

**JOURNAL**  
**OF THE**  
**HOUSE OF DELEGATES**  
**EIGHTY-FIFTH**  
**LEGISLATURE**  
**OF**  
**WEST VIRGINIA**



**VOLUME III**

WEST VIRGINIA HOUSE OF DELEGATES  
HONORABLE ROGER HANSHAW  
SPEAKER OF THE HOUSE

\*\*\*\*\*

COMPILED AND PUBLISHED  
UNDER THE DIRECTION  
OF

STEPHEN J. HARRISON  
CLERK OF THE HOUSE



OFFICE OF THE CLERK OF THE HOUSE  
STATE CAPITOL  
CHARLESTON, WEST VIRGINIA

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Friday, March 11, 2022

**FIFTY-NINTH DAY**

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates called to order by the Honorable Roger Hanshaw, Speaker.

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

The Clerk proceeded to read the Journal of Thursday, March 10, 2022, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Reordering of the Calendar**

Pursuant to the action of the Committee on Rules, Delegate Summers announced that Com. Sub. for S. B. 2, Com. Sub. for S. B. 138, S. B. 228, Com. Sub. for S. B. 246, Com. Sub. for S. B. 247, Com. Sub. for S. B. 264, Com. Sub. for S. B. 424 and Com. Sub. for S. B. 486, on Third Reading, Special Calendar, had been transferred to the House Calendar; and, Com. Sub. for S. B. 659 and S. B. 693, on Second Reading, House Calendar, had been transferred to the Special Calendar.

**Conference Committee Report Availability**

At 10:55 a.m., the Clerk announced that the report of the Committee of Conference on **Com. Sub. for H. B. 4333**, Relating to the sunset of the Board of Hearing-Aid Dealers and Fitters, would be available in the Clerk's Office.

**Committee Reports**

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

Your Committee on Rules has had under consideration:

**H. C. R. 101**, Urging Congress to pass “Share the Savings” legislation,

**H. R. 7**, Urging the United States Congress to increase sustainable forest harvesting on public lands in the state of West Virginia and more specifically, the Monongahela National Forest,

**H. R. 19**, A resolution urging Congress and the President to pass federal legislation to speed up the environmental permitting process on new wells and mines,

**S. C. R. 4**, US Army SP4 Warner Ray Osborne Memorial Bridge,

**S. C. R. 10**, US Air Force TSGT Franklin A. Bradford Bridge,

**S. C. R. 14**, US Army SSGT Elson M Kuhn Memorial Bridge,

**S. C. R. 19**, US Army PVT Thomas D. Beckett, Sr., Memorial Bridge,

**S. C. R. 22**, US Army PFC Clifford O. Eckard Memorial Bridge,

**S. C. R. 26**, US Army TEC5 William “Bill” Thurman King Memorial Bridge,

**S. C. R. 36**, USMC CPL Harry Edward Dean, Jr., Memorial Bridge,

**S. C. R. 48**, US Army PFC Ronald Lee Berry Memorial Bridge,

**S. C. R. 49**, Establishing Honor Guard in each National Guard unit,

And,

**S. C. R. 55**, Respectfully urging current presidential administration to open federal lease sales onshore and offshore,



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

### **Reports of Select Committees**

On motion for leave the following resolutions were introduced (Originating in the Select Committee on Tourism and Economic Diversification and reported with the recommendation that they each be adopted, but that they first be referred to the Committee on Rules), which were read by their titles, as follows:

**By Delegate Howell:**

**H. C. R. 104** - "Requesting the Joint Committee on Government and Finance study the fiscal feasibility of eliminating the motor fuel excise tax and replacing any income from the tax with an equivalent increase in the general state sales tax revenue generated by increased sales,"

**By Delegate Howell:**

**H. C. R. 105** - "Requesting the Joint Committee on Government and Finance study economic policy strategies and incentives for drawing into West Virginia employers employing 50 persons or less located in high tax, high regulation, anti-competitive locations out of state,"

**By Delegate Howell:**

**H. C. R. 106** - "Requesting the Joint Committee on Government and Finance study economic policy strategies and incentives for building Intrastate pipelines from the gas fields (likely propane) and from the Ohio River to transport oil and gas products to the far eastern panhandle of the state of West Virginia within close proximity to interstate highway corridors,"

**By Delegates Howell:**

**H. C. R. 107** - "Requesting the Joint Committee on Government and Finance study ways that allow the West Virginia Economic Development Authority ('EDA') to target companies and have them move to West Virginia without having to go through the Legislative process for every job announcement,"

And,

**By Delegate Howell:**

**H. C. R. 108** – “Requesting the Joint Committee on Government and Finance study the possibility of combining certain programs related to the West Virginia Department of Health and Human Resources (‘DHHR’), Workforce West Virginia, and the West Virginia Community and Technical College System to create a ‘one-stop shop’ for applicants to be admitted into higher education programs.”

The Speaker referred the resolutions (H. C. R. 104, H. C. R. 105, H. C. R. 106, H. C. R. 107 and H. C. R. 108) to the Committee on Rules.

**Messages from the Executive**

The following communication was laid before the House of Delegates and reported by the Clerk:

**STATE OF WEST VIRGINIA**

Jim Justice  
Governor of West Virginia  
March 9, 2022

The Honorable Craig Blair  
President of the Senate  
State Capitol, Building 1, Room 229-M  
Charleston, West Virginia 25305

The Honorable Roger Hanshaw  
Speaker of the House of Delegates  
State Capitol, Building 1, Room 228-M  
Charleston, West Virginia 25305

Dear President Blair and Speaker Hanshaw:

After submission of my recommended FY 2023 Executive Budget on January 12, 2022, there are areas that require adjustment.

Therefore, pursuant to Section 51, Article VI of the Constitution of the State of West Virginia, I submit revisions to the FY 2023 Budget Bill for the following sections:

## TITLE II – APPROPRIATIONS

### **Section 1. Appropriations from general revenue.**

#### **Executive**

*Governor's Office – Civil Contingent Fund, Fund 0105, Fiscal Year 2023, Org 0100*

(To add a new item of appropriation.)

- Insert a new item of appropriation: “Court Improvement” Appropriation xxxxx for \$5,000,000.

(To add reappropriation language.)

- Insert into the reappropriation language after Civil Contingent Fund - Surplus (fund 0105, appropriation 26300), “...Local Economic Development Assistance - Surplus (fund 0105, appropriation 26600),...”

#### **Department of Commerce**

*Department of Commerce – Office of the Secretary, Fund 0606, Fiscal Year 2023, Org 0327*

(To reflect 5% pay raise transferred from Department of Economic Development.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$60,318.

*Division of Natural Resources, Fund 0265, Fiscal Year 2023, Org 0310*

(To continue funding positions provided by supplemental appropriation SB 628/HB 4740.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$184,162.

### **Department of Economic Development**

*Department of Economic Development – Office of the Secretary, Fund 0256, Fiscal Year 2023, Org 0307*

(To move pay raise to correct fund under Department of Commerce.)

- Decrease “Personal Services and Employee Benefits” Appropriation 00100 by \$60,318.

(To add directive language only to reflect fund transfer.)

- Amend the directive language for appropriation 13000 to read as follows: “From the above appropriation for Current Expenses (fund 0256, appropriation 13000), \$50,000 shall be used for the Western Potomac Economic Partnership, \$100,000 shall be used for Advantage Valley, \$548,915 for West Virginia University, and \$298,915 for Southern West Virginia Community and Technical College for the Mine Training and Energy Technologies Academy.”

(To remove Directed Transfer language from lines 12-13.)

- Remove the language “The above appropriation for Directed Transfer (fund 0256, appropriation 70000) shall be transferred to the Broadband Enhancement Fund (fund 3013).”

### **Department of Education**

*State Board of Education – State Department of Education, Fund 0313, Fiscal Year 2023, Org 0402*

(To adjust Teachers’ Retirement Savings Realized per CPRB actuarial requirement.)

- Decrease “Teachers’ Retirement Savings Realized” Appropriation 09500 by \$15,814,000.

(To include HOPE Scholarship funding in accordance with §18-9A-25 of the West Virginia Code.)

- Insert a new item of appropriation: “Hope Scholarship Program” Appropriation 30401 for \$23,350,520.

*State Board of Education – State Aid to Schools, Fund 0317, Fiscal Year 2023, Org 0402*

(To adjust School Aid Formula based on the certified property valuations and actuarial requirement from the West Virginia Consolidated Public Retirement Board.)

- Decrease “Less Local Share” adjustment by \$682,295 (it should now be -\$474,379,513).
- Decrease “Adjustments” adjustment by \$97,293 (it should now be -\$2,495,004).
- Amend “Total Basic State Aid” to reflect the sum of all appropriations and adjustments that precede it. It should now read as “\$1,207,845,815”.
- Decrease “Teachers’ Retirement System” Appropriation 01900 by \$3,976,760.
- Decrease “Retirement Systems – Unfunded Liability” Appropriation 77500 by \$25,072,240.

**Department of Health and Human Resources**

*Division of Health – Consolidated Medical Services Fund, Fund 0525, Fiscal Year 2023, Org 0506*

(To include reappropriation language.)

- On page 47, line 12, before the word “and” insert the following: “...Institutional Facilities Operations – Surplus (fund 0525, appropriation 63200),...”.

**Department of Homeland Security**

*West Virginia State Police, Fund 0453, Fiscal Year 2023, Org 0612*

(To adjust the Trooper Retirement Fund appropriation based on the actuarial requirement from the West Virginia Consolidated Public Retirement Board.)

- Increase “Retirement Systems – Unfunded Liability” Appropriation 77500 by \$12,000.

**Department of Transportation**

*Division of Public Transit, Fund 0510, Fiscal Year 2023, Org 0805*

(To provide support to the Sistersville Ferry.)

- On page 63, after line 9, insert the following: “From the above appropriation for Current Expenses (fund 0510, appropriation 13000), \$30,000 shall be transferred to the City of Sistersville to support the Sistersville Ferry.”

**Higher Education Policy Commission**

*Higher Education Policy Commission – Administration – Control Account, Fund 0589, Fiscal Year 2023, Org 0441*

(To adjust reappropriation language.)

- On page 69, line 19, insert the letter “H” in front of “EAPS Grant Program”.

**Department of Veterans’ Assistance**

*Division of Veterans’ Affairs, Fund 0456, Fiscal Year 2023, Org 0613*

(To match state construction costs for the new Beckley facility.)

- Insert a new item of appropriation: “Buildings” Appropriation 25800 for \$8,181,000.

## **Section 2. Appropriations from state road fund.**

### **Department of Transportation**

*Division of Highways, Fund 9017, Fiscal Year 2023, Org 0803*

(To realign state road spending authority.)

- Decrease “Maintenance” Appropriation 23700 by \$21,200,000.
- Increase “General Operations” Appropriation 27700 by \$21,200,000.

## **Section 3. Appropriations from other funds.**

### **Department of Administration**

*Department of Administration – Office of the Secretary – Employee Pension and Health Care Benefit Fund, Fund 2044, Fiscal Year 2023, Org 0201*

(To adjust spending authority to match the appropriation for Teachers’ Retirement Savings Realized.)

- Decrease “Current Expenses” Appropriation 13000 by \$15,814,000.

### **Miscellaneous Boards and Commissions**

*Hospital Finance Authority – Hospital Finance Authority Fund, Fund 5475, Fiscal Year 2023, Org 0509*

(To carry-forward spending authority established by supplemental appropriation SB 732/HB 4852.)

- Insert a new item of appropriation: “Personal Services and Employee Benefits” Appropriation 00100 for \$10,000.

**Section 6. Appropriations of federal funds.****Executive**

*Department of Agriculture, Fund 8736, Fiscal Year 2023, Org 1400*

(To carry-forward federal spending authority for American Rescue Plan [ARPA] funds.)

- Insert a new item of appropriation: “Federal Coronavirus Pandemic” Appropriation 89101 for \$1,098,839.

Insert a new budget item as follows:

**“Department of Tourism”**

*“342a - Department of Tourism – Tourism Workforce Development Fund, Fund 8903, Fiscal Year 2023, Org 0304”*

(To add Federal spending authority for American Rescue Plan [ARPA] funds.)

- Insert a new item of appropriation: “Federal Coronavirus Pandemic” Appropriation 89101 for \$5,148,017.

**Department of Arts, Culture, and History**

*Division of Culture and History, Fund 8718, Fiscal Year 2023, Org 0432*

(To carry-forward federal spending authority for American Rescue Plan [ARPA] funds.)

- Insert a new item of appropriation: “Federal Coronavirus Pandemic” Appropriation 89101 for \$765,400.

*Commission for National and Community Service, Fund 8841, Fiscal Year 2023, Org 0432*



(To carry-forward federal spending authority for American Rescue Plan [ARPA] funds.)

- Insert a new item of appropriation: “Federal Coronavirus Pandemic” Appropriation 89101 for \$1,960,558.

*Library Commission, Fund 8720, Fiscal Year 2023, Org 0433*

(To carry-forward federal spending authority for American Rescue Plan [ARPA] funds.)

- Insert a new item of appropriation: “Federal Coronavirus Pandemic” Appropriation 89101 for \$2,388,880.

*Educational Broadcasting Authority, Fund 8721, Fiscal Year 2023, Org 0439*

(To carry-forward federal spending authority for American Rescue Plan [ARPA] funds.)

- Insert a new item of appropriation: “Federal Coronavirus Pandemic” Appropriation 89101 for \$710,176.

## **Bureau of Senior Services**

*Bureau of Senior Services, Fund 8724, Fiscal Year 2023, Org 0508*

(To carry-forward federal spending authority for American Rescue Plan [ARPA] funds.)

- Insert a new item of appropriation: “Federal Coronavirus Pandemic” Appropriation 89101 for \$16,400,000.

## **Section 9. Appropriations from general revenue fund surplus accrued.**

### **Department of Economic Development**

*Department of Economic Development - Office of the Secretary,  
Fund 0256, Fiscal Year 2023, Org 0307*

(To amend directive language to correct fund.)

- Amend the language to read as follows: “The above appropriation for Directed Transfer (fund 0256, appropriation 70099) shall be transferred to the Broadband Enhancement Fund (fund 3013).”

## **Executive**

*Governor’s Office – Civil Contingent Fund, Fund 0105, Fiscal  
Year 2023, Org 0100*

(To add an item of surplus appropriation for federal  
maintenance of effort.)

- Insert a new item of appropriation: “Congressional  
Earmark Maintenance of Effort - Surplus”  
Appropriation xxxxx for \$100,000,000.

## **Section 10. Appropriations from lottery net profits surplus accrued.**

### **Bureau of Senior Services**

*Bureau of Senior Services, Fund 5405, Fiscal Year 2023, Org  
0508*

(To restore state matching portion for Title XIX Waiver  
Program.)

- Increase “Senior Services Medicaid Transfer –  
Lottery Surplus” Appropriation 76500 by \$750,000.

Insert a new budget item as follows:

### **“Department of Arts, Culture, and History”**

*“401a – Division of Culture and History, Fund 3534, Fiscal Year  
2023, Org 0432”*

(To add new items of appropriation.)

- Insert “Save the Music – Lottery Surplus”  
Appropriation xxxxx for \$100,000.
- Insert “Capital Outlay and Maintenance – Lottery  
Surplus” Appropriation 76099 for \$3,000,000.

**Section 11. Appropriations from state excess lottery revenue  
surplus accrued.**

(To correct section numbering.)

- On page 188, line 1, replace “Sec. 10” with “Sec. 11”.

Thank you for your prompt attention to this matter. Note also that while my introduced budget bill accounted for additional General and Lottery revenue appropriations for salary increases, to avoid additional base budget growth, any agency specific legislation relating to salaries passed after my introduced budget bill could potentially be addressed within existing Personal Services and Employee Benefits appropriations through the elimination and/or realignment of vacant positions, as available and appropriate. Your cooperation is always appreciated. Should you have any questions or require additional information, please call me at any time.

Sincerely,

Jim Justice,  
*Governor.*

A communication from His Excellency, the Governor, advised that on March 9, 2022, he approved **S. B. 639, H. B. 4048, H. B. 4299, H. B. 4308, H. B. 4312 and Com. Sub. for H. B. 4369.**

**Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 2096**, Reinstating the film investment tax credit.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.**

**§11-13X-3. Definitions.**

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

(b) *Terms defined.* —

~~(1)~~ ‘Commercial exploitation’ means reasonable intent for public viewing for the delivery medium used.

~~(2)~~ ‘Direct production expenditure’ means a transaction that occurs in the State of West Virginia or with a West Virginia vendor and includes:

(A) Payment of wages, fees, and costs for related fringe benefits provided for talent, management or labor that are subject to West Virginia income tax;

(B) Payment to a personal services corporation for the services of a performing artist if:

(i) The personal services corporation is subject to West Virginia income tax on those payments; and

(ii) The performing artist receiving payments from the personal services corporation is subject to West Virginia income tax; and

(C) Any of the following provided by a West Virginia vendor:

(i) The story and scenario to be used by a qualified project;

(ii) Set construction and operations, wardrobe, accessories, and related services;

(iii) Photography, sound synchronization, lighting, and related services;

(iv) Editing and related services;

(v) Rental of facilities and equipment;

(vi) Leasing of vehicles;

(vii) Food or lodging;

(viii) Airfare if purchased through a West Virginia-based travel agency or travel company;

(ix) Insurance coverage and bonding if purchased through a West Virginia-based insurance agent; and

(x) Other direct costs of producing a qualified project in accordance with generally accepted entertainment industry practices: Provided, That "direct production expenditure" shall not include depreciation of any item that has less than one full year of depreciable life.

~~(3)~~ 'Eligible company' means a person or business entity engaged in the business of producing film industry productions. The term excludes state agencies.

~~(4)~~ 'Feature length' means in excess of 40 minutes.

~~(5)~~ 'Film industry production' means a qualified project intended for reasonable national or international commercial exploitation.

~~(6)~~ 'Film office' means the West Virginia Film Office, which is a division of the West Virginia Department of Commerce

‘Multi-state distribution’ means reaching at least one other state besides West Virginia.

(7) ‘Postproduction expenditure’ means a transaction that occurs in West Virginia or with a West Virginia vendor after the completion of principal photography, including editing and negative cutting; Foley recording and sound effects; automatic dialogue replacement (also known as ADR or dubbing); special effects or visual effects, including computer-generated imagery or other effects; scoring and music editing; sound editing; beginning and end credits; soundtrack production; subtitling or addition of sound or visual effects; but not including an expenditure for advertising, marketing, distribution, or expense payments.

(8) ‘Qualified project’ means a feature length theatrical or direct-to-video motion picture, a made-for-television motion picture, ~~a commercial~~ a music video, commercial still photography, a television pilot program, a television series, and a television mini-series that incurs a ~~minimum of \$25,000~~ cumulative amount of \$50,000 in a calendar year in direct production expenditures and post-production expenditures ~~as defined by this subsection~~, in West Virginia or any combination of projects not previously claimed that would qualify for the credit except for cost, and that combined meets or exceeds the cumulative amount of \$50,000 in a calendar year. The term excludes news or current affairs programming, a weather or market program, ~~an interview or a~~ talk show, a sporting event or show, an awards show, a gala, a production that solicits funds, a home shopping program, a program that primarily markets a product or service, political advertising, or a concert production.

A qualified project may be produced on any single media or multimedia program that:

(A) Is fixed on film, digital medium, videotape, computer disk, laser disc, or other similar delivery medium;

(B) Can be viewed or reproduced;

(C) Is not intended to and does not violate §61-8C-1 *et seq.* of this code;

(D) Does not contain obscene matter or sexually explicit conduct, as defined by §61-8A-1 *et seq.* of this code;

(E) Is intended for reasonable commercial exploitation for the delivery medium used whether delivery is in state or multi-state distribution; and

(F) Does not contain content that, in the sole discretion of the Office of Economic Development, negatively portrays the state of West Virginia. ~~in a significantly derogatory manner~~

~~(9)~~ “Tax Commissioner” means the West Virginia State Tax Commissioner or his or her designee.

#### **§11-13X-4. Creation of the tax credit.**

(a) An eligible company may apply for, and the Tax Commissioner shall allow, a nonrefundable tax credit in an amount equal to the percentage specified in §11-13X-5 of this code of:

(1) Direct production expenditures incurred in West Virginia that are directly attributable to the production in West Virginia of a qualified project ~~and that~~ which expenditures occur in West Virginia or with a West Virginia vendor; and

(2) Postproduction expenditures incurred in West Virginia that are:

(A) Directly attributable to the production of a qualified project; and

(B) For services performed in West Virginia.

(b) Expenditures utilized by an eligible company for purposes of calculating the tax credit authorized by this article shall in no event be utilized by the eligible company for the purpose of calculating or qualifying investment for claiming the economic opportunity tax credit authorized by §11-13Q-1 *et seq.* of this code

or the manufacturing investment tax credit authorized by §11-13S-1 *et seq.* of this code.

**§11-13X-5. Amount of credit allowed; limitation of the credits.**

(a) *Base allowance.* — The amount of credit allowed to every eligible company, except as provided in subsection (b) of this section, is 27 percent.

(b) *Extra allowance for hiring of local workers.* — Any amount allowed in subsection (a) of this section shall be increased by an additional four percent if the eligible company, or its authorized payroll service company, employs 10 or more West Virginia residents as part of its full-time employees working in the state or as apprentices working in the state.

(c) *Application of the credits.* — The tax credit allowed under this section shall be applied to the eligible company's state tax liability as provided in §11-13X-7 of this code.

~~(d) *Limitation of the credits.* — No more than \$5 million of the tax credits may be allocated by the film office in any given West Virginia state fiscal year office shall allocate the tax credits in the order the applications therefor are received.~~

**§11-13X-6. Requirements for credit.**

(a) In order for any eligible company to claim a tax credit under this article, it shall comply with the following requirements:

(1) If the qualified project contains production credits, the eligible company shall agree, upon request by the ~~film office~~ Office of Economic Development, to recognize the State of West Virginia with the following acknowledgment in the end credit roll: "Filmed in West Virginia with assistance of the West Virginia Film Industry Investment Act";

(2) Apply to the ~~film office~~ Office of Economic Development on forms and in the manner the ~~film office~~ Office of Economic Development may prescribe; ~~and~~



(3) If an eligible company submits a proposal to perform a qualified project for a state agency, the eligible company shall indicate its intention to claim the tax credit provided by this article; and

~~(3)~~ (4) Submit to the ~~film-office~~ Office of Economic Development information required by the ~~film~~ office to demonstrate conformity with the requirements of this section and shall agree in writing:

(A) To pay all obligations the eligible company has incurred in West Virginia; and

(B) To delay filing of a claim for the tax credit authorized by this article until the ~~film-office~~ Office of Economic Development delivers written notification to the Tax Commissioner that the eligible company has fulfilled all requirements for the credit.

The ~~film-office~~ Office of Economic Development shall determine the eligibility of the company and the qualification of each project, and shall report this information to the Tax Commissioner in a manner and at times the ~~film-office~~ Office of Economic Development and the Tax Commissioner shall agree upon.

(b) Upon completion of a qualified project:

(1) An eligible company shall have filed all required West Virginia tax reports and returns and paid any balance of West Virginia tax due on those returns;

(2) All claims for the tax credit shall be filed with an expense verification report prepared by an independent certified public accountant, utilizing “agreed upon procedures” which are prescribed by the ~~film-office~~ Office of Economic Development in accordance with generally accepted auditing standards in the United States. The certified public accountant will render a report as to the qualification of the credits, consistent with guidelines to be determined by the ~~film office~~ Office of Economic Development and approved by the Tax Commissioner; and

(3) An eligible company claiming an extra allowance for employing local workers shall submit to the ~~film office~~ Office of Economic Development documentation verifying West Virginia residency for all individuals claimed to qualify for the extra allowance. The documentation shall include the name, home address, and telephone number for all individuals used to qualify for the extra allowance.

(c) If the requirements of this section have been complied with, the ~~film office~~ Office of Economic Development shall approve the film tax credit and issue a document granting the appropriate tax credit to the eligible company and shall report this information to the Tax Commissioner.

#### **§11-13X-7. Application of credit to state taxes.**

(a) *Credit allowed. —*

Beginning in the taxable year that the expenditures permitted under section four of this article are incurred, eligible companies and owners of eligible companies, as described in subsection (d) of this section, are permitted a credit, as described in section five of this article, against the taxes imposed by articles ~~twenty-three~~, twenty-four and twenty-one of this chapter, in that order, as specified in this section.

~~(b) *Business franchise tax. —*~~

~~The credit is first applied to reduce the taxes imposed by article twenty-three of this chapter for the taxable year, determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits against tax.~~

~~(c)~~ (b) *Corporation net income taxes. —*

After application of subsection (b) of this section, any unused credit is next applied to reduce the taxes imposed by article twenty-four of this chapter for the taxable year, determined before application of allowable credits against tax.

~~(d)~~ (c) *Personal income tax.* --

(1) If the eligible taxpayer is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, a limited liability company that is treated as a partnership for federal income tax purposes or a sole proprietorship, then any unused credit, after application of subsections (b) and (c) of this subsection, is allowed as a credit against the taxes imposed by article twenty-one of this chapter on the income from business or other activity subject to tax under article twenty-three of this chapter or on income of a sole proprietor attributable to the business.

(2) Electing small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

**§11-13X-8. Uses of credit; unused credit; carry forward; carry back prohibited; expiration and forfeiture of credit.**

(a) No credit is allowed under this section against any employer withholding taxes imposed by §11-21-1 *et seq.* of this code.

(b) If the tax credit allowed under this article in any taxable year exceeds the sum of the taxes enumerated in subsections (b), (c), or (d) of §11-13X-7 of this code, for that taxable year, the excess may be applied against those taxes, in the order and manner stated in §11-13X-7 of this code, for succeeding taxable years until the earlier of the following:

(1) The full amount of the excess tax credit is used;

(2) The expiration of the second taxable year after the taxable year in which the expenditures occurred. The tax credit remaining thereafter is forfeited; or

(3) The excess tax credit is transferred or sold.

(c) No carryback is allowed to a prior taxable year that does not have qualified expenditures for the amount of any unused portion of any annual credit allowance.

(d) The transfer or sale of this credit does not extend the time in which the credit can be used. The carry forward period for credit that is transferred or sold begins on the date on which the credit was originally issued by the ~~film office~~ Office of Economic Development.

(e) Any tax credit certificate issued in accordance with this article, which has been issued to an eligible company, and to the extent not previously claimed against the tax of the eligible company or the owner of the certificate, may be transferred or sold by such eligible company to another West Virginia taxpayer, subject to the following conditions:

(1) A single transfer or sale may involve one or more transferees, assignees or purchasers. A transfer or sale of the credits may involve multiple transfers to one or more transferees, assignees or purchasers;

(2) Transferors and sellers shall apply to the ~~film~~ office for approval of any transfer, sale, or assignment of the tax credit. Any amount of the tax credit that has been transferred or assigned shall be subject to the same limitations and conditions that apply to the eligible company's or seller's entitlement, use and application of the credit. The application for sale, transfer or assignment of the credit shall include the transferor's tax credit balance prior to transfer, the credit certificate number, the name of the seller, the transferor's remaining tax credit balance after transfer, if any, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the credit certificate and any other information required by the ~~film office~~ Office of Economic Development or the Tax Commissioner.

(3) The ~~film office~~ Office of Economic Development shall not approve the transfer or assignment of a tax credit if the seller or transferor has an outstanding tax obligation with the State of West Virginia for any prior taxable year.

(f) The transferee, assignee or purchaser shall apply such credits in the same manner and against the same taxes as specified in this article.

(g) For purposes of this chapter, any proceeds received by the eligible company or transferor for its assignment or sale of the tax credits allowed pursuant to this section are exempt from the West Virginia consumers sales and service tax, use tax, the corporate net income tax, and personal income tax.

(h) The Tax Commissioner shall not seek recourse against the transferee for any portion of the credit that may be subsequently disqualified.

Failure to comply with this section will result in the disallowance of the tax credit until the seller or transferor is in full compliance.

#### **§11-13X-11. TAX CREDIT REVIEW AND ACCOUNTABILITY.**

(a) Beginning on the first day of the third taxable year after the passage of this article and every two years thereafter, the ~~film office~~ Office of Economic Development shall submit to the Governor, the President of the Senate and the Speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the Film Industry Investment Act during the most recent two-year period for which information is available. The criteria to be evaluated shall include, but not be limited to, for each year of the two-year period:

- (1) The number of eligible companies claiming the credit;
- (2) The dollar amount of tax credit certificates issued to taxpayers;
- (3) The number of new businesses created by the tax credit;
- (4) The number of new jobs, if any, created by the tax credit;

(5) The amount of direct expenditures made on qualified projects; and

(6) The cost of the credit.

(b) Eligible companies claiming the credit shall provide any information the Tax Commissioner and the ~~film-office~~ Office of Economic Development 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. ~~However, ;~~ *Provided, however, That* notwithstanding the provisions of §11-10-5d and §11-10-5s of this code, the Tax Department is hereby authorized to disclose to the ~~film and to the development office~~ Office of Economic Development such tax information as may be necessary to compile the report required by this section and the report required by §11-13X-12 of this code.

**§11-13X-12. Economic development; utilization of state locations, talent, and production companies.**

(a) The West Virginia ~~Development Office~~ Office of Economic Development, in consultation and coordination with the appropriate public and private entities, shall promote, foster, encourage, and monitor the development of the film industry in this state as part of its comprehensive economic development strategy for West Virginia and report recommendations for expanding the industry in the state to the Governor and the Joint Committee on Government and Finance annually on or before December 1.

(b) The West Virginia Office of Economic Development shall coordinate with property owners, musicians and other performers, and other managers of resources suitable for film production to develop a database of locations, music, and other resources available for incorporation into film projects. To the greatest feasible extent, the Economic Development Office shall establish methods for interface with national and international databases of these resources that are available to, or used by, film and video production teams in the identification and selection of location, music, and other resources. The Economic Development Office

shall also implement means for property owners and for staff in the field to connect to the state's database and to submit entries or nominations thereto.

**§11-13X-13. Effective date, elimination of film tax credits, preservation of film tax credits earned prior to the sunset date; cessation of the West Virginia Film Office.**

(a) The credit allowed by this article shall be allowed upon eligible expenditures occurring after December 31, 2007 and before January 16, 2018, and shall be allowed upon eligible expenditures occurring on and after the date specified in subsection (d) of this section and before the termination date specified therein.

~~(b) The amendments to this article enacted in the year 2009 shall apply to all taxable years beginning after December 31, 2007, and shall apply with retroactive effect with relation to taxable years beginning prior to the date of passage of such amendments.~~

~~(c) No tax credits authorized under this article shall be issued following the effective date of legislation establishing this subsection, §11-13X-13(d), and §11-13X-13(e) of this code in the year 2018. Notwithstanding any provision of this article to the contrary, no entitlement to any tax credit under this article may result from, and no credit is available to any person for, expenditures incurred following the effective date of this subsection~~

~~(d)~~ (b) Notwithstanding the provisions of §11-13X-13(e) of this code, film Film tax credits to which a taxpayer has gained lawful entitlement ~~prior to the effective date of this subsection,~~ after December 31, 2007, and before January 16, 2018 may continue to be applied against tax liabilities, subject to the conditions, limitations, and constraints applicable to such credit under this article, until exhausted or otherwise terminated in accordance with the terms of this article and this code. Film tax credits to which a taxpayer has gained lawful entitlement prior to the effective date of this subsection may be transferred in accordance with §11-13X-8 of this code, subject to the conditions, limitations, and constraints applicable to such credit under this

article, until exhausted or otherwise terminated in accordance with the terms of this article and this code.

(e) (c) Effective July 1, 2018, all operations of the West Virginia Film Office shall cease. To the extent necessary to settle, finalize, and conclude business relating to outstanding film tax credits issued prior to the effective date of the bill, the Division of Tourism is hereby authorized to administer such duties for that limited purpose.

(d) The amendments to this article enacted in the year 2022 shall apply to all taxable years beginning on or after July 1, 2022: *Provided*, That, unless sooner terminated by law, the film investment tax credit will terminate on December 31, 2027. No entitlement to any tax credit authorized by this article may result from, and no credit is available to any person for, expenditures incurred subsequent to December 31, 2027. Film tax credits to which a taxpayer has gained lawful entitlement on or after July 1, 2022, and on or before December 31, 2027, may continue to be applied against tax liabilities, subject to the conditions, limitations, and constraints applicable to such credit under this article, until exhausted or otherwise terminated in accordance with the terms of this article and this code. Film tax credits to which a taxpayer has gained lawful entitlement on or after July 1, 2022, and on or before December 31, 2027, may be transferred in accordance with §11-13X-8 of this code, subject to the conditions, limitations, and constraints applicable to such credit under this article, until exhausted or otherwise terminated in accordance with the terms of this article and this code.”

And,

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

**Com. Sub. for H. B. 2096** – “A Bill to amend and reenact §11-13X-3, §11-13X-4, §11-13X-5, §11-13X-6, §11-13X-7; §11-13X-8, §11-13X-11, §11-13X-12, and §11-13X-13 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Film Industry Investment Act; reinstating the film investment tax credit; providing the coordination and management by the West Virginia



Office of Economic Development; defining terms; excluding commercials and promotional videos from the definition of qualified project; excluding short-term depreciation from credit; raising the minimum threshold of cumulative annual expenditures necessary to qualify for credit; eliminating limitation of credit; requiring the Economic Development Office to develop a database of locations, music, and other resources to be made available to film production teams; providing Economic Development Office discretion to determine if project negatively portrays West Virginia; providing and clarifying effective date; eliminating reference to business franchise tax; providing sunset provision; and making technical corrections.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 541**), and there were—yeas 92, nays 7, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Foster, J. Jeffries, Maynard, Paynter, Pinson, Pritt and Steele.

Absent and Not Voting: Honaker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2096) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4567**, Relating to business and occupation or privilege tax.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 13. TAXATION AND FINANCE.**

**§8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax; exemptions; activity in two or more municipalities; administrative provisions.**

(a) *Authorization to impose tax.* — (1) Whenever any business activity or occupation, for which the state imposed its annual business and occupation or privilege tax under article thirteen, chapter eleven of this code, prior to July 1, 1987, is engaged in or carried on within the corporate limits of any municipality, the governing body thereof shall have plenary power and authority, unless prohibited by general law, to impose a similar business and occupation tax thereon for the use of the municipality.

(2) Municipalities may impose a business and occupation or privilege tax upon every person engaging or continuing within the municipality in the business of aircraft repair, remodeling, maintenance, modification and refurbishing services to any aircraft or to an engine or other component part of any aircraft as a separate business activity.

(b) *Maximum tax rates.* — In no case shall the rate of such municipal business and occupation or privilege tax on a particular activity exceed the maximum rate imposed by the state, exclusive of surtaxes, upon any business activities or privileges taxed under sections two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and two-j, article thirteen of said chapter eleven, as such rates were in effect under said article thirteen, on January 1, 1959, or in excess of one percent of gross income under section two-k of said article thirteen, or in excess of three tenths of one percent of gross value or gross proceeds of sale under section two-m of said article thirteen. The rate of municipal business and occupation or privilege tax on the activity described in subdivision (2), subsection (a) of

this section shall be ten one-hundredths of one percent. The rate of municipal business and occupation or privilege tax on the activity of a health maintenance organization holding a certificate of authority under the provisions of article twenty-five-a, chapter thirty-three of this code, shall not exceed one half of one percent to be applied solely to that portion of gross income received from the Medicaid program pursuant to Title XIX of the Social Security Act, the state employee programs administered by the Public Employees Insurance Agency pursuant to article sixteen, chapter five of this code, and other federal programs, for health care items or services provided directly or indirectly by the health maintenance organization, that is expended for administrative expenses; and shall not exceed one half of one percent to be applied to the gross income received from enrollees, or from employers on behalf of enrollees, from sources other than Medicaid, state employee programs administered by the Public Employees Insurance Agency and other federal programs for health care items or services provided directly or indirectly by the health maintenance organization: *Provided*, That this tax rate limitation shall not extend to that part of the gross income of health maintenance organizations which is received from the use of real property other than property in which any such company maintains its office or offices in this state, whether such income is in the form of rentals or royalties. This provision concerning the maximum municipal business and occupation tax rate on the activities of health maintenance organizations is effective beginning after December 31, 1996. Any payments of business and occupation tax made by a health maintenance organization to a municipality for calendar year 1997 shall not be subject to recovery by the health maintenance organization. Administrative expenses shall include all expenditures made by a health maintenance organization other than expenses paid for claims incurred or payments made to providers for the benefits received by enrollees.

(c) *Effective date of local tax.* — Any taxes levied pursuant to the authority of this section may be made operative as of the first day of the then current fiscal year or any date thereafter: *Provided*, That any new imposition of tax or any increase in the rate of tax upon any business, occupation or privilege taxed under section

two-e of said article thirteen shall apply only to gross income derived from contracts entered into after the effective date of such imposition of tax or rate increase, and which effective date shall not be retroactive in any respect: *Provided, however,* That no tax imposed or revised under this section upon public utility services may be effective unless and until the municipality provides written notice of the same by certified mail to said public utility at least sixty days prior to the effective date of said tax or revision thereof.

(d) *Exemptions.* –

(1) A municipality shall not impose its business and occupation or privilege tax on any activity that was exempt from the state's business and occupation tax under the provisions of section three, article thirteen of said chapter eleven, prior to July 1, 1987, and determined without regard to any annual or monthly monetary exemption also specified therein: *Provided,* That on and after July 1, 2007, a municipality may impose its business and occupation or privilege tax on any activity of a corporation, association or society organized and operated exclusively for religious or charitable purposes that was exempt from the state's business and occupation tax under the provisions of section three, article thirteen of chapter eleven, prior to July 1, 1987, but only to the extent that the income generated by the activity is subject to taxation under the provisions of section 511 of the Internal Revenue Code of 1986, as amended.

(2) Effective July 1, 2023, the municipal business and occupation or privilege tax on the sale of new automobiles that have never been registered in the name of an individual shall be reduced by 50% percent of the total amount of the tax: *Provided,* That, effective July 1, 2024, the remaining municipal business and occupation or privilege tax on the sale of new automobiles that have never been registered in the name of an individual shall be reduced by an additional 50% of the total amount of the tax: *Provided, however,* That effective July 1, 2025, the municipal business and occupation or privilege tax on the sale of new automobiles that have never been registered in the name of an individual shall be completely eliminated. For the purposes of this section an automobile is a self-propelled vehicle used primarily for the transportation of passengers and their effects and operated on

the roads and highways by the use of motor vehicle fuel or propelled by one or more electric motors using energy stored in batteries or a combination thereof. An automobile shall include a light-duty truck with an enclosed cabin and an open loading area at the rear and a sport utility vehicle. An automobile does not include a motorcycle.

(e) *Activity in two or more municipalities.* — Whenever the business activity or occupation of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount of gross income, or gross proceeds of sales, taxable by each municipality shall be determined in accordance with such legislative regulations as the Tax Commissioner may prescribe. It being the intent of the Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the same classification by two or more municipalities shall not be allowed, and that gross income, or gross proceeds of sales, derived from activity engaged in or carried on within this state, that is presently subject to state tax under section two-c or two-h, article thirteen, chapter eleven of this code, which is not taxed or taxable by any other municipality of this state, may be included in the measure of tax for any municipality in this state, from which the activity was directed, or in the absence thereof, the municipality in this state in which the principal office of the taxpayer is located. Nothing in this subsection shall be construed as permitting any municipality to tax gross income or gross proceeds of sales in violation of the Constitution and laws of this state or the United States, or as permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

(f) Where the governing body of a municipality imposes a tax authorized by this section, such governing body shall have the authority to offer tax credits from such tax as incentives for new and expanding businesses located within the corporate limits of the municipality.

(g) *Administrative provisions.* — The ordinance of a municipality imposing a business and occupation or privilege tax shall provide procedures for the assessment and collection of such

tax, which shall be similar to those procedures in article thirteen, chapter eleven of this code, as in existence on June 30, 1978, or to those procedures in article ten, chapter eleven of this code, and shall conform with such provisions as they relate to waiver of penalties and additions to tax.”

And,

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

**Com. Sub. for H. B. 4567** – “A Bill to amend and reenact §8-13-5 of the Code of West Virginia, 1931, as amended, relating the limiting of the imposition of the municipal business and occupation or privilege tax on the business of selling automobiles; providing for a decreasing reduction in the tax on new automobiles that have never been registered in the name of an individual over a three year period; providing for complete elimination of the tax on new automobiles that have never been registered in the name of an individual; and defining terms.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 542**), and there were—yeas 88, nays 11, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Barach, Griffith, Hornbuckle, Pethtel, Pushkin, Rowe, Skaff, Thompson, Walker, Young and Zukoff.

Absent and Not Voting: Capito.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4567) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 13**, The Doctor Enrique Aguilar Memorial Bridge.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 17**, Daniel Okey Cunningham Memorial Bridge.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 25**, SP5 Terry Lee McClanahan Memorial Bridge.

On motion of Delegate Summers, the House concurred in the following amendment of the resolution by the Senate:

On page two, in the Resolved clause, line twenty-eight, by striking out the word “SP5” and inserting in lieu thereof the words “U.S. Army SP5”;

On page two, in the first Further Resolved clause, line thirty-one, by striking out the word “SP5” and inserting in lieu thereof the words “U.S. Army SP5”;

And,

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

**H. C. R. 25** – “Requesting the Division of Highways name bridge number 20-061/00-016.01 (20A184), (38.23939, -81.5576) locally known as Lens Creek Temporary Bridge, carrying WV 61 over Lens Creek in Kanawha County, the “U.S. Army SP5 Terry Lee McClanahan Memorial Bridge”.

The resolution, as amended by the Senate, was then adopted.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 26**, Charleston Police Officer Cassie Johnson - Fallen Heroes Memorial Bridge.

On motion of Delegate Summers, the House concurred in the following amendment of the resolution by the Senate:

On page two, in the Resolved clause, lines forty-one and forty-two, by striking out the words “-Fallen Heroes”;

On page two, in the second Further Resolved clause, lines forty-four and forty-five, by striking the words “-Fallen Heroes”;

And,

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

**H. C. R. 26** – “Requesting the Division of Highways name bridge number: 20-060/00-005.59 (WB) (20A336), (38.35826, -81.63989) locally known as US 60 Washington Street Bridge, carrying US 60 over Elk River in Kanawha county, the “Charleston Police Officer Cassie Johnson Memorial Bridge”.

On the question of the adoption of the resolution, as amended by the Senate, the yeas and nays were demanded, which demand was sustained.

On this question, the yeas were taken (**Roll No. 543**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Brown and Capito.



So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the resolution adopted.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 35**, David Allen Drake, Sr. Memorial Bridge.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 36**, John Calvin “J.C.” Baker Memorial Bridge.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 38**, “Dale Shaheen and George H. Hooker Memorial Bridge.”

On motion of Delegate Summers, the House concurred in the following amendment of the resolution by the Senate:

On page two, in the fifteenth Whereas clause, line thirty-four, by striking out the word “Warrant” and inserting in lieu thereof the words “U.S. Army Warrant”;

On page two, in the Resolved clause, lines thirty-seven and thirty-eight, by striking out the words “23-44-9.12 on Route 44 in Logan County, West Virginia, the ‘Warrant’” and inserting in lieu thereof the words “23-044/00-009.12 () (23A109), (37.75907,-81.99690) locally known as Warrant Officer Dale Shaheen

Memorial Bridge, carrying WV 44 over Island Creek in Logan County, West Virginia, the “U.S. Army Warrant”;

On page two, in the first Further Resolved Clause, line forty-two, by striking out the word “Warrant” and inserting in lieu thereof the words “U.S. Army Warrant”;

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

**H. C. R. 38** – “Requesting the Division of Highways name a bridge bearing bridge number 23-044/00-009.12 (23A109), (37.75907,-81.99690) locally known as Warrant Officer Dale Shaheen Memorial Bridge, carrying WV 44 over Island Creek in Logan County, West Virginia, the “U.S. Army Warrant Officer Dale Shaheen and U. S. Army Pvt George H. Hooker Memorial Bridge”.

The resolution, as amended by the Senate, was then adopted.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 61**, Timothy Wayne Farley Memorial Bridge.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 74**, Judge Les Fury Memorial Bridge.

On motion of Delegate he House concurred in the following amendment of the resolution by the Senate:

On page two, in the Resolved clause, line sixteen, by striking out the word “Judge” and inserting in lieu thereof the words “U.S. Army Captain”;

On page two, in the first Further Resolved clause, line eighteen, by striking out the word “Judge” and inserting in lieu thereof the words “U.S. Army Captain”;

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

**H. C. R. 74** – “Requesting the Division of Highways name bridge number 21-033/00-018.34 (21A215), locally known as Hardees Boxbeam, carrying US Route 33 over Stonecoal Creek in Lewis County, the “U.S. Army Captain Les Fury Memorial Bridge”.

The resolution, as amended by the Senate, was then adopted.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 82**, Alleen Ledson Memorial Bridge.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 83**, U.S. Army SGT Charles L. Toppings Memorial Road.

On motion of Delegate Summers, the House concurred in the following amendment of the resolution by the Senate:

On page two, in the Resolved clause, lines twenty-seven through twenty-nine, by striking out the words “a portion of County Route 30/1, beginning at (38.239066), (-82.192876) and ending at (38.239066), (-82.200978), locally known as Sheridan Road, in Lincoln County, the “U.S. Army SGT Charles L. Toppings Memorial Road”” and inserting in lieu thereof the words “bridge number 22-026/00-000.20 () (22A145), (38.25506,-82.17864) locally known as Onemile Creek Box Beam, carrying CR 26 over Onemile Creek in Lincoln County, the “U.S. Army SGT Charles L. Toppings Memorial Bridge””;

On page two, in the first Further Resolved clause, lines thirty-two and thirty-three, by striking out the words “portion of road as the “U.S. Army SGT Charles L. Toppings Memorial Road”” and inserting in lieu thereof the words “bridge as the “U.S. Army SGT Charles L. Toppings Memorial Bridge””;

And,

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

**H. C. R. 83** – “Requesting the Division of Highways name bridge number 22-026/00-000.20 (22A145), (38.25506,-82.17864) locally known as Onemile Creek Box Beam, carrying CR 26 over Onemile Creek in Lincoln County, the ‘U.S. Army SGT Charles L. Toppings Memorial Road’.”

The resolution, as amended by the Senate, was then adopted.

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

A message from the Senate, by

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

**Com. Sub. for S. B. 694**, Relating to oil and gas conservation.

A message from the Senate, by

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

**S. C. R. 25** – “REQUESTING THE DIVISION OF HIGHWAYS NAME BRIDGE NUMBER 35-43-0.01 (35A054), 40.04402, -80.55134, LOCALLY KNOWN AS MIDDLE CREEK SCHOOL BRIDGE, CARRYING COUNTY ROUTE 43 OVER MIDDLE WHEELING CREEK IN OHIO COUNTY, THE ‘FIREFIGHTER MARVIN LAYTON HUGHES MEMORIAL BRIDGE’.”

Whereas, Marvin Layton Hughes was born on October 12, 1924, in Dallas, Marshall County, West Virginia; and

Whereas, Marvin Layton Hughes took a job at the railroad during World War II getting coal to steel mills for the war effort. He later worked for years as a security guard at the Division of Highways in Triadelphia, West Virginia; and

Whereas, Marvin Layton Hughes was known in Dallas, West Virginia as the “unofficial mayor” and served as a member of the Dallas Volunteer Fire Department for 44 years prior to his death on July 27, 1998; and

Whereas, Marvin Layton Hughes loved serving his community and walked the roads picking up trash to better serve his community; and

Whereas, Marvin Layton Hughes raised two daughters who followed his example of community service and are part of the Dallas Volunteer Fire Department; and

Whereas, It is fitting that an enduring memorial be established to commemorate Marvin Layton Hughes and his contributions to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 35-43-0.01 (35A054), 40.04402, - 80.55134, locally known as Middle Creek School Bridge, carrying County Route 43 over Middle Wheeling Creek in Ohio County, the “Firefighter Marvin Layton Hughes Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “Firefighter Marvin Layton Hughes Memorial Bridge”; and, be it

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

A message from the Senate, by

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

**S. C. R. 32** - “Requesting the Division of Highways name bridge number 50-152-5.70 (50A112), locally known as Missouri Branch Beam Span, carrying Route 152 over the West Fork of Twelvepole Creek in Wayne County, the ‘Curtis ‘Pap’ and Millie ‘Mammie’ Asbury Memorial Bridge’.”

Whereas, Curtis Asbury was born on September 24, 1917, in Wayne, West Virginia, and his devoted wife, Millie Ferguson, was born on April 24, 1924. They were married in 1939; and

Whereas, Curtis and Millie Asbury established, owned, and operated Asbury’s Grocery, located at the entrance to Cabwaylingo Park Road for 52 years. The grocery store became a vital resource for community members. For five decades, the store not only provided necessary food and other goods but, was also a meeting place for community members to gather and discuss everything from politics to family life. The bus stop was outside and when the school children would go inside the store they would be met with a smile, a hug, and a piece of fruit or candy; and

Whereas, Almost every person in the community of Dunlow, West Virginia, has been touched by Curtis and Millie Asbury's kindness and generosity. The love they both had for their community was displayed by their hardworking, gentle, and giving spirits. They were devoted to making their small community a better place to live by always extending a helping hand, providing jobs, caring for the elderly, and encouraging and guiding the youth. They helped develop and organize their area by creating local churches, directing Sunday school classes, and working to fulfill the needs of the entire community. They treated everyone as their own family and were lovingly referred to as everyone's "Mammie" and "Pap"; and

Whereas, It is fitting that an enduring memorial be established to commemorate Curtis and Millie Asbury and their contributions to their community and our state; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 50-152-5.70 (50A112), locally known as Missouri Branch Beam Span, carrying Route 152 over the West Fork of Twelvepole Creek, in Wayne County, the "Curtis 'Pap' and Mille 'Mammie' Asbury Memorial Bridge"; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "Curtis 'Pap' and Mille 'Mammie' Asbury Memorial Bridge"; and, be it

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

A message from the Senate, by

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

**S. C. R. 41** - "Requesting the Division of Highways name bridge number 08-011/00-023.08 (08A108), locally known as NEW DILLE BR 23.03, carrying CR 11 over Strange Creek in Clay County, the 'Henry Preston Hickman Memorial Bridge'."

Whereas, Henry Preston Hickman was a beloved community leader in Dille, West Virginia. He was a source of guidance and wisdom affectionately known as "Grandpa" to all who knew and loved him; and

Whereas, Henry Preston Hickman filled out an "Old Man's Draft" registration card during WWII when he was 59 years old. However, he was never called to active duty, but served in critical industrial and civilian roles in both WWII, as well as the Korean War providing important materials for the war effort; and

Whereas, Henry Preston Hickman operated three sawmills, employing nearly 80 men and opened a coal mine and coal tippie on his property, providing additional jobs for the community, including creating jobs for troubled youth. He served on the Clay County Draft Board during the Korean War; and

Whereas, Henry Preston Hickman served as the Buffalo District Representative on the Clay County Board of Education for 33 years, several as board president; and

Whereas, Henry Preston Hickman, donated a large piece of property for the construction of the Dille Grade School. He helped build and maintain a neighborhood community center, providing a place for basketball, roller skating and movies, as well as a place where the Boy Scouts and other social clubs could meet. He led a Community Action Group which installed an outdoor concrete basketball court, erected cemetery signs, and provided first-aid and CPR classes; and

Whereas, Henry Preston Hickman served as Sunday School Superintendent of the Big Union Baptist Church, Dill, WV, for 70 years, also serving as deacon and as a Sunday school teacher; and

Whereas, Henry Preston Hickman died at age 93 after serving the community in many different capacities such as storekeeper,



postmaster, and self-trained veterinarian all of which were to the great benefit of his community; and

Whereas, It is fitting that an enduring memorial be established to commemorate Henry Preston Hickman and his contributions to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 08-011/00-023.08 (08A108), locally known as NEW DILLE BR 23.03, carrying CR 11 over Strange Creek in Clay County, the “Henry Preston Hickman Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “Henry Preston Hickman Memorial Bridge”; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the commissioner of the Division of Highways and forward a copy to his great granddaughter, Merry Cogar.”

A message from the Senate, by

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

**S. C. R. 51** - “Requesting the Division of Highways name bridge number 11351 (located at 38°46’52”N 82°04’13”W), carrying Route 35 over Lower Five-mile Creek in Mason County, the ‘Deputy Kenneth ‘Kenny’ Ward Love, Sheriff Elvin Eugene ‘Pete’ Wedge, and Jailer Ernest Ray ‘Ernie’ Hesson Memorial Bridge’.”

Whereas, Mason County suffered a devastating tragedy on March 2, 1976, when three local law-enforcement officers lost their lives in the line of duty due to a bombing inside the Mason County Courthouse on Sixth Street in Point Pleasant, West Virginia; and

Whereas, Deputy Kenneth “Kenny” Ward Love was born in Point Pleasant, Mason County, West Virginia on April 14, 1940; and

Whereas, Deputy Kenneth “Kenny” Ward Love was a member of the Fraternal Order of Police – Tue-Endie-Wei #102 and Sheriffs Association of West Virginia. He was a Mason County Sheriff from 1974 to 1976; and

Whereas, Deputy Kenneth “Kenny” Ward Love was killed instantly in the line of duty during the Mason County Courthouse bombing on March 2, 1976; and

Whereas, Sheriff Elvin Eugene “Pete” Wedge was born June 19, 1927, in Point Pleasant, Mason County, West Virginia; and

Whereas, Sheriff Elvin Eugene “Pete” Wedge was a member of the Fraternal Order of Police – Tue-Endie-Wei #102 and Sheriffs Association of West Virginia. He was a Mason County Sheriff from 1974 to 1976; and

Whereas, Sheriff Elvin Eugene “Pete” Wedge convinced the Mason County bomber to release an inmate from her jail cell prior to the bombing, saving her life; and

Whereas, Sheriff Elvin Eugene “Pete” Wedge, in an adjoining cell at the time of the explosion, ultimately died from his injuries resulting from the blast on March 3, 1976; and

Whereas, Jailer Ernest Ray “Ernie” Hesson was born in Glenwood, Mason County, West Virginia on December 4, 1904. He devoted his life to a career in law enforcement, serving under several sheriffs and ultimately winning election as sheriff himself; and

Whereas, Jailer Ernest Ray “Ernie” Hesson was a member of the Fraternal Order of Police –Tue-Endie-Wei #102 and Sheriffs Association of West Virginia, and the United Brothers of Carpenters and Joiners of America; and

Whereas, Jailer Ernest Ray “Ernie” Hesson was serving as a county jailer on March 2, 1976, the day of the bombing. He was locked in a jail cell with the bomber at the time of the blast; and

Whereas, Jailer Ernest Ray “Ernie” Hesson ultimately died from injuries he sustained in the blast on March 9, 1976, after a week in intensive care; and

Whereas, All three men were honorable law-enforcement officers taken too soon due to this unfathomable tragedy; and

Whereas, It is fitting that an enduring memorial be established to commemorate these three men, their family, their sacrifice, and their contributions to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 11351 (located at 38°46’52”N 82°04’13”W), carrying Route 35 over Lower Five-mile Creek in Mason County the “Deputy Kenneth ‘Kenny’ Ward Love, Sheriff Elvin Eugene ‘Pete’ Wedge, and Jailer Ernest Ray ‘Ernie’ Hesson Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “Deputy Kenneth ‘Kenny’ Ward Love, Sheriff Elvin Eugene ‘Pete’ Wedge, and Jailer Ernest Ray ‘Ernie’ Hesson Memorial Bridge”; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways and to the families of these three men.”

### **Resolutions Introduced**

Delegates Toney, Dean, Haynes, Brown, Bridges, Holstein, Paynter, Evans and Zukoff offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 102** - “Requesting the Joint Committee on Government and Finance study the benefits of creating a West Virginia State Bank to facilitate access to capital for returning veterans, low-income entrepreneurs and for underserved communities, to facilitate access to capital for developing sustainable agricultural and community investment projects, and to study the best practices and management structures necessary to create a successful West Virginia State Bank.”

Whereas, Having access to financial services and capital is necessary to facilitate investments across this state from developing opportunities for returning veterans and low-income individuals including opportunities for first-time farmers to community investment and reinvestment where a State Bank can play a vital role in providing access to capital by partnering with financial institutions to stimulate and facilitate investment in this state; and

Whereas, Cities and municipalities across this state are wrestling with blighted and dilapidated buildings and abandoned mining sites and citizens in these communities have limited resources to address these problems and revitalize communities that have experienced significant job loss due to the cessation of mining operations and various other types of economic loss, without access to financial services and capital to invest to improve our communities; and

Whereas, The impacts of the COVID pandemic has negatively impacted small businesses, driving them out of business and/or substantially hindering their access to employees and capital, and eroding economic growth in local communities; and

Whereas, West Virginia has a consistent food import, export deficit of approximately \$6 billion because we import more than \$7 billion in agricultural consumer products and produce less than \$1 billion for export in agricultural consumer products annually; and

Whereas, A State Bank that invests in state residents and promotes state agriculture has the potential to create jobs and

provide for developing a wide range of local agricultural projects, community reinvestment and future farming opportunities; and

Whereas, A West Virginia State Bank with a mission to facilitate access to capital for resident small businesses and entrepreneurial individuals would provide greater access to capital by partnering with local banks, thereby increasing local lending through measures such as guaranteeing larger loans and backing smaller, riskier loans, thereby enabling entrepreneurs to continue operations, expand their businesses, and start up new ventures, all of which provide economic benefit to this state and our citizens; and

Whereas, West Virginia should strive to learn from the highly successful Bank of North Dakota and create a prudent state bank management structure that is insulated from political influence with an advisory board that consists of finance experts and executives who are experienced bankers to promote state bank operations and lending decisions that are made by professionals for the explicit purpose of making investments in this state for the benefit of our citizens; and

Whereas, Small businesses represent the largest block of employers in this state (and country) and loans for small business are consistently about half of the national average and without access to capital, businesses cannot begin to operate, small business startups don't start up, and local entrepreneurship gets curtailed, and growth is hindered; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance study the benefits of creating a West Virginia State Bank to facilitate access to capital for returning veterans, low-income entrepreneurs and for underserved communities, to promote access to capital for developing sustainable agricultural and community investment projects and to study the best practices and management structures necessary to create a successful West Virginia State Bank; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance contract with the Political Science Department at Marshall University and the Department of Public Administration at West Virginia University as joint partners, and at a total cost of up to \$50,000, to prepare a report regarding the design and implementation of a State Bank of West Virginia, including possible funding mechanisms, structural components (i.e., the Bank Board of Directors), and target lending clients and entrepreneurial purposes, and the ways the State Bank will benefit and support the people and communities of this state, and to report to the Legislature on or before December 31, 2022, on their findings, conclusions and recommendations, together with any drafts of legislation necessary to effectuate any recommendations; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the Regular Session of the Legislature 2023 on its findings, conclusions and recommendations, together with any drafts of legislation necessary to effectuate any recommendations; and, be it

*Further Resolved*, That the State Treasurer, the West Virginia Division of Financial Institutions, the West Virginia Development Office, and the Division of Tourism shall cooperate with the Legislature and provide information requested for this study; and, be it

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

Delegates Young and Fleischauer offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 103** - "Requesting the Joint Committee on Government and Finance conduct an interim study on how the State of West Virginia can work with municipalities to find solutions for recycling in the state."

Whereas, Current state law provides that county and solid waste authorities provide for innovative incentives to promote recycling; and

Whereas, Current recycling programs within counties are not meeting the recycling needs of the communities they serve; and

Whereas, Adequate recycling programs in the State of West Virginia have the potential to be an effective and innovative method of disposal of waste; and

Whereas, Adequate recycling programs can be acquired by the improvement of current programs or the implementation of new programs; and

Whereas, The combined efforts towards recycling from both the state and municipalities could provide for effective recycling programs across the state; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance conduct an interim study on how the State of West Virginia can work with municipalities to find solutions for recycling in the state; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the Regular Session of the Legislature, 2023, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

### **Petitions**

Delegates Pushkin, Hornbuckle and Walker presented a petition from over 400 citizens in opposition to S. B. 498; which was referred to the Committee on Education.

At 11:15 a.m., on motion of Delegate Summers, the House of Delegates recessed for ten minutes.

### **Reordering of the Calendar**

Delegate Summers announced that Com. Sub. for S. B. 659 on Second Reading, Special Calendar, had been transferred to the House Calendar; S. B. 228, Com. Sub. for S. B. 246 and Com. Sub. for S. B. 424 on Third Reading, House Calendar, had been transferred to the Special Calendar; and Com. Sub. for S. B. 656 and S. B. 685 on Second Reading, House Calendar, had been transferred to the Special Calendar.

### **Special Calendar**

#### **Third Reading**

**S. B. 1**, Creating Mining Mutual Insurance Company; on third reading, coming up in regular order, with amendments pending and the right to amend, was reported by the Clerk.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page 2, section 2, beginning on line 30, after the word “in” by striking the words “managing the actual and potential liability of the state to the private sector and”;

On page 4, section 4, on line 17, after the word “code” and before the period by inserting the words “to the extent applicable”;

On page 4, section 5, on line 4, after the first word “and” by inserting the words “all of”;

On page 4, section 5, on line 4, after the word “this” by striking the words “chapter and chapter 31 of this”;

And;

On page 8, section 10, on line 2, after the number “31” and before the “and” by inserting a comma and the following “31D, 31E”.



Delegate Hansen move to amend the bill on page 7, section 8, lines 15 and 16 by striking out the words “paid back as credits as reclamation activities are accomplished.” and insert in lieu thereof, the following:

“conditioned upon the repayment thereof and subject to the terms of a surplus note or other loan arrangement. The terms of any such surplus note or other loan arrangement must be approved by the State Auditor. Payments received by the Treasurer from the company in repayment of any outstanding surplus note or other loan arrangement made pursuant to this subsection shall be deposited in the treasury of the state.”

And,

On page 8, section 8, lines 29 and 30, following the words “noninterest loan” by inserting a period and deleting the remainder of the sentence.

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

The yeas and nays having been ordered, they were taken (**Roll No. 544**), and there were—yeas 23, nays 77, absent and not voting none, with the yeas being as follows:

Yeas: Barach, Boggs, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Gearheart, Griffith, Hansen, Hornbuckle, Lovejoy, Pethtel, Pushkin, Riley, Rowe, Skaff, Thompson, Walker, Williams, Young and Zukoff.

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

Delegate Skaff moved to amend the bill page 8, line 30, following the period at the end of Section 8, by adding a new subsection (f) that reads as follows:

“(f) As a condition of receiving state funding as either capital or surplus, the company nor its executive officers may engage in political activity including campaign contributions or funding of

political related organizations such as state or federal political action committees and separate segregated funds, nonconnected committees, hybrid political action committees or leadership political action committees or similar entities. If the company does engage in political activities all state monies provided to the company shall be repaid to the state within 365 days.”

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

The yeas and nays having been ordered, they were taken (**Roll No. 545**), and there were—yeas 27, nays 72, absent and not voting 1, with the yeas and the absent and not voting being as follows:

Yeas: Barach, Boggs, Brown, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Graves, Griffith, Hansen, Hornbuckle, Kimes, Lovejoy, Pethtel, Pushkin, Rowe, Skaff, Statler, Steele, Thompson, Walker, Williams, Young, Zukoff and Hanshaw (Mr. Speaker).

Absent and Not Voting: Pinson.

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

The being no further amendments, the bill was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 546**), and there were—yeas 61, nays 36, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Barach, Bates, Booth, Diserio, Doyle, Evans, Ferrell, Fleischauer, Fluharty, Garcia, Gearheart, Griffith, Hansen, Hornbuckle, D. Jeffries, Jennings, Kimes, Longanacre, Lovejoy, Martin, McGeehan, Pack, Pushkin, Reed, Riley, Rohrbach, Rowe, Skaff, Storch, Summers, Thompson, Walker, Williams, Worrell, Young and Zukoff.

Absent and Not Voting: Bridges, Howell and J. Jeffries.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 1) passed.

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

On this question, the yeas and nays were taken (**Roll No. 547**), and there were—yeas 73, nays 24, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Barach, Booth, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Gearheart, Griffith, Hansen, Longanacre, McGeehan, Pack, Reed, Riley, Rowe, Skaff, Storch, Walker, Williams, Worrell, Young and Zukoff.

Absent and Not Voting: Bridges, Howell and J. Jeffries.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 1) takes effect from its passage.

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

**S. B. 10**, Relating to WVU Rifle Team electronic application donation program; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 548**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: J. Kelly and Young.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 10) passed.

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

**Com. Sub. for S. B. 205**, Expanding PEIA Finance Board membership; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 549**), and there were—yeas 89, nays 2, absent and not voting 9, with the nays and the absent and not voting being as follows:

Nays: Linville and Rowe.

Absent and Not Voting: Conley, Ferrell, Fluharty, Graves, Hardy, McGeehan, Pinson, Pritt and Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 205) passed.

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

**S. B. 228**, Providing tuition and fee waivers at state higher education institutions for volunteers who have completed service in AmeriCorps programs in WV; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 550**), and there were—yeas 92, nays none, absent and not voting 8, with the absent and not voting being as follows:

Absent and Not Voting: Ferrell, Fluharty, Hardy, Pack, Pinson, Reed, Westfall and Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 228) passed.

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

**Com. Sub. for S. B. 230**, Relating generally to public employees grievance procedure; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 551**), and there were—yeas 39, nays 61, absent and not voting none, with the yeas being as follows:

Yeas: Burkhammer, Capito, Conley, Criss, Crouse, Ellington, Espinosa, Forsht, Foster, Gearheart, Graves, Hamrick, Hanna, Hardy, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, Keaton, Kessinger, Kimes, Linville, Mallow, Martin, Maynard, Maynor, Pack, Pinson, Queen, Reed, Riley, Smith, Summers, Tully, B. Ward, Zatezalo and Hanshaw (Mr. Speaker).

So, a majority of the members present not having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 230) rejected.

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

**Com. Sub. for S. B. 231**, Relating generally to broadband connectivity; on second reading, coming up in regular order, with the right to amend, was reported by the Clerk.

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

At 1:40 p.m., on motion of Delegate Summers, the House of Delegates recessed until 3:00 p.m.

\* \* \* \* \*

### **Afternoon Session**

\* \* \* \* \*

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

### **Reordering of the Calendar**

During the recess, Com. Sub. for S. B. 264 and S. B. 486 on Third Reading, House Calendar, were transferred to the Special Calendar; and Com. Sub. for S. B. 533, S. B. 536, S. B. 548, Com. Sub. for S. B. 552, S. B. 568, S. B. 573, S. B. 582, S. B. 588, S. B. 590 and S. B. 606, Com. Sub. for S. B. 609, S. B. 610, S. B. 611, S. B. 617, Com. Sub. for S. B. 647, S. B. 653, S. B. 662, S. B. 686, S. B. 711, S. B. 714, S. B. 726 on Second Reading, House Calendar, were transferred to the Special Calendar, by the Committee on Rules.

### **Special Calendar**

#### **Third Reading**

- continued -

**Com. Sub. for S. B. 232**, Relating to punishment for third offense felony; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 552**), and there were—yeas 86, nays 5, absent and not voting 9, with the nays and the absent and not voting being as follows:

Nays: Fleischauer, Hornbuckle, Pushkin, Rowe and Walker.

Absent and Not Voting: Dean, Foster, Griffith, Hamrick, D. Jeffries, Martin, McGeehan, Smith and Young.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 232) passed.

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

**Com. Sub. for S. B. 242**, Restricting authority to prevent or limit owner's use of natural resources or real property in certain

agricultural operations; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 553**), and there were—yeas 89, nays 4, absent and not voting 7, with the nays and the absent and not voting being as follows:

Nays: Doyle, Hansen, Miller and Rowe.

Absent and Not Voting: Dean, Foster, Griffith, Hamrick, Martin, McGeehan and Smith.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 242) passed.

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

**Com. Sub. for S. B. 246**, Requiring newly constructed public schools and public schools with major improvements to have water bottle filling stations; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 554**), and there were—yeas 83, nays 10, absent and not voting 7, with the nays and the absent and not voting being as follows:

Nays: Gearheart, Householder, Keaton, Kimes, Linville, Longanacre, Miller, Pack, Paynter and Pushkin.

Absent and Not Voting: Dean, Foster, Griffith, Hamrick, Martin, McGeehan and Smith.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 246) passed.

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

**Com. Sub. for S. B. 246** – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-9G-1, §18-9G-2, and §18-9G-3, all relating to imposing water bottle filling station requirements for newly constructed public school buildings and existing public school buildings undergoing a major improvement; purpose; defining terms; requiring State Board of Education rules; setting forth requirements for any water bottle filling station installed in a public school building; and requiring county boards to adopt policies to permit students in schools with water bottle filling stations to carry water bottles.”

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

**Com. Sub. for S. B. 262**, Relating generally to financial institutions engaged in boycotts of energy companies; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 555**), and there were—yeas 80, nays 14, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Barach, Diserio, Doyle, Fluharty, Garcia, Hansen, Hornbuckle, Pushkin, Skaff, Storch, Thompson, Walker, Williams and Young.

Absent and Not Voting: Bates, Dean, Fleischauer, Hamrick, Smith and Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 262) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:



**Com. Sub. for S. B. 262** – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §12-1C-1, §12-1C-2, §12-1C-3, §12-1C-4, §12-1C-5, §12-1C-6, and §12-1C-7, all relating generally to financial institutions engaged in boycotts of energy companies; defining terms; authorizing the State Treasurer to publish a list of financial institutions engaged in boycotts of energy companies; requiring the Treasurer to publicly post the list and submit the list to certain public officials; requiring the list to contain certain information; requiring the Treasurer to send written notice to a financial institution prior to its inclusion on the list; establishing required content of said written notice; requiring the Treasurer to remove a financial institution from the list if it presents information demonstrating that it is not engaged in a boycott of energy companies; preventing financial institutions from being compelled to produce certain information; setting forth sources of information on which the Treasurer may rely in preparing the list; authorizing the Treasurer to exclude financial institutions on the list from the selection process for state banking contracts; authorizing the Treasurer to refuse to enter into a banking contract with a financial institution on the list; authorizing the Treasurer to require, as a term of a banking contract, an agreement by the financial institution not to engage in a boycott of energy companies; limiting liability for actions taken in compliance with the new article; and exempting the Investment Management Board from the new article.”

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

**Com. Sub. for S. B. 264**, Relating to conservation districts law of WV; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 556**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Bates, Dean, Hamrick, Smith and Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 264) passed.

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

**Com. Sub. for S. B. 268**, Creating exemption from compulsory school attendance for child who participates in learning pod or micro school; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 557**), and there were—yeas 56, nays 41, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Anderson, Barach, Barnhart, Barrett, Bates, Boggs, Booth, Brown, Diserio, Doyle, Evans, Ferrell, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, D. Kelly, J. Kelly, Lovejoy, Miller, Pack, Pethtel, Pushkin, Reed, Reynolds, Riley, Rowan, Rowe, Skaff, Statler, Storch, Thompson, Toney, Walker, Wamsley, Westfall, Williams, Young and Zukoff.

Absent and Not Voting: Dean, Hamrick and Paynter.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 268) passed.

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

**Com. Sub. for S. B. 268** - “A Bill to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating to creating a new exemption from compulsory school attendance for a child who participates in a learning pod or microschool; defining learning pod and microschool; requiring parent or custodian to

present to the county superintendent or county board a notice of intent to participate in the learning pod or microschool; establishing qualifications for person or persons providing instruction; requiring annual academic assessment of the child in one of four specified ways; requiring the results of the annual academic assessment of the child to be submitted to the county superintendent; allowing the results of the annual academic assessment to be submitted as composite results; requiring the county board upon request to notify the parents or legal guardian of the services available to assist in the assessment of the child's eligibility for special education services; requiring the county superintendent to offer such assistance as may assist the person or persons providing instruction; allowing any child participating in a learning pod or microschool to attend any class offered by the county board under certain conditions; providing that no learning pod or microschool is subject to any other provision of law relating to education other than the law pertaining to placement of video cameras in certain special education classrooms; and clarifying that learning pods and microschools are not the same as homeschooling."

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

**Com. Sub. for S. B. 312**, Authorization for Department of Revenue to promulgate legislative rules; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 558**), and there were—yeas 88, nays 7, absent and not voting 5, with the nays and the absent and not voting being as follows:

Nays: Burkhammer, Fast, D. Jeffries, Jennings, Mazzocchi, Pinson and B. Ward.

Absent and Not Voting: Bridges, Dean, Hamrick, Pack and Paynter.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 312) passed.

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

**Com. Sub. for S. B. 312** – “A Bill to amend and reenact §64-7-1 et. seq. of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Revenue to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; relating to authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to private club licensing; relating to authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to bailment policies and procedures; relating to authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to nonintoxicating beer licensing and operations procedures; relating to authorizing the Insurance Commission to promulgate a legislative rule relating to continuing education for individual insurance producers and individual insurance providers; relating to authorizing the Insurance Commission to promulgate a legislative rule relating to the adoption of the valuation manual; relating to authorizing the Insurance Commission to promulgate a legislative rule relating to pharmacy auditing entities and pharmacy benefit managers; relating to authorizing the Insurance Commission to promulgate a legislative rule relating to term and universal life insurance reserve financing; relating to authorizing the Insurance Commission to promulgate a legislative rule relating to bail bondsmen in criminal cases; relating to authorizing the Lottery Commission to promulgate a legislative rule relating to the West Virginia Lottery State Lottery Rules; relating to authorizing the Lottery Commission to promulgate a legislative rule relating to West Virginia Lottery Limited Video Lottery Rule; relating to authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing; relating to authorizing the Racing Commission to promulgate a legislative rule relating to

pari-mutuel wagering; relating to not authorizing the Tax Department to promulgate a legislative rule relating to the valuation of producing and reserve oil, natural gas liquids, and natural gas for ad valorem property tax purposes; relating to authorizing the Tax Department to promulgate a legislative rule relating to the West Virginia tax credit for Federal Excise Tax imposed upon small arms and ammunition manufacturers; relating to authorizing the Tax Department to promulgate a legislative rule relating to the Sales Tax Holiday; relating to authorizing the Tax Department to promulgate a legislative rule relating to the exemption for repair, remodeling, and maintenance of an aircraft; relating to authorizing the Tax Department to promulgate a legislative rule relating to vendor absorption or assumption of Sales and Use tax; and relating to authorizing the Tax Department to promulgate a legislative rule relating to on-line bingo and raffles; and relating to authorizing the Tax Department to promulgate a legislative rule to the corporation net income tax.”

Delegate Summers moved that the bill take effect July 1, 2022.

On this question, the yeas and nays were taken (**Roll No. 559**), and there were—yeas 87, nays 7, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Burkhammer, Fast, D. Jeffries, Jennings, Mazzocchi, Pinson and B. Ward.

Absent and Not Voting: Bridges, Dean, Hamrick, Pack, Paynter and Steele.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 312) takes effect July 1, 2022.

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

**Com. Sub. for S. B. 334**, Authorizing miscellaneous agencies and boards to promulgate rules; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 560**), and there were—yeas 81, nays 14, absent and not voting 5, with the nays and the absent and not voting being as follows:

Nays: Diserio, Doyle, Fleischauer, Fluharty, Garcia, Gearheart, Hansen, Hornbuckle, Pushkin, Rowe, Thompson, Walker, Williams and Zukoff.

Absent and Not Voting: Dean, Griffith, Hamrick, Hardy and Riley.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 334) passed.

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

**Com. Sub. for S. B. 334** – “A Bill to amend and reenact §64-9-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to authorizing certain miscellaneous agencies and boards to promulgate legislative rules; authorizing the rules, as filed, as modified, and as amended by the Legislative Rule-Making Review Committee, and as amended by the Legislature; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to feeding of untreated garbage to swine; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to commercial feed; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to enrichment of flour and bread law regulations; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to fruits and vegetables: certification for potatoes for seedling purposes; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to Fresh Food Act; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to auctioneers; to authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to hemp products; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to livestock care standards;

authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the Rural Rehabilitation Program; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the Farm-to-Food Bank Tax Credit; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to farmers markets; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to seed certification; authorizing the State Auditor to promulgate a legislative rule relating to the procedure for local levying bodies to apply for permission to extend time to meet as levying body; authorizing the State Auditor to promulgate a legislative rule relating to accountability requirements for state funds and grants; authorizing the West Virginia Board of Chiropractic Examiners to promulgate a legislative rule relating to fees; authorizing the West Virginia Board of Chiropractic Examiners to promulgate a legislative rule relating to chiropractic telehealth practices; authorizing the Contractor Licensing Board to promulgate a legislative rule relating to the Contractor Licensing Act; authorizing the West Virginia Board of Examiners in Counseling to promulgate a legislative rule relating to licensure; authorizing the West Virginia Board of Examiners in Counseling to promulgate a legislative rule relating to licensed professional counselors fees; authorizing the West Virginia Board of Examiners in Counseling to promulgate a legislative rule relating to marriage and family therapist licensing; authorizing the West Virginia Board of Examiners in Counseling to promulgate a legislative rule relating to marriage and family therapist fees; authorizing the Dangerous Wild Animal Board to promulgate a legislative rule relating to dangerous wild animals; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to the West Virginia Board of Dentistry; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to fees; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to the formation and approval of dental corporation and dental practice ownership; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to continuing education

requirements; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to the administration of anesthesia by dentists; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to the expanded duties of dental hygienists and dental assistants; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to teledentistry; authorizing the West Virginia Board of Licensed Dietitians to promulgate a legislative rule relating to licensure and renewal requirements; authorizing the West Virginia Board of Professional Engineers to promulgate a legislative rule relating to examination, licensure, and practice of professional engineers and the fee schedule; authorizing the West Virginia Board of Funeral Service Examiners to promulgate a legislative rule relating to the fee schedule; authorizing the West Virginia Massage Therapy Licensure Board to promulgate a legislative rule relating to general provisions; authorizing the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners relating to medical imaging technologists; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to licensing and disciplinary procedures for physicians, podiatric physicians, and surgeons; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to licensure, practice requirements disciplinary and complaint procedures, continuing education, and physician assistants; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to dispensing of prescription drugs by practitioners; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to continuing education for physicians and podiatric physicians; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to practitioner requirements for accessing the West Virginia Controlled Substances Monitoring Program Database; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to the establishment and regulation of limited license to practice medicine and surgery at certain state veterans nursing home facilities; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to registration to practice during a declared State of Emergency; authorizing the West Virginia Board of Medicine to promulgate a



legislative rule relating to telehealth and interstate telehealth registration for physicians, podiatric physicians, and physician assistants; authorizing the West Virginia Board of Osteopathic Medicine to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; authorizing the West Virginia Board of Osteopathic Medicine to promulgate a legislative rule relating to Osteopathic Physicians Assistants; authorizing the West Virginia Board of Osteopathic Medicine to promulgate a legislative rule relating to practitioner requirements for controlled substances licensure and Accessing the West Virginia Controlled Substances Monitoring Program Database; authorizing the West Virginia Board of Osteopathic Medicine to promulgate a legislative rule relating to telehealth practice and interstate telehealth registration for osteopathic physicians and physician assistants; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to licensure and practice of pharmacy care; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to the Controlled Substance Monitoring Program; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to regulations governing pharmacists; authorizing the West Virginia Board of Psychologists to promulgate a legislative rule relating to fees; authorizing the Public Service Commission to promulgate a legislative rule relating to rules governing the occupancy of customer-provided conduit; authorizing the West Virginia Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to requirements for licensure or certification; authorizing the West Virginia Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to the renewal of licensure and certification; authorizing the West Virginia Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to requirements for registration and renewal of appraisal management companies; authorizing the West Virginia Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to limited prescriptive authority for nurses in advanced practice; authorizing the West Virginia Board of Examiners of Registered Professional Nurses to promulgate a legislative rule relating to telehealth practice; authorizing the Secretary of State to

promulgate a legislative rule relating to voter registration at the Division of Motor Vehicles; authorizing the Secretary of State to promulgate a legislative rule relating to voter registration list maintenance by the Secretary of State; authorizing the Secretary of State to promulgate a legislative rule relating to the combined Voter Registration and Driver Licensing Fund; authorizing the Secretary of State to promulgate a legislative rule relating to the use of digital signatures; authorizing the Secretary of State to promulgate a legislative rule relating to regulation of political party headquarters finances; authorizing the Secretary of State to promulgate a legislative rule relating to standards and guidelines for electronic notarization, remote online notarization, and remote ink notarization; authorizing the Secretary of State to promulgate a legislative rule relating to real property electronic recording standards and regulations; authorizing the West Virginia Board of Social Work Examiners to promulgate a legislative rule relating to qualifications for the profession of social work; authorizing the West Virginia Board of Social Work Examiners to promulgate a legislative rule relating to the fee schedule; authorizing the West Virginia Board of Social Work Examiners to promulgate a legislative rule relating to continuing education for social workers and providers; authorizing the West Virginia Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to licensure of speech-pathology and audiology; authorizing the State Treasurer to promulgate a legislative rule relating to Substitute Checks- Exceptional Items Fund; authorizing the State Treasurer to promulgate a legislative rule relating to procedures for deposit of monies with the State Treasurer's Office by state agencies; authorizing the State Treasurer to promulgate a legislative rule relating to the selection of state depositories for disbursement accounts through competitive bidding; authorizing the State Treasurer to promulgate a legislative rule relating to the selection of state depositories for receipt accounts; authorizing the State Treasurer to promulgate a legislative rule relating to procedures for processing payments from the State Treasury; authorizing the State Treasurer to promulgate a legislative rule relating to reporting debt; authorizing the State Treasurer to promulgate a legislative rule relating to procedures for fees in collections by charge, credit, or debit card or

by electronic payment; and authorizing the State Treasurer to promulgate a legislative rule relating to procedures for providing services to political subdivisions.”

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

On this question, the yeas and nays were taken (**Roll No. 561**), and there were—yeas 94, nays 1, absent and not voting 5, with the nays and the absent and not voting being as follows:

Nays: Fleischauer.

Absent and Not Voting: Dean, Griffith, Hamrick, Hardy and Riley.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 334) takes effect from its passage.

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

**Com. Sub. for S. B. 424**, Relating generally to 2022 Farm Bill; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 562**), and there were—yeas 92, nays none, absent and not voting 8, with the absent and not voting being as follows:

Absent and Not Voting: Dean, Griffith, Hamrick, Hardy, Hott, Mandt, Riley and Steele.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 424) passed.

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

**Com. Sub. for S. B. 424** – “A Bill to repeal §19-1-10, and §19-15-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-13DD-3 of said code; to amend and reenact §19-1-4a and §19-1-11 of said code; to amend said code by adding thereto one new section, designated §19-1-13; to amend and reenact §19-9-7a of said code; to amend and reenact §19-12E-4 and §19-12E-5 of said code; to amend and reenact §19-15A-4 of said code; to amend and reenact §19-16-6 of said code; to amend and reenact §19-16A-21 of said code; to amend and reenact §19-20C-3 of said code; to amend and reenact §19-36-5 of said code, all relating generally to the 2022 Farm Bill; increasing the West Virginia Farm-to-Food bank tax credit; allowing for retroactive application of the tax credit; allowing the Commissioner of Agriculture to accept certain funds and property from federal agencies, individuals, and certain businesses; repealing requirement for Social Security numbers on applications; removing requirement that commissioner file annual report on rural rehabilitation loan program with Joint Committee; requiring commissioner to file annual report detailing department activities with President of the Senate, Speaker of the House, and Joint Committee on Government and Finance and sending copy to archives and history; requiring license from state to produce industrial hemp; changing the National Animal Identification System to the Animal Disease Traceability Program; requiring license from state to produce industrial hemp; allowing commissioner to recognize hemp license issued by the USDA; repealing publication requirement for fertilizer law; removing requirement that commissioner publish annual report on the liming material law; removing requirement that commissioner publish and distribute annual report on the law; allowing commissioner to deny, suspend, modify, or revoke license or application for license for violation, conviction, or penalty assessment under a certain federal act; removing requirement that commissioner file annual spay and neuter report; providing that agritourism on land classified as agricultural does not change use of land for zoning purposes; providing that agritourism business may use certain facilities for certain events without complying with fire codes.”

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

**Com. Sub. for S. B. 434**, Updating authority to airports for current operations; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 563**), and there were—yeas 81, nays 8, absent and not voting 11, with the nays and the absent and not voting being as follows:

Nays: Anderson, J. Jeffries, J. Kelly, Kimble, Mallow, Paynter, Queen and Summers.

Absent and Not Voting: Burkhammer, Dean, Griffith, Hamrick, Hardy, Honaker, Hott, Longanacre, Mandt, Riley and Steele.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 434) passed.

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

**Com. Sub. for S. B. 438**, Relating generally to WV Security for Public Deposits Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 564**), and there were—yeas 89, nays none, absent and not voting 11, with the absent and not voting being as follows:

Absent and Not Voting: Burkhammer, Crouse, Dean, Graves, Griffith, Hamrick, Hanna, Hott, Mandt, Riley and Thompson.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 438) passed.

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

**Com. Sub. for S. B. 441**, Providing confidentiality of video and other records of correctional juvenile facilities; on third reading, coming up in regular order, was reported by the Clerk.

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

**S. B. 442**, Relating to WV Public Employee Retirement System; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 565**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Burkhammer, Crouse, Dean and Hamrick.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 442) passed.

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

**Com. Sub. for S. B. 463**, Best Interests of Child Protection Act of 2022; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 566**), and there were—yeas 75, nays 22,

absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Barach, Boggs, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Lovejoy, Mazzocchi, Nestor, Pethtel, Pushkin, Rowe, Skaff, Thompson, Walker, Williams and Young.

Absent and Not Voting: Dean, Hamrick and Mandt.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 463) passed.

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

**Com. Sub. for S. B. 486**, Allowing PERS retirees to designate special needs trust as beneficiary; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 567**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Dean, Hamrick and Young.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 486) passed.

On motion of Delegates Householder and Capito, the title of the bill was amended to read as follows:

**Com. Sub. for S. B. 486** – “A Bill to amend and reenact §5-10-2 and §5-10-24 of the Code of West Virginia, 1931, as amended, all relating to the Public Employees Retirement System; allowing retirees in the Public Employees Retirement System to designate an irrevocable special needs trust as beneficiary; defining

terms; including a deliberate act as employer error; updating required beginning date to conform with federal law; and providing for substitution of irrevocable special needs trust as beneficiary post retirement in certain circumstances.”

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

**Com. Sub. for S. B. 498**, Creating Anti-Racism Act of 2022; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 568**), and there were—yeas 75, nays 24, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Barach, Boggs, Brown, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Lovejoy, Pethtel, Pushkin, Rowan, Rowe, Skaff, Storch, Thompson, Walker, Williams, Young and Zukoff.

Absent and Not Voting: Westfall.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 498) passed.

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

**Com. Sub. for S. B. 498** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-9b; all relating to prohibiting a school district, a public charter school, the West Virginia Board of Education, the West Virginia Department of Education, or any employee of the aforementioned entities, within the scope of his or her employment, from requiring or otherwise compelling a student, teacher, administrator, or other employee to affirm, adopt or adhere to certain specified concepts; limiting prohibitions; providing that complaints may be filed pursuant to current state board policy;



requiring reports of substantiated complaints to the Legislative Oversight Commission on Education Accountability annually; and allowing the state board to promulgate rules.”

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

**Com. Sub. for S. B. 530**, Encouraging public-private partnerships in transportation; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 569**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Hamrick and Westfall.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 530) passed.

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

**S. B. 729**, Relating to funding for infrastructure and economic development projects in WV; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 570**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Graves, Hamrick and Westfall.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 729) passed.

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

On this question, the yeas and nays were taken (**Roll No. 571**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Forsht, Hamrick and Westfall.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 729) takes effect from its passage.

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

### **Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with a title amendment, a bill of the House of Delegates, as follows:

**H. B. 2631**, Provide for WVDNR officers to be able to work “off duty”.

On motion of Delegate Summers, the House of Delegates concurred in the following Senate title amendment:

**H. B. 2631** – “A Bill to amend and reenact §20-1-7e of the Code of West Virginia, 1931, as amended, relating to allowing off duty Natural Resources Police Officers to contract to work for a private person or entity during off duty hours if work does not violate Division of Natural Resources law or rules regarding location or nature; expanding authority of chief natural resources police office to enter contract for certain services with quasi-public entities; and requiring Division of Natural Resources contracts with public and private entities for certain services provide liability immunity for Natural Resources Police Officers.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 572**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Boggs, Hamrick, Thompson, Westfall and Williams.

So, a majority of the members elected having voted in the affirmative, the Speaker declared the bill (H. B. 2631) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4050**, Defining terms related to livestock trespassing.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 18. GENERAL STOCK LAW.**

**§19-18-1. Livestock trespassing on property of another; damages for injuries to person or property; notice to livestock owner; containment of livestock; costs for containment.**

(a) If livestock enters the property of a landowner without that landowner’s consent, the owner of the livestock is liable for damages for personal injury or property damage in a civil action in magistrate or circuit court.

(b) The landowner must attempt to contact the owner of the trespassing livestock within 48 hours of the trespass. If the owner cannot be contacted within 48 hours, the landowner shall notify the county sheriff.

(c) The landowner may contain the trespassing livestock on his or her property, but is not required to do so. If the landowner is able to contact the owner of the trespassing livestock pursuant to subsection (a) of this section, he or she shall also inform the owner of the costs of containment and shall allow the owner to retrieve the livestock.

(d) The owner of the trespassing livestock and the landowner shall attempt to mutually agree upon a fair cost for any containment. A fair cost for containment is an amount which would be allowed for the sheriff for containing similar livestock. If the negotiation fails, or if the landowner is not otherwise reimbursed for the costs for containment, the landowner may seek monetary damages in a civil action for these costs.

(e) ‘Livestock’ is defined as an animal of the bovine, equine, porcine, ovine or caprine specie, domestic poultry, peafowl, guineafowl, leporidae, camelid, emu, and captive cervid as defined in §19-2H-2 of this code.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 573**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Boggs, Capito, Hamrick, Westfall and Williams.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4050) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to recede from its amendment and requested the House of Delegates to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses as to

**H. B. 4097**, To prohibit nonpublic funding sources for election administration and related expenses without prior written approval by the State Election Commission.

The message further announced that the Senate had appointed the following conferees:

Senators Weld, Azinger and Woelfel.

On motion of Delegate Summers, the House of Delegates agreed to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Steele, Holstein and Diserio.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4311**, Creating criminal penalties for illegal voting activity.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 7. CONTESTED ELECTIONS.**

**§3-9-17. Illegal voting; deceiving voters; penalties.**

(a) Any person who knowingly and willfully votes or attempts to vote more than once at the same election held in this state; in more than one county in this state at the same or equivalent election; or, in this state and another state or territory at the same or equivalent election, irrespective of different offices, questions, or candidates on the ballot, knowing the same to be illegal, is guilty of a felony and, on conviction thereof, shall be imprisoned for not less than one year but not more than 10 years, or fined not more than \$10,000, or both, in the discretion of the court.

(b) If ~~any~~ Any person who knowingly and willfully votes or attempts to vote when the person knows he or she is not legally entitled to do so; ~~or votes more than once in the same election; or knowingly votes or attempts to vote more than one ballot for the same office, or on the same question~~ or procures or assists in procuring an illegal vote to be admitted, or received, at an election, knowing the same to be illegal; or causes or assists in causing a legal vote to be rejected, knowing the same to be legal; ~~or, is guilty of a felony and, on conviction thereof, shall be imprisoned for not less than one year but not more than 10 years, or fined not more than \$10,000, or both, in the discretion of the court.~~

(c) Any person who knowingly and willfully, with intent to deceive, alters the ballot of a voter by marking out the name of any person for whom such voter desires to vote; or, with like intent, writes the name of any person on such ballot other than those directed by the voter; or with like intent, makes any alteration thereof, whether such ballot be voted or not; or defrauds any voter at any election, by deceiving and causing him or her to vote for a different person for any office than he or she intended or desired to vote for, ~~he shall be guilty of a misdemeanor, and, on conviction thereof, shall for each offense be fined not more than \$1,000 or confined in the county jail for not more than one year, is guilty of a felony and, on conviction thereof, shall be imprisoned for not less~~

than one year but not more than 10 years, or fined not more than \$10,000, or both, in the discretion of the court.”

And,

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

**Com. Sub. for H. B. 4311-** “A Bill to amend and reenact §3-9-17 of the Code of West Virginia, 1931, as amended, relating to unlawfully voting generally; creating certain crimes of illegal voting and deceiving voters; prohibiting knowingly and willfully voting or attempting to vote multiple times in the same or equivalent elections as a felony offense and establishing penalties therefor; prohibiting voting or attempting to vote when not entitled to do so as a felony offense and establishing penalties therefor; prohibiting knowingly and willfully procuring or assisting in procuring the acceptance of illegal votes or rejection of legal votes as a felony offense and establishing penalties therefor; and prohibiting knowing and willfully altering ballots or defrauding voters as a felony offense and establishing penalties therefor.

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 574**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Hamrick and Westfall.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4311) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

**H. B. 4331**, West Virginia's Urban Mass Transportation Authority Act.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 27. INTERGOVERNMENTAL RELATIONS —  
URBAN MASS TRANSPORTATION SYSTEMS.**

**§8-27-21a. Federal grants; wage deductions.**

Notwithstanding any provision of this code to the contrary, the term “deductions”, as defined in §21-5-1 of this code and applied to the wages of an employee of an urban mass transportation authority under this article which is a direct or indirect recipient of federal funding from the Federal Transit Administration pursuant to the Urban Mass Transportation Act of 1964, as amended, includes amounts authorized for union or labor organization dues or fees. This section applies only to urban mass transportation authorities under this article.”

And,

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

**H. B. 4331** – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-27-21a, relating to allowing union or labor organization dues or fees to be deducted from the wages of employees of an urban mass transportation authority which receives federal funding from the Federal Transit Administration.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 575**), and there were—yeas 87, nays 10,



absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Burkhammer, Foster, Graves, Hanna, Kessinger, Kimes, Martin, Paynter, Steele and G. Ward.

Absent and Not Voting: Cooper, Hamrick and Westfall.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4331) passed.

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

On this question, the yeas and nays were taken (**Roll No. 576**), and there were—yeas 89, nays 7, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Burkhammer, Foster, Hanna, Kessinger, Martin, Steele and G. Ward.

Absent and Not Voting: Cooper, Hamrick, Thompson and Westfall.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4331) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4441**, Creating a Class M air rifle stamp.

On motion of Delegate Summers, the House concurred in the following amendment by the Senate, with further amendment amending the title:

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

**“ARTICLE 2. WILDLIFE RESOURCES.**

**§20-2-5k. Use of air rifles to hunt.**

(a) Notwithstanding any other provision of this code to the contrary, any person lawfully entitled to hunt may hunt with an air rifle during small game and big game firearms season: *Provided*, That air rifles may only be used for deer hunting in counties open to firearm deer hunting.

(b) An air rifle may not be substituted for a muzzleloader during any muzzleloader season or during the Mountaineer Heritage season.

(c) No person may be afield with an air rifle and bow, or with an air rifle or any arrow at the same time.

(d) No person may hunt with an air bow at any time.

(e) Any person hunting with an air rifle is subject to all other rifle and firearm hunting regulations according to this chapter and rules promulgated thereunder.

(f) Only air rifles meeting the following specifications may be used for hunting big game:

(1) No person may hunt big game with an air rifle of less than .45 caliber and with a bullet of less than 200 grains, except that wild turkey may be hunted with an air rifle of .22 caliber or larger.

(2) No person may hunt small game with an air rifle of less than .22 caliber.

(g) Air rifles may be shot within 500 feet of a dwelling.”

With the further amendment, sponsored by Delegate Summers, amending the title of the bill to read as follows:

**Com. Sub. for H. B. 4441** – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-2-5k relating to permitting the use of air rifles when hunting; permitting a person use an air rifle to hunt when properly authorized to hunt under an existing stamp; setting forth criteria for when an air rifle may be used to hunt game in this state; setting caliber limits for air rifles when hunting certain types of game; and providing limitations on air rifle use.”

The bill, as amended by the Senate, and further amended by the House of Delegates, was then put upon its passage.

On passage of the bill, the yeas and nays were taken (**Roll No. 577**), and there were—yeas 96, nays 1, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Criss.

Absent and Not Voting: Cooper, Hamrick and Westfall.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4441) passed.

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

On this question, the yeas and nays were taken (**Roll No. 578**), and there were—yeas 96, nays 1, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Paynter.

Absent and Not Voting: Cooper, Hamrick and Westfall.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4441) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4466**, Relating to School Building Authority's review of school bond applications.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

On page eight, section fifteen, lines one hundred sixty-five through one hundred eighty, by striking out all of subdivision (2) and inserting in lieu thereof a new subdivision (2), to read as follows:

“(2) A county board may apply to the authority for funding under this article as a part of the county’s bond finance plan for a proposed capital improvement bond levy to be submitted to the voters of that county. The county board shall first submit a request for the funding to the executive director of the authority prior to the county board’s proposed bond levy election. After initial consultation with the executive director, the county board shall prepare a written outline of the bond finance plan, the capital improvements to be made with levy funds, and the amount and timing of funding requested from the authority. The county board shall then present its request at a meeting of the members of the authority.

Grants of financial assistance that have received initial approval under this section are contingent upon passage of the bond levy and final approval by the School Building Authority of the county’s bond finance plan. Any materials produced by the county or its county board that refer to the authority shall include a statement of this contingency and terms. Notwithstanding any other provision of this subsection, financial assistance to be provided by the authority may only be used to pay costs of capital improvements and may not be pledged as security for or repayment of any bonds issued by the county board.

Upon passage of bond levy, the county board shall have four years to finalize the project: *Provided, That the authority may grant an extension to the four years in extenuating circumstances.*

The provisions of this subsection do not apply to any proposed capital improvement bond levy that is scheduled to be submitted to the voters on or before December 31, 2022.”

And,

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

**Com. Sub. for H. B. 4466** – “A Bill to amend and reenact §18-9D-15 of the Code of West Virginia, 1931, as amended, relating to seeking contribution of School Building Authority funds to support a local capital improvement bond finance plan; providing for application to the School Building Authority; requiring initial approval prior to conducting bond levy election; requiring conditional language in materials referencing School Building Authority; limiting use of financial assistance provided; establishing time limit for project completion; allowing extension to the time limit in extenuating circumstances; exempting new provisions from applying to any proposed capital improvement bond levy scheduled to be submitted to the voters on or before December 31, 2022; and deleting obsolete provisions.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 579**), and there were—yeas 94, nays 3, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Gearheart, Hanna and J. Jeffries.

Absent and Not Voting: Cooper, Hamrick and Westfall.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4466) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 4535**, Repeal section relating to school attendance and satisfactory academic progress as conditions of licensing for privilege of operation of motor vehicle.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

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

**“CHAPTER 17B. MOTOR VEHICLE DRIVER’S LICENSE.**

**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION, AND RENEWAL.**

**§17B-2-3a. Graduated driver’s license.**

(a) A person under the age of 18 may not operate a motor vehicle unless he or she has obtained a graduated driver’s license in accordance with the three-level graduated driver’s license system described in the following provisions.

(b) Any person under the age of 21, regardless of class or level of licensure, who operates a motor vehicle with any measurable alcohol in his or her system is subject to §17C-5-2 and §17C-5A-2 of this code. Any person under the age of ~~18~~17, regardless of class or licensure level, is subject to the mandatory school attendance and satisfactory academic progress provisions of §18-8-11 of this code~~;~~ Provided, That a person may otherwise be eligible for a restricted license or instruction permit pursuant to §18-8-11.

(c) *Level one instruction permit.* — An applicant who is 15 years or older meeting all other requirements prescribed in this code may be issued a level one instruction permit.

(1) *Eligibility.* — The division may not issue a level one instruction permit unless the applicant:

(A) Presents a completed application, as prescribed by §17B-2-6 of this code, which is accompanied by a writing, duly acknowledged, consenting to the issuance of the graduated driver's license, and executed by a parent or guardian entitled to custody of the applicant;

(B) Presents a certified copy of a birth certificate issued by a state or other governmental entity responsible for vital records unexpired, or a valid passport issued by the United States government evidencing that the applicant meets the minimum age requirement and is of verifiable identity;

(C) Passes the vision and written knowledge examination and completes the driving under the influence awareness program, as prescribed in §17B-2-7 of this code; and

~~(D) Presents a driver's eligibility certificate or otherwise shows compliance with §18-8-11 of this code; and~~

~~(E)~~ (D) Pays a fee of \$7.50, which permits the applicant one attempt at the written knowledge test. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U.S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in the fee may not exceed 10 percent of the total fee amount in a single year.

(2) *Terms and conditions of instruction permit.* — A level one instruction permit issued under this section is valid until 30 days after the date the applicant attains the age of 18 and is not renewable: *Provided*, That for an applicant who is an active member of any branch of the United States military, a level one instruction permit issued under the provisions of this section is valid until 180 days after the date the applicant attains the age of 18. However, any permit holder who allows his or her permit to expire prior to successfully passing the road skills portion of the driver examination, and who has not committed any offense which

requires the suspension, revocation, or cancellation of the instruction permit, may reapply for a new instruction permit under §17B-2-6 of this code. The division shall immediately revoke the permit upon receipt of a second conviction for a moving violation of traffic regulations and laws of the road or violation of the terms and conditions of a level one instruction permit, which convictions have become final unless a greater penalty is required by this section or any other provision of this code. Any person whose instruction permit has been revoked is disqualified from retesting for a period of 90 days. However, after the expiration of 90 days, the person may retest if otherwise eligible. A holder of a level one instruction permit who is under the age of 18 years may not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked, or canceled, the holder of a level one instruction permit may only operate a motor vehicle under the following conditions:

(A) The permit holder is under the direct supervision of a licensed driver, 21 years of age or older, or a driver's education or driving school instructor who is acting in an official capacity as an instructor, who is fully alert and unimpaired, and the only other occupant of the front seat. The vehicle may be operated with no more than two additional passengers, unless the passengers are family members;

(B) The permit holder is operating the vehicle between the hours of 5 a.m. and 10 p.m.;

(C) All occupants use safety belts in accordance with §17C-15-49 of this code;

(D) The permit holder is operating the vehicle without any measurable blood alcohol content, in accordance with §17C-5-2(h) of this code; and

(E) The permit holder maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with §18-8-11 of this code: Provided, That a person



may otherwise be eligible for a restricted license or instruction permit pursuant to §18-8-11.

(d) *Level two intermediate driver's license.* — An applicant 16 years of age or older, meeting all other requirements of this code, may be issued a level two intermediate driver's license.

(1) *Eligibility.* — The division may not issue a level two intermediate driver's license unless the applicant:

(A) Presents a completed application as prescribed in §17B-2-6 of this code;

(B) Has held the level one instruction permit conviction-free for the 180 days immediately preceding the date of application for a level two intermediate license;

(C) Has completed either a driver's education course approved by the State Department of Education or 50 hours of behind-the-wheel driving experience, including a minimum of 10 hours of night time driving, certified by a parent or legal guardian or other responsible adult over the age of 21 as indicated on the form prescribed by the division: *Provided*, That nothing in this paragraph may be construed to require any school or any county board of education to provide any particular number of driver's education courses or to provide driver's education training to any student;

~~(D) Presents a driver's eligibility certificate or otherwise shows compliance with §18-8-11 of this code~~

~~(E)~~ (D) Passes the road skills examination as prescribed by §17B-2-7 of this code; and

(F) Pays a fee of \$7.50 for one attempt. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U.S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in the fee may not exceed 10 percent of the total fee amount in a single year.

(2) *Terms and conditions of a level two intermediate driver's license.* — A level two intermediate driver's license issued under the provisions of this section expires 30 days after the applicant attains the age of 18, or until the licensee qualifies for a level three full Class E license, whichever comes first. A holder of a level two intermediate driver's license who is under the age of 18 years shall not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked, or canceled, the holder of a level two intermediate driver's license may only operate a motor vehicle under the following conditions:

(A) The licensee operates a vehicle unsupervised between the hours of 5 a.m. and 10 p.m.;

(B) The licensee operates a vehicle only under the direct supervision of a licensed driver, age 21 years or older, between the hours of 10 p.m. and 5 a.m. except when the licensee is going to or returning from:

(i) Lawful employment;

(ii) A school-sanctioned activity;

(iii) A religious event; or

(iv) An emergency situation that requires the licensee to operate a motor vehicle to prevent bodily injury or death of another;

(C) All occupants of the vehicle use safety belts in accordance with §17C-15-49 of this code;

(D) For the first six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying any passengers less than 20 years old, unless these passengers are family members of the licensee; for the second six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying more than

one passenger less than 20 years old, unless these passengers are family members of the licensee;

(E) The licensee operates a vehicle without any measurable blood alcohol content in accordance with §17C-5-2(h) of this code;

(F) The licensee maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with §18-8-11 of this code: Provided, That a person may otherwise be eligible for a restricted license or instruction permit pursuant to §18-8-11.

(G) Upon the first conviction for a moving traffic violation or a violation of §17B-2-3a(d)(2) of this code of the terms and conditions of a level two intermediate driver's license, the licensee shall enroll in an approved driver improvement program unless a greater penalty is required by this section or by any other provision of this code; and

At the discretion of the commissioner, completion of an approved driver improvement program may be used to negate the effect of a minor traffic violation as defined by the commissioner against the one year conviction-free driving criteria for early eligibility for a level three driver's license and may also negate the effect of one minor traffic violation for purposes of avoiding a second conviction under ~~§17B-2-3a(d)(2)(H)~~ §17B-2-3a(d)(2)(G) of this code; and

(H) Upon the second conviction for a moving traffic violation or a violation of the terms and conditions of the level two intermediate driver's license, the Division of Motor Vehicles shall revoke or suspend the licensee's privilege to operate a motor vehicle for the applicable statutory period or until the licensee's 18th birthday, whichever is longer, unless a greater penalty is required by this section or any other provision of this code. Any person whose driver's license has been revoked as a level two intermediate driver, upon reaching the age of 18 years and if otherwise eligible, may reapply for an instruction permit, then a driver's license in accordance with §17B-2-5, §17B-2-6 and §17B-2-7 of this code.

(e) *Level three, full Class E license.* — The level three license is valid until 30 days after the date the licensee attains his or her 21st birthday. A holder of a level three driver's license who is under the age of 18 years shall not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. Unless otherwise provided in this section or any other section of this code, the holder of a level three full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver's license.

A level two intermediate licensee whose privilege to operate a motor vehicle has not been suspended, revoked, or otherwise canceled and who meets all other requirements of the code may be issued a level three full Class E license without further examination or road skills testing if the licensee:

(1) Has reached the age of 17 years; ~~and~~

~~(A) (2)~~ Presents a completed application as prescribed by §17B-2-6 of this code;

~~(B) (3)~~ Has held the level two intermediate license conviction free for the 12-month period immediately preceding the date of the application;

~~(C) (4)~~ Has completed any driver improvement program required under §17B-2-3a(d)(2)(G) of this code; and

~~(D) (5)~~ Pays a fee of \$2.50 for each year the license is valid. An additional fee of 50 cents shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund established in §3-2-12 of this code.

~~(E) Presents a driver's eligibility certificate or otherwise shows compliance with §18-8-11 of this code; or~~

~~(2) Reaches the age of 18 years; and~~

~~(A) Presents a completed application as prescribed by §17B-2-6 of this code; and~~

~~(B) Pays a fee of \$5 for each year the license is valid. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in the fee may not exceed 10 percent of the total fee amount in a single year. An additional fee of 50 cents shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund established in §3-2-12 of this code~~

(f) A person violating the provisions of the terms and conditions of a level one instruction permit, level two intermediate driver's license, or level three license is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined \$25; for a second offense be fined \$50; and for a third or subsequent offense be fined \$75.

### **ARTICLE 3. CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSES.**

#### **§17B-3-6. Authority of division to suspend, restrict, or revoke license; hearing.**

(a) The division is hereby authorized to suspend, restrict, or revoke the driver's license of any person without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(1) Has committed an offense for which mandatory revocation of a driver's license is required upon conviction;

(2) Has by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in the death or personal injury of another or property damage;

(3) Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(4) Is an habitually reckless or negligent driver of a motor vehicle;

(5) Is incompetent to drive a motor vehicle;

(6) Has committed an offense in another state which if committed in this state would be a ground for suspension or revocation;

(7) Has failed to pay or has defaulted on a plan for the payment of all costs, fines, forfeitures, or penalties imposed by a magistrate court or municipal court within 90 days, as required by ~~section two-a, article three, chapter fifty~~ §50-3-2a of this code or ~~section two-a, article ten, chapter eight~~ §8-10-2a of this code;

(8) Has failed to appear or otherwise respond before a magistrate court or municipal court when charged with a motor vehicle violation as defined in section three-a of this article;

(9) Is under the age of ~~eighteen~~ 17 and has withdrawn either voluntarily or involuntarily due to misconduct from a secondary school or has failed to maintain satisfactory academic progress, as provided in ~~section eleven, article eight, chapter eighteen~~ §18-8-11 of this code; or

(10) Has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings, if a circuit court has ordered the suspension of the license as provided in ~~article five-a, chapter forty-eight-a~~ §48A-5A-1 et seq. of this code and the Child Support Enforcement Division has forwarded to the division a copy of the court order suspending the license, or has forwarded its certification that the licensee has failed to comply with a new or modified order that stayed the suspension and provided for the payment of current support and any arrearage due.

(b) The driver's license of any person having his or her license suspended shall be reinstated if:

(1) The license was suspended under the provisions of subdivision (7), subsection (a) of this section and the payment of costs, fines, forfeitures, or penalties imposed by the applicable court has been made;

(2) The license was suspended under the provisions of subdivision (8), subsection (a) of this section and the person having his or her license suspended has appeared in court and has prevailed against the motor vehicle violations charged; or

(3) The license was suspended under the provisions of subdivision (10), subsection (a) of this section and the division has received a court order restoring the license or a certification by the Child Support Enforcement Division that the licensee is complying with the original support order or a new or modified order that provides for the payment of current support and any arrearage due.

(c) Any reinstatement of a license under subdivision (1), (2) or (3), subsection (b) of this section shall be subject to a reinstatement fee designated in section nine of this article.

(d) Upon suspending, or restricting the driver's license of any person as hereinbefore in this section authorized, the division shall immediately notify the licensee in writing, sent by certified mail, return receipt requested, to the address given by the licensee in applying for license, and upon his or her request shall afford him or her an opportunity for a hearing as early as practical within not to exceed 20 days after receipt of such request in the county wherein the licensee resides unless the division and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner or his or her duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the division shall either rescind its order of suspension, or restriction or, good cause appearing therefor, may extend the suspension, or restriction of such license or revoke such license. The provisions of this subsection providing for notice and hearing are not applicable to a suspension under subdivision (10), subsection (a) of this section. Any person whose driver's license is suspended, restricted, or revoked after hearing with the commissioner may seek judicial review of the final order or decision in accordance with §29A-5-4 of this code.

(e) Notwithstanding the provisions of legislative rule 91 CSR 5, the division may, upon completion of an approved defensive driving course, deduct three points from a licensee's point accumulation provided the licensee has not reached 14 points. If a licensee has been notified of a pending 30-day driver's license suspension based on the accumulation of 12 or 13 points, the licensee may submit proof of completion of an approved defensive driving course to deduct three points and rescind the pending license suspension: *Provided*, That the licensee submits proof of prior completion of the course and payment of the reinstatement fee in accordance with section nine, article three of this chapter to the division prior to the effective date of the suspension.

## CHAPTER 18. EDUCATION.

### ARTICLE 18. COMPULSORY SCHOOL ATTENDANCE.

#### **§18-8-11. School attendance and satisfactory academic progress as conditions of licensing for privilege of operation of motor vehicle.**

~~(a) In accordance with the provisions of §17B-2-3a and §17B-2-5 of this code, the Division of Motor Vehicles shall deny a license or instruction permit for the operation of a motor vehicle to any person under the age of 18 who does not at the time of application present a diploma or other certificate of graduation issued to the person from a secondary high school of this state or any other state or documentation that the person: (1) Is enrolled and making satisfactory progress in a course leading to a general education development certificate (GED) from a state approved institution or organization or has obtained the certificate; (2) is enrolled and is making satisfactory academic progress in a secondary school of this state or any other state; (3) is excused from the requirement due to circumstances beyond his or her control; or (4) is enrolled in an institution of higher education as a full time student in this state or any other state.~~

~~(b) The attendance director or chief administrator shall, upon request, provide a driver's eligibility certificate on a form approved by the Department of Education to any student at least 15 but less~~



~~than 18 years of age who is properly enrolled and is making satisfactory academic progress in a school under the jurisdiction of the official for presentation to the Division of Motor Vehicles on application for or reinstatement of an instruction permit or license to operate a motor vehicle: *Provided*, That a parent or legal guardian of a child who is being educated pursuant to §18-8-1(c) of this code may provide a signed statement in lieu of a driver's eligibility certificate issued by the attendance director or chief administrator affirming that the child is being educated in accordance with law, is making satisfactory academic progress, and meets the conditions to be eligible to obtain any permit or license under this section. The Division of Motor Vehicles may accept from a county board of education electronic notice of a student's compliance with the provisions of this section in lieu of any written form or written statement otherwise required from an applicant for an instruction permit or driver's license.~~

(e) (a) Whenever a student at least 15 but less than 17 years of age, except as provided in subsection ~~(g)~~ (e) of this section, withdraws from school, the attendance director or chief administrator shall notify the Division of Motor Vehicles of the student's withdrawal no later than five days from the date of the withdrawal. Within five days of receipt of the notice, the Division of Motor Vehicles shall send notice to the student that the student's instruction permit or license to operate a motor vehicle will be suspended restricted to driving for work or medical purposes or educational or religious pursuits under the provisions of §17B-3-6 of this code on the 30th day following the date the notice was sent unless documentation of compliance with the provisions of this section is received by the Division of Motor Vehicles before that time. The notice shall also advise the student that he or she is entitled to a hearing before the county superintendent of schools or his or her designee or before the appropriate private school official concerning whether the student's withdrawal from school was due to a circumstance or circumstances beyond the control of the student. If suspended restricted, the division may not reinstate an instruction permit or license until the student returns to school and shows satisfactory academic progress or until the student attains 17 years of age.

~~(d)~~ (b) Whenever a student at least 15 but less than ~~18~~ 17 years of age is enrolled in a secondary school and fails to maintain satisfactory academic progress, the attendance director or chief administrator shall follow the procedures set out in subsection ~~(e)~~ (a) of this section to notify the Division of Motor Vehicles. Within five days of receipt of the notice, the Division of Motor Vehicles shall send notice to the student that the student's instruction permit or license will be ~~suspended~~ restricted to driving for work or medical purposes or educational or religious pursuits under the provisions of §17B-3-6 of this code on the 30th day following the date the notice was sent unless documentation of compliance with the provisions of this section is received by the Division of Motor Vehicles before that time. The notice shall also advise the student that he or she is entitled to a hearing before the county superintendent of schools or his or her designee or before the appropriate private school official concerning whether the student's failure to make satisfactory academic progress was due to a circumstance or circumstances beyond the control of the student. Once ~~suspension~~ the restriction is ordered, the division may not reinstate an instruction permit or license until the student shows satisfactory academic progress or until the student attains ~~18~~ 17 years of age.

~~(e)~~ (c) Upon written request of a student, within 10 days of receipt of a notice of ~~suspension~~ restriction as provided by this section, the Division of Motor Vehicles shall afford the student the opportunity for an administrative hearing. The scope of the hearing shall be limited to determining if there is a question of improper identity, incorrect age, or some other clerical error.

~~(f)~~ (d) For the purposes of this section:

(1) "Withdrawal" is defined as more than 10 consecutive or 15 total days unexcused absences during a school year, or suspension pursuant to §18A-5-1a(a) and §18A-5-1a(b) of this code.

(2) "Satisfactory academic progress" means the attaining and maintaining of grades sufficient to allow for graduation and course work in an amount sufficient to allow graduation in five years or by age 19, whichever is earlier.

(3) “Circumstances outside the control of the student” shall include, but not be limited to, medical reasons, familial responsibilities, and the necessity of supporting oneself or another.

(4) Suspension or expulsion from school or imprisonment in a jail or a West Virginia correctional facility is not a circumstance beyond the control of the student.

~~(g)~~ (e) Whenever the withdrawal from school of the student, the student’s failure to enroll in a course leading to or to obtain a GED or high school diploma, or the student’s failure to make satisfactory academic progress is due to a circumstance or circumstances beyond the control of the student, or the withdrawal from school is for the purpose of transfer to another school as confirmed in writing by the student’s parent or guardian, no notice shall be sent to the Division of Motor Vehicles to ~~suspend~~ restrict the student’s motor vehicle operator’s license and if the student is applying for a license, the attendance director or chief administrator shall provide the student with documentation to present to the Division of Motor Vehicles to excuse the student from the provisions of this section. The school district superintendent (or the appropriate school official of any private secondary school) with the assistance of the county attendance director and any other staff or school personnel shall be the sole judge of whether any of the grounds for ~~denial or suspension~~ restriction of a license as provided by this section are due to a circumstance or circumstances beyond the control of the student.

~~(h)~~ (f) The state board shall promulgate rules necessary for uniform implementation of this section among the counties and as may otherwise be necessary for the implementation of this section. The rule may not include attainment by a student of any certain grade point average as a measure of satisfactory progress toward graduation.

And,

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

**H. B. 4535** – “A Bill to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §17B-3-6 of said code; and to amend and reenact §18-8-11 of said code, all relating to motor vehicle licensing; modifying requirements for a graduated driver’s license; granting Division of Motor Vehicles authority to restrict and revoke a driver’s license for certain reasons; allowing any person whose driver’s license is suspended, restricted, or revoked after hearing with the Commissioner of the Division of Motor Vehicles to seek judicial review; removing requirement to deny a license or instruction permit to any person under 18 who does not meet one of certain academic related requirements; removing provisions pertaining to the provision of a driver’s eligibility certificate; and replacing suspension of license with requiring restriction of license to driving for work or medical purposes or educational or religious pursuits whenever a student at least 15 but less than 17 years of age withdraws from school or fails to maintain satisfactory academic progress.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 580**), and there were—yeas 90, nays 7, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Crouse, Diserio, Fluharty, Miller, Pethtel, Worrell and Zukoff.

Absent and Not Voting: Cooper, Statler and Westfall.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4535) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4779**, Permit banks the discretion to choose whether to receive deposits from other banks, savings banks, or savings and loan associations when arranging for the re-deposits of county, municipal, and state funds.

On motion of Delegate Kessinger, the House concurred in the following Senate title amendment:

**Com. Sub. for H. B. 4779** – “A Bill to amend and reenact §7-6-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-13-22a of said code; to amend and reenact §12-1-4 of said code; and to amend and reenact §18-9-6 of said code, all relating to county, municipal, state, and county Board of Education public depositories; and giving those public depositories which redeposit public monies to ensure they are federally insured the discretion on whether or not to accept a reciprocal deposit.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 581**), and there were—yeas 95, nays 1, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Miller.

Absent and Not Voting: Cooper, Dean, Statler and Westfall.

So, a majority of the members elected having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4779) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 4,** John B. Short Memorial Bridge.

On motion of Delegate Summers, the House concurred in the following amendment of the resolution by the Senate:

On page one, in the Resolved clause, line eighteen, by striking out the words “John B. Short” and inserting in lieu thereof the words “U.S. Army Air Corps Sergeant John B. Short”;

On page one, in the first Further Resolved clause, line twenty, by striking out the words “John B. Short” and inserting in lieu thereof the words “U.S. Army Air Corps Sergeant John B. Short”;

And,

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

**H. C. R. 4** – “Requesting the Division of Highways name bridge number 23-10/7-0.01(23A048), locally known as the Gillman Bottom Bridge carrying CR 10/7 over Huff Creek in Logan County, West Virginia, the “U.S. Army Air Corps Sergeant John B. Short Memorial Bridge”.

The resolution, as amended by the Senate, was then adopted.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 7,** Daniel Edward Kolhton “Red” Haney Memorial Bridge.

On motion of Delegate Summers, the House concurred in the following amendment of the resolution by the Senate:

On page one, in the first Whereas clause, line four, by striking out the words “Kolhton “Red””;

On page one, in the second Whereas clause, line six, by striking out the words “Kolhton “Red””;

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

On page one, in the third Whereas clause, line eight, by striking out the words “Kolhton “Red””;

On page one, in the fourth Whereas clause, line ten, by striking out the words “Kolhton “Red””;

On page one, in the fifth Whereas clause, line twelve, by striking out the words “Kolhton “Red””;

On page one, in the sixth Whereas clause, line sixteen, by striking out the words “Kolhton “Red””;

On page two, in the Resolved clause, line twenty, by striking out the words “Daniel Edward Kolhton “Red”” and inserting in lieu thereof the words “Daniel Edward “Kolhton””;

On page two, in the first Further Resolved clause, line twenty-three, by striking out the words “Daniel Edward Kolhton ‘Red’” and inserting in lieu thereof the words “Daniel Edward “Kolhton””;

And,

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

**H. C. R. 7** – “Requesting the Division of Highways name bridge number: 03-005/00-017.66 (03A042), (38.63616, - 81.62303) locally known as Seth Bridge, carrying CR 5 over Big Coal River in Boone County, the “Daniel Edward ‘Kolhton’ Haney Memorial Bridge”.

The resolution, as amended by the Senate, was then adopted.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 8**, U.S. Army Private Elmo Davis Memorial Road.

On motion of Delegate Summers, the House concurred in the following amendment of the resolution by the Senate:

On page one, in the third Whereas clause, line thirteen, by striking out the words “Bronze Star” and inserting in lieu thereof the words “Bronze Service Star”.

The resolution, as amended by the Senate, was then adopted.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 14**, Colonel Ronald John “Ron” Chiccehitto Memorial Road.

On motion of Delegate Summers, the House concurred in the following amendment of the resolution by the Senate:

On page on page three, in the Resolved clause, line sixty-three, by striking out the word “Colonel” and inserting in lieu thereof the words “U.S. Army Colonel”;

On page two, in the first Further Resolved Clause, line sixty-seven, by striking out the word “Colonel” and inserting in lieu thereof the words “U.S. Army Colonel”;



And,

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

**H. C. R. 14** - “Requesting the Division of Highways name a stretch of road on WV 46 in Mineral County, east of Keyser between Lime Stone Rd, CR 14 (WV 46, 39.428520472667465, - 78.95480521741753) and Fountain Rd (46/11) as the “U.S. Army Colonel Ronald John “Ron” Chiccehitto Memorial Road”.

The resolution, as amended by the Senate, was then adopted.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 39**, PFC Donald L. Stuckey Memorial Bridge.

On motion of Delegate Summers, the House concurred in the following amendment of the resolution by the Senate:

On page two, in the Resolved clause, line thirty, by striking out the word “PFC” and inserting in lieu thereof the words “U.S. Army PFC”;

On page two, in the first Further Resolved clause, line thirty-two, by striking out the word “PFC” and inserting in lieu thereof the words “U.S. Army PFC”;

And,

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

**H. C. R. 39** – “Requesting the Division of Highways name the bridge bearing Identification Number 42-219/86-003.18 (42A228), located in Randolph County, West Virginia, carrying County Route 219 over Stalnaker Run, Latitude 38.988821, Longitude -

79.83132, locally known as Stalnaker Run Bridge, the “U.S. Army PFC Donald L. Stuckey Memorial Bridge.”

The resolution, as amended by the Senate, was then adopted.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 56**, Roy Lee Shamblin Memorial Bridge.

On motion of Delegate Summers, the House concurred in the following amendment of the resolution by the Senate:

On page two, in the Resolved clause, lines forty and forty-one, by striking out the words “Roy Lee Shamblin” and inserting in lieu thereof the words “U.S. Army T/5 Roy Lee Shamblin”;

Page two, in the first Further Resolved clause, line forty-four, by striking out the words “Roy Lee Shamblin” and inserting in lieu thereof the words “U.S. Army T/5 Roy Lee Shamblin”;

And,

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

**H. C. R. 56** - “Requesting the Division of Highways name a bridge bearing the bridge number: 08-036/01-000.04 (08A063), (38.55377,-81.12988) locally known as Laurel Fork Bridge, carrying CR 36/1 over Laurel Fork of Camp Run in Clay County, West Virginia, as the “U.S. Army T/5 Roy Lee Shamblin Memorial Bridge.”

The resolution, as amended by the Senate, was then adopted.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 60**, Fire Chief Lee Thomas Bridge.

On motion of Delegate Summers, the House concurred in the following amendment of the resolution by the Senate:

On page one, in the first Whereas clause, line four, by striking out the words “Fire Chief”;

On page one, in the second Whereas clause, line six, by striking out the word “Chief”;

On page one, in the third Whereas clause, line eight, by striking out the word “Chief” and inserting in lieu thereof the word “SP4”;

On page one, in the Resolved clause, line fifteen, by striking out the words “Fire Chief” and inserting in lieu thereof the words “U.S. Army SP4”;

On page one, in the first Further Resolved clause, line seventeen, by striking out the words “Fire Chief” and inserting in lieu thereof the words “U.S. Army SP4”;

And,

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

**H. C. R. 60** – “Requesting the Division of Highways name bridge number 18-077/00-145.78 (NB-SB) (18A172), locally known as Sandy Creek NB-SB bridges, carrying I-77 over Sandy Creek in Jackson County, the “U.S. Army SP4 Lee Thomas Memorial Bridge”.

The resolution, as amended by the Senate, was then adopted.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 89**, Hajash Brothers Memorial Bridge.

On motion of Delegate Summers, the House concurred in the following amendment of the resolution by the Senate:

On page two, in the Resolved clause, lines forty-two and forty-three, by striking out the words “Hajash Brothers Memorial Bridge” and inserting in lieu thereof “Hajash Brothers WWII Veterans Memorial Bridge”;

On page two, in the first Further Resolved clause, line forty-five, by striking out the words “Hajash Brothers Memorial Bridge” and inserting in lieu thereof the words “Hajash Brothers WWII Veterans Memorial Bridge”;

And,

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

**H. C. R. 89** – “Requesting the Division of Highways name Bridge Numbers 41-077/00-040.83 (NB & SB) (41A221, 41A228), (37.74329, -81.20788) locally known as I-77 OVER PINEY CR (NB & SB), carrying IS 77 over PINEY CREEK and CSX RR in Raleigh County, the “Hajash Brothers WWII Veterans Memorial Bridge”.

The resolution, as amended by the Senate, was then adopted.

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

A message from the Senate, by

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

**S. C. R. 12** “Requesting the Division of Highways name a portion of road, beginning at Dingess Branch Road at Liberty High School in Beckley to the unincorporated sign in Naoma in Raleigh County, as the ‘Raymond Jarrell, Jr., Memorial Road’.”

Whereas, Raymond Jarrell, Jr., was born on February 15, 1959, to Raymond and Ruth Jarrell; and

Whereas, Raymond Jarrell, Jr., was raised by his grandparents, Carl and Sylvia Jarrell, in Raleigh County, West Virginia, and he attended Raleigh County schools; and

Whereas, Raymond Jarrell, Jr., later became an employee of Raleigh County schools as a bus driver for 28 years and also ran Jarrell Backwoods Towing for 38 years; and

Whereas, Raymond Jarrell, Jr., was a member of the Naoma Methodist Church, was a bookkeeper for the Liberty High School Raiders basketball team, and was known for philanthropic acts to benefit his community that he provided personally and through his business; and

Whereas, Raymond Jarrell, Jr., gained fame from an early age as an expert in marble games, achieving his first national championship in New Jersey in 1972 at the age of 13, for which he was recognized in the New York Times; and

Whereas, Raymond Jarrell, Jr., went on to play for the Marble King team sponsored by the famous Marble King company of Paden City, West Virginia, and eventually won the title of World Marble Champion five times in competitions held in Tinsley Green, England;

Whereas, Raymond Jarrell, Jr., passed away August 10, 2019, and was buried at Adkins Cemetery in his home community of Naoma, West Virginia; and

Whereas, It is fitting that an enduring memorial be established to commemorate Raymond Jarrell, Jr., and his contributions to his community; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name a portion of road, beginning at Dingess Branch Road at Liberty High School in Beckley to the unincorporated sign in Naoma in Raleigh County, as the “Raymond Jarrell, Jr., Memorial Road”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the portion of road as the “Raymond Jarrell, Jr., Memorial Road”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs reading “Home of Raymond Jarrell, Jr., Five-Time World Marble Champion” to be placed with the present signs identifying the unincorporated community of Naoma, Raleigh County, West Virginia; and, be it

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

A message from the Senate, by

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

**Com. Sub. for S. C. R. 16** - “Requesting the Division of Highways name bridge numbers 40A180 and 40A181, locally known as Buffalo Interchange Bridges on U.S. Rt. 35 near Buffalo, Putnam County, the ‘William Gregory ‘Greg’ White, P.E., Memorial Bridges’.”

Whereas, William Gregory “Greg” White, P.E., was born February 21, 1959, in Charleston, West Virginia, the son of Maralu White Craven and William Clifford White. He graduated in 1977 from Parkersburg South High School and continued his education at West Virginia Tech, where he received a bachelor’s degree in civil engineering; and

Whereas, William Gregory “Greg” White, P.E., loved his work as a licensed professional civil engineer and owned his own business, White Brothers Consulting, a partnership he shared with his brother Tim; and

Whereas, Some of the projects William Gregory “Greg” White, P.E., was involved in as a structural engineer for the design and detail of various bridges include, but are not limited to: The Wolfe Valley Girder Bridge in Mason County; the East Fork Beam Span Bridge in Mingo County; the Buzzard Creek Bridge in Putnam County; the Capehart Bridge in Mason County; the Central Station Bridge in Doddridge County; the Monongahela River Bridge and Approaches in Marion County; the I-40 Widening Project in North Little Rock, Arkansas; the Sam Houston Tollway Widening in Houston, Texas; the Witcher Creek Bridge in Kanawha County; the Virginia Hybrid Energy Center in Virginia City, Virginia; two of the West Virginia Turnpike bridges over U.S. Rt. 60 in Kanawha County; the Upper Sleith Fork Bridge in Braxton County; the South Branch Potomac Bridge in Hardy County; and the Gypsy Bridge in Harrison County; and

Whereas, William Gregory “Greg” White, P.E., was an avid supporter of local youth soccer leagues and the Ripley High School marching band. He was also an ordained deacon at Witcher Baptist Church in Belle, West Virginia, and a member of the West Ripley Baptist Church; and

Whereas, Sadly, William Gregory “Greg” White, P.E., passed away on Sunday, December 16, 2018; and

Whereas, The bridges being named in honor of William Gregory “Greg” White, P.E., were the last ones that he designed and stamped with his license before he passed away; and

Whereas, It is fitting that an enduring memorial be established to commemorate William Gregory “Greg” White, P.E., and his contributions to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge numbers 40A180 and 40A181, locally known as Buffalo Interchange Bridges on U.S. Rt. 35 near Buffalo, Putnam County, the “William Gregory ‘Greg’ White, P.E., Memorial Bridges”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridges as the “William Gregory ‘Greg’ White, P.E., Memorial Bridges”; and, be it

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

A message from the Senate, by

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

**Com. Sub. for S. C. R. 18** - “Requesting the Division of Highways name bridge number 03-020/00-002.94 (03A058), (37.9898,-81.852), locally known as SIXMILE CK BR NO 2.94, carrying CR 20 over Sixmile Creek in Boone County, as the ‘U.S. Army SSGT Fred E. Duty Memorial Bridge’.”

Whereas, Fred E. Duty was born November 4, 1922, in Ramage, Boone County, West Virginia, the only son to Hugh and Mary Bell Duty. He had two sisters, Nancy and Joyce. Fred grew up in Boone County, where he also found the love of his life and married Doris Burton Duty. Fred E. Duty graduated from Scott High School in Boone County, West Virginia, and attended Morris Harvey College in Charleston, West Virginia; and

Whereas, SSGT Fred E. Duty was inducted into the U.S. Army on January 5, 1943, and received basic combat training, US Army 12-week ordinance school, and 41C20 fire control artillery repairman training. SSGT Fred E. Duty was a member of the HQ Co 1134th Engineers as a light truck driver for combat engineers



and served in battles in Northern France, Ardennes, Rhineland, and Central Europe and was wounded in battle in Germany on March 27, 1945. He was awarded the Purple Heart, American Theater Service Ribbon, European Theater Service Ribbon, African Theater Service Ribbon, Middle Eastern Theater Service Ribbon, World War II Victory Medal, and Good Conduct Medal; and

Whereas, Except for SSGT Fred E. Duty's time serving his country in the military, he lived in Madison his entire life, attended vocational school, and became an electrician. This led to his employment as an electrician for 34 years in the coal mines of Armco Steel where he was a member of the United Mine Workers of America. SSGT Fred E. Duty was a loyal and faithful member of the Madison United Methodist Church where he served as a lay speaker, showing his faith, and leading by example. SSGT Fred E. Duty could regularly be seen quietly performing work for and supporting members of his community in various public service programs both organized and on his own merits. SSGT Fred E. Duty became a dedicated and long serving member of the Veterans of Foreign Wars Post 5578 in Madison, West Virginia. SSGT Fred E. Duty could always be seen serving his community with many activities of the VFW and performing the final rites to fallen comrades at their gravesides on a regular basis until he passed away on August 19, 2019, having served his fellow citizens for over 96 years; and

Whereas, It is fitting that an enduring memorial be established to commemorate SSGT Fred E. Duty and his contributions to our state, country, community, and Boone County; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 03-020/00-002.94 (03A058), (37.9898,-81.852), locally known as SIXMILE CK BR NO 2.94, carrying CR 20 over Sixmile Creek in Boone County, as the "U.S. Army SSGT Fred E. Duty Memorial Bridge"; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge

as the “U.S. Army SSGT Fred E. Duty Memorial Bridge”; and, be it

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

A message from the Senate, by

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

**S. C. R. 20** - “Requesting the Division of Highways name a portion of WV17, beginning at (38.05727) (-81.82520), and ending at (38.05264) (-81.83461), in Madison, Boone County, the ‘U.S. Air Force LT COL Robert J. Hill Memorial Road’.”

Whereas, Robert J. Hill was born September 24, 1936, son of the late Wallace Alvin Hill and Mattie Varney Hill. Robert grew up in Boone County, West Virginia in an area known as the North Fork of Big Creek; and

Whereas, Robert J. Hill graduated in 1953 from Scott High School. He attended Marshall University, and after two years, he received an emergency teacher certificate which allowed him to teach at a two-room public school at the North Fork of Big Creek; and

Whereas, Robert J. Hill had an Uncle Edsel Carl Varney who was a World War II Navy pilot [Pacific Theatre], then a local pilot, and who was a major influence in his life. Although his parents wanted him to become a teacher, Robert J. Hill was enthralled with the idea and strongly desired to become a pilot from his awareness of his Uncle Varney’s history; and

Whereas, On September 27, 1956, LT COL Robert J. Hill entered the United States Air Force and in 1958, he became a commissioned officer. LT COL Robert J. Hill’s eyesight would prohibit him from becoming a pilot, so instead he became a navigator that would define his Air Force career; and

Whereas, In his over 22 years of Air Force service, LT COL Robert J. Hill would spend most that time in the Strategic Air Command [SAC], where he witnessed many new innovations. Trained in electronic warfare and electronic counter measures equipment, his initial assignment was a B-52; and

Whereas, In 1963, LT COL Robert J. Hill was assigned to a B-58, often used for reconnaissance using aerial photography which he had been trained to perform. On March 27, 1964, his aircraft was assigned to fly over the Alaskan earthquake area to photograph the damage. Those photographs were rapidly developed and provided to the Department of Defense and to President Lyndon B. Johnson. In September 1967, he received a call from President Johnson requesting another mission to photograph the damage of Hurricane Beulah; and

Whereas, From 1969-1970, LT COL Robert J. Hill was reassigned to become a Navigator qualified in the air refueling aircraft, the KC-135. In 1972, LT COL Robert J. Hill was assigned to Maxwell Air Force Base to participate in the Air Force's Command Staff College and concurrently entered Troy State University, where, in 1973, he earned a Bachelor of Science degree; and

Whereas, With his exemplary navigator skills, the Air Force was engaging with the linked electronic radar bombing site technology. From 1973-1974, LT COL Robert J. Hill completed the Skyport training and became an active Combat Controller in Ubon, Thailand in support of the Vietnam conflict. In late 1974, having exemplary electronic radar bombing site technology, LT COL Robert J. Hill would soon become the Operations Officer, and then Detachment Commander; and

Whereas, On October 31, 1978, LT COL Robert J. Hill retired from the United States Air Force with over 22 years of service. As a result of his service with the Strategic Air Command and other assignments involving secret missions, top secret equipment, and his high security clearance, LT COL Robert J. Hill's full history can never be told; and

Whereas, Many service awards bestowed upon LT COL Robert J. Hill were not allowed public view. However, many of his awards are known: December 15, 1958-January 10, 1963: Air Force Commendation Medal; March 28-29, 1964: The Air Medal [Alaska Earthquake]; January 25, 1963-November 15, 1969: Air Force Commendation Medal; First Oak Leaf Cluster [meritorious service]; March 15, 1971-July 7, 1972: The Air Medal; First Oak Leaf Cluster; January 30, 1977-October 31, 1978: Air Force Commendation Medal; Second Oak Leaf Cluster [meritorious service]; the Vietnam Service, and the Armed Services Expeditionary Medals; and

Whereas, In 1958, LT COL Robert J. Hill married his sweetheart, Mary Frances Craddock, and they have two children, Susan Hill Keller and Steven A. Hill; and

Whereas, Following retirement in 1978, LT COL Robert J. Hill remained in Bismarck, North Dakota until 1989 when he and his family returned to Boone County; and

Whereas, LT COL Robert J. Hill was a member of two Madison-based Boone County veterans organizations: the American Legion, Post 87 and the VFW, Post 5578; and

Whereas, LT COL Robert J. Hill died on November 13, 2020, at his home in Jeffrey; he was preceded in death by his wife, Mary Frances Craddock Hill. He is survived by his daughter, Susan Keller (Terry) of Grayson, KY; son, Steven A. Hill of Ramage, two grandchildren, three great-grandchildren, and sister, Linda Marcum; and

Whereas, It is fitting that an enduring memorial be established to commemorate U.S. Air Force LT COL Robert J. Hill and his contributions to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name a portion of WV17, beginning at (38.05727) (-81.82520), and ending at (38.05264) (-81.83461), in Madison, Boone County, the “U.S. Air Force LT COL Robert J. Hill Memorial Road”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs at both ends identifying the portion of road as the “U.S. Air Force LT COL Robert J. Hill Memorial Road”; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways. “; which was referred to the Committee on Rules.

A message from the Senate, by

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

**Com. Sub. for S. C. R. 24** - “Requesting the Division of Highways name a portion of Route 85, beginning at the southern end of Dunlap Brothers Road at Uneeda and ending one-mile south near Quinland in Boone County, as the ‘U.S. Marine Corps CPL Roger Lee Boothe Memorial Road’.”

Whereas, Roger Lee Boothe was born in Logan County on August 20, 1947, and moved to Uneeda in Boone County at the age of three and was raised there; and

Whereas, CPL Roger Lee Boothe graduated from Scott High School and, at age 18, he entered the Marine Corps; and

Whereas, While at Quang Tri, Vietnam, with only eight days left until his deployment home, the bunker to which CPL Roger Lee Boothe was assigned was shelled, leaving him paralyzed from the waist down; and

Whereas, When CPL Roger Lee Boothe returned home, he enrolled at the West Virginia Rehab Center, studied accounting, and played on their wheelchair basketball team; and

Whereas, CPL Roger Lee Boothe went on to earn a chemistry degree from West Virginia State University and then successfully completed the pharmacy program at West Virginia University; and

Whereas, CPL Roger Lee Boothe returned to Uneeda to help his mother who was ill. He opened a pharmacy there in 1976 to help his community; and

Whereas, CPL Roger Lee Boothe was always a guiding light for his community who never turned down the opportunity to help someone in need, whether it was loaning money for food, medicine, or just being there to listen when someone was going through a difficult time; and

Whereas, CPL Roger Lee Boothe always had an interest in sports. He played basketball and baseball as a left-handed pitcher in high school; and

Whereas, Later, CPL Roger Lee Boothe played wheelchair basketball, participated in the Charleston Distance Run, and supported athletic teams in Madison County and the surrounding areas; and

Whereas, CPL Roger Lee Boothe also became interested in flying, learned to fly ultralight planes, and even built his own airplane and customized it with hand controls; and

Whereas, CPL Roger Lee Boothe has selflessly helped several students get their college degrees and much more; and

Whereas, CPL Roger Lee Boothe was a very humble, private person. He did not speak of his many outreach and assistance efforts on his own, and this information was gathered by family and friends who love and appreciate him; and

Whereas, Sadly, on Sunday, August 11, 2019, CPL Roger Lee Boothe passed away. He was preceded in death by his parents, Bill and Mary (Green) Boothe; his brother, Ralph; his sister, RoseMary (Boothe) McCray; and nephew, Bill Church; and

Whereas, CPL Roger Lee Boothe is survived by his companion and love of his life of 25 years, Nada Baldwin; his brother, Dale Boothe; sister, Rita Boothe Church; nieces, Wendy Miller, London Gibson, and Dee-Dee Seagraves; nephews, Tom, Jim, and Joe Boothe; a special friend, Brock Loftis; a special granddaughter,

Brittany Baldwin; and a 12-year-old granddaughter, Azriella Baldwin; and

Whereas, It is fitting that an enduring memorial be established to commemorate CPL Roger Lee Boothe and his contributions to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name a portion Route 85, beginning at the southern end of Dunlap Brothers Road at Uneeda and ending one-mile south near Quinland in Boone County, the “U.S. Marine Corps CPL Roger Lee Boothe Memorial Road”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs at both ends identifying the portion of road as the “U.S. Marine Corps CPL Roger Lee Boothe Memorial Road”; and, be it

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

A message from the Senate, by

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

**Com. Sub. for S. C. R. 30** - “Requesting the Division of Highways name bridge number 13-017/02-000.34 (13A250), (37.94358, -80.47152), locally known as Culverson Creek Bridge, carrying CR 17/2 over Culverson Creek in Greenbrier County, the ‘McClintic Family Veterans Memorial Bridge’.”

Whereas, Five of the McClintic family served in the United States Army overseas from 1957-1979; and

Whereas, Levi McDonald McClintic was born in 1934 and attended Potomac State and West Virginia University, earning a

Bachelor of Science degree in Agriculture. He joined the United States Army in 1957 and was stationed in Fort Benning, Georgia and Bamberg, Germany. He returned to Greenbrier County and was employed as a meat inspector from 1966-1992. He and his wife Ramona Hanna have five children, eight grandchildren, and six great-grandchildren. His grandson, Christopher Wiseman, served 12 years in the United States Navy. Levi and Ramona McClintic operate the McClintic farm today; and

Whereas, Patrick Wallace McClintic was born in 1935 and attended Potomac State and West Virginia University, earning a degree in Agriculture. He joined the United States Army in 1958 and retired in 1985. Patrick "Pat" Wallace McClintic rose to the rank of Colonel and completed assignments in Fort Dix, New Jersey, Korea, Germany, Fort Leavenworth, Kansas, Virginia, Florida, Pennsylvania, and the Pentagon in Washington, D.C. Colonel Patrick "Pat" Wallace McClintic also served two tours in Vietnam. He later served as a professor of Military Science at West Virginia University. Colonel McClintic, who died in 1995, was a recipient of the Bronze Star, and is buried at the Arlington National Cemetery in Washington, D.C. He and his wife Bobbie Ann Cole have two children and three grandchildren; and

Whereas, James Alan McClintic was born in 1937 and joined the United States Army in 1961 after graduating from Potomac State and West Virginia University, earning a degree in Physical Education. He was stationed in Fort Benning, Georgia and Fort Sill, Oklahoma for two years. He returned to Greenbrier County and taught until his retirement from Renick Junior High School/Greenbrier County public schools in 1989. James "Alan" McClintic and Frances Spencer divorced but have four children and 11 grandchildren. Son, Kevin McClintic, retired from the United States Army, and grandson Trevor Weikle has 12 years' service in the United States Army and continues today to serve in the United States Army Reserves. James "Alan" McClintic and his wife, Dora Whitt, have two children and four grandchildren, and continue to live on and operate part of the McClintic farm; and

Whereas, Wayne Leonard McClintic was born in 1943 and was a ROTC Army cadet at West Virginia University. Upon completing



a master's degree in Agricultural Engineering in 1967, Wayne joined the United States Army and was stationed at Fort Belvoir, Virginia, Saudi Arabia, and Fort Leonard Wood, Missouri as Second Lieutenant of the Corps of Engineers. Wayne and his wife, Thomasine Michael, have four children and eight grandchildren; and

Whereas, Bedford Rader McClintic was born in 1946 and was a ROTC Army cadet at West Virginia University. He graduated with degrees in Physical Education in 1968, and from the University of Kentucky in 1969. He entered the United States Army and served assignments in Indiana, Georgia, and overseas in Germany and Vietnam. He continued to serve in the United States Army Reserves until 1979. He served as principal of Frankford School, his alma mater, from 1978-2017, when he retired from the Greenbrier County public school system. He and his wife, Patricia Dodson, have two children and three grandchildren. His daughter, Debbie, and her husband Jason were married on the bridge in 2009. Bedford Rader McClintic and Patricia Dodson have a "camp" along the creek that borders the old Boy Scout camp, part of the original McClintic homestead; and

Whereas, It is fitting that an enduring memorial be established to commemorate the military service of the McClintic family and contributions to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 13-017/02-000.34 (13A250), (37.94358, -80.47152), locally known as Culverson Creek Bridge, carrying CR 17/2 over Culverson Creek in Greenbrier County, the "McClintic Family Veterans Memorial Bridge"; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "McClintic Family Veterans Memorial Bridge"; and, be it

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

A message from the Senate, by

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

**Com. Sub. for S. C. R. 33** - "Requesting the Division of Highways name bridge number 20-077/00-089.68 (20A625), (38.24249,-81.56771), locally known as MARMET BR, carrying I-77 over 98th Street in Marmet in Kanawha County, the 'U. S. Army SGT Lewis M. 'Mike' Totten Memorial Bridge'."

Whereas, Lewis Malcolm "Mike" Totten was born on August 25, 1949, the son of the late Charlotte and Roy Totten; and

Whereas, Lewis M. "Mike" Totten, a native of Marmet, was a graduate of East Bank High School and earned a Bachelor of Arts in Social Studies Education from the University of Charleston, taking courses at night over a ten-year period while working full time at E.I. DuPont in Belle; and

Whereas, SGT Lewis M. "Mike" Totten served in the U.S. Army from 1969 to 1971, rising to the rank of E5 Sergeant. SGT Lewis M. "Mike" Totten served in combat in Vietnam from March 1970 to March 1971, as part of the "air cavalry," 2nd Battalion, 7th Cavalry Regiment, until wounded in combat, for which he has reportedly received the Purple Heart. He then served in the corps-level U.S. Army Republic of Vietnam (USARV) and was part of the intelligence-counterintelligence Phoenix Program; and

Whereas, After returning home from military service, SGT Lewis M. "Mike" Totten was a bridge inspector for the State of West Virginia; and

Whereas, SGT Lewis M. "Mike" Totten was also a certified public school teacher, master electrician, pipefitter, and boilermaker; and

Whereas, Collaborating with former Senator Tod Kaufman, SGT Lewis M. “Mike” Totten advocated for the successful Senate resolution that led to the creation of what later became the West Virginia Veterans Memorial at the State Capitol Complex. Both met with and secured the support of Governor Arch Moore, Jr. on the issue of a state Vietnam Veterans Memorial, which later became an all-wars memorial. He later helped secure one of the largest corporate donations to the state’s Veterans Memorial Commission; and

Whereas, SGT Lewis M. “Mike” Totten participated in E. I. DuPont’s volunteer team for “Project Teach,” a semester-long effort to cover instruction in public school classrooms while regular teachers received first-generation computer training at a time when technology first entered the classroom. SGT Lewis M. “Mike” Totten designed the instructional program for E. I. DuPont’s volunteer team, training and coaching the company’s contributors; and

Whereas, While at E. I. DuPont and working in coordination with the Belle Works’ Human Resources Department, SGT Lewis M. “Mike” Totten provided counseling to veterans with PTSD. He also trained employees on the first substance-abuse and smoking policy program in the global DuPont system; and

Whereas, SGT Lewis M. “Mike” Totten retired from E.I. DuPont in Belle as an electrical-instrument mechanic after 39 years of service. He developed multiple safety devices for the chemical industry and received multiple safety awards; and

Whereas, At the time of his death, SGT Lewis M. “Mike” Totten was president of the Marmet Hospital Foundation, having served on its board for several decades. His final project with the foundation created the first ADA wheelchair-accessible playground in the West Virginia State Parks system, in Kanawha State Forest; and

Whereas, SGT Lewis M. “Mike” Totten was also a former president of the Charleston Chapter of the Vietnam Veterans of America, a member of the American Legion, and taught map-

reading classes for local Boy Scout troops in the Kanawha Valley; and

Whereas, SGT Lewis M. “Mike” Totten, 71, of Belle, died unexpectedly on November 16, 2020, at the Cleveland Clinic, suffering cardiac arrest after contracting COVID-19 following a long-awaited kidney transplant. He is survived by his wife, Mary Martha Totten and his son, Mark Leslie Totten. Also surviving are his sister, Debbie; brother, George Totten; sister, Marie Leavens Dawson, as well as many other extended family members; and

Whereas, It is fitting that an enduring memorial be established to commemorate SGT Lewis M. “Mike” Totten and his contributions to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 20-077/00-089.68 (20A625), (38.24249,-81.56771), locally known as MARMET BR, carrying I-77 over 98th Street in Marmet in Kanawha County, the “U. S. Army SGT Lewis M. ‘Mike’ Totten Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs at both ends identifying the bridge as the “U. S. Army SGT Lewis M. “Mike” Totten Memorial Bridge”; and, be it

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

A message from the Senate, by

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

**Com. Sub. for S. C. R. 39** - “Requesting the Division of Highways to name bridge number 20-079/00-019.22 (NB and SB) (20A514-20A515), locally known as I-79 CLENDENIN I/C NB,

carrying I-79 over CR 53 in Kanawha County, the ‘Walker Brothers Veterans Memorial Bridge’.”

Whereas, All five of the Walker men volunteered for military service during the Vietnam War with three experiencing injuries while on active duty; and

Whereas, Albert J.L. Walker served as a civil engineer in the U.S. Air Force at the Eielson Air Force Base in Alaska when the Great Alaskan Earthquake struck in 1964. He was active in rescue efforts and recovery of the dead following the strongest earthquake in North American history; and

Whereas, Allie Melton Walker served in the U.S. Air Force at the Kaden Air Force Base, Okinawa, Japan, as an aircraft mechanic. He deployed to Vietnam for three months at a time as the crew chief on the C130 aircraft delivering cargo and picking up the wounded and the dead. He earned a Good Conduct Medal (AFGCM w/1BR OLC), Special Ops, and marksmanship; and

Whereas, Ray Milton Walker served in the U.S. Army at the Dong Tam Base Camp where he was a part of the ground recon team for the 1st Aviation Brigade. He was awarded the Combat Infantryman Badge (CIB), Bronze Star, National Defense Service Medal with two bronze stars, and Marksman Badge with Rifle Bar; and

Whereas, Roger Bill Walker served in the U.S. Air Force at Udorn Airbase, Thailand, as a radar operator and air traffic controller assisting with the bombing of North Vietnam. He received the National Defense Service Medal, Vietnam Service Medal, Air Force Good Conduct, and Special Ops; and

Whereas, David Allen Walker joined the WV Army National Guard while he was still a senior in high school, serving as a Green Beret with the 19th S.F. Group Airborne as a combat engineer. He was injured during paratrooper training when his plane caught on fire and forced him to jump onto the tarmac wearing full combat gear. He continued to serve in supply and transport. David Allen

Walker also served the State of West Virginia as a WV Delegate from the 33rd District from 2009 to 2015; and

Whereas, It is fitting that an enduring memorial be established to commemorate the Walker brothers and their contributions to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 20-079/00-019.22 (NB and SB) (20A514-20A515), locally known as I-79 CLENDENIN I/C NB, carrying I-79 over CR 53 in Kanawha County, the “Walker Brothers Veterans Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “Walker Brothers Veterans Memorial Bridge”; and, be it

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

A message from the Senate, by

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

**Com. Sub. for S. C. R. 40** - “Requesting the Division of Highways name bridge number 17-034/00-000.01 (17A296), (39.23653, -80.39654), locally known as Laurel Park Truss, carrying CR 34 over West Fork River in Harrison County, the ‘Frye Brothers Veterans Memorial Bridge’.”

Whereas, Three of the four Frye brothers served in World War II, with one brother killed in action; and

Whereas, The Frye brothers’ father was killed in a coal mining accident, forcing their mother to send them to group homes until

she found a job and was able to support her four boys and two girls who were all under the age of 12; and

Whereas, The oldest Frye brother, Thomas, was not allowed to enlist because he worked in the defense industry and would have been his widowed mother's sole source of support if his younger brothers were killed; and

Whereas, Kermit C. Frye was drafted in 1940 and served as a Navy Seaman Second Class; and

Whereas, Kermit C. Frye was killed in action with his body "lost at sea" after the East Indian motor merchant ship was torpedoed and sunk off the Coast of South Africa on November 3, 1942; and

Whereas, Kermit C. Frye was awarded a posthumous Purple Heart and memorialized with a cross at the North Africa American Cemetery in Carthage, Tunisia; and

Whereas, Richard G. Frye was drafted in 1942 and served as Army Private First Class, fighting in both Africa and Germany combat campaigns; and

Whereas, Harold Q. Frye, known as "Red", due to the color of his hair, was drafted in 1942 and served as a Private First Class cannoneer in the 119th Field Artillery Division of the 9th Army; and

Whereas, Harold Q. Frye, jumped into the icy waters off Normandy, surrounded by the bodies of dead comrades, making it safely to shore despite carrying a 90-pound pack and having a severe asthma attack, while fellow soldier Dale Crim shouted, "Swim Frye! Swim Dammit". Dale Crim later told Frye's daughter that the experience was so haunting many soldiers never talked about it, but he wanted her to know the bravery of her father and how they encouraged each other to survive; and

Whereas, Harold Q. Frye, operated a "Long Tom" gun during the Battle of the Bulge with a commendation from the XIX Corps Artillery headquarters for helping to protect aircraft, armor, and

infantry as they made their rapid run through Germany in pursuit of enemy troops; and

Whereas, Harold Q. Frye received an additional commendation from Lieutenant General W. H. Simpson for taking part in the six-week bloody battle. Approximately 19,000 American troops were killed before the crushing defeat of the German Army was completed; and

Whereas, Harold Q. Frye returned to Clarksburg after the war and served as a nursing assistant at the Veterans Hospital for more than 20 years. He was recognized for saving the life of a patient who became choked on a piece of meat; and

Whereas, it is fitting that an enduring memorial be established to commemorate the Frye brothers for the contributions of Thomas Frye, Kermit C. Frye, Richard G. Frye, and Harold Q. Frye to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name Bridge Number 17-034/00-000.01 (17A296), (39.23653, -80.39654), locally known as Laurel Park Truss, carrying CR 34 over West Fork River in Harrison County, the “Frye Brothers Veterans Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “Frye Brothers Veterans Memorial Bridge”; and, be it

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

A message from the Senate, by

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



**Com. Sub. for S. C. R. 42** - "Requesting the Division of Highways name bridge number 17A361 (17-025/99-000.34), locally known as Camden Street Bridge, over the West Fork River in Harrison County, the 'U.S.M.C. SSGT Herbert 'Herbie' D. Barnes Memorial Bridge'."

Whereas, Herbert "Herbie" D. Barnes was born May 15, 1927, to alcoholic parents and raised in extreme poverty in West Virginia. He enlisted in the U.S. Marine Corps at age 19, writing in his journal that the Marine Corps became his family and his home for two decades where he "slept in warm barracks, had three warm meals a day, had nice clothes, shoes, and a hot shower every day"; and

Whereas, SSGT Herbert "Herbie" D. Barnes left training in Quantico, Virginia, to board the troop ship USS President Adams headed for Trinidad in 1947 when the ship was caught in a typhoon that nearly capsized the vessel, causing him to remember that "I was scared to death that the ship was going to sink"; and

Whereas, SSGT Herbert "Herbie" D. Barnes helped guard the amphibious base in Trinidad where he watched PBY seaplanes land and take off on the water as part of their mission to hunt enemy submarines. He took his next ocean voyage, headed to South Korea, where he fought on the beaches in and around Inchon Harbor. SSGT Herbert "Herbie" D. Barnes and his unit fought their way to Korea's capital of Seoul where they were targeted by snipers during a 10-day battle; and

Whereas, SSGT Herbert "Herbie" D. Barnes and his fellow Marines dug in for an extremely bloody battle with Red Chinese soldiers in temperatures that dropped as low as 35 degrees below zero. They used sandbags and frozen bodies since it was too cold to dig foxholes for which he and his fellow troops were dubbed the "Frozen Chosen"; and

Whereas, SSGT Herbert "Herbie" D. Barnes served as a drill instructor during the Vietnam War, a time he rarely discussed with his family. His son remembers his father somberly describing it as the spookiest place he had ever been. SSGT Herbert "Herbie" D.

Barnes retired after 20 years in the U.S. Marine Corps earning a WW II Victory Medal, Good Conduct Medal with three stars, Presidential Unit Citation with one-star, Korean Service Medal with three stars, and National Defense Service Medal with one star; and

Whereas, SSGT Herbert “Herbie” D. Barnes was a member of the VFW, Post 573, and past commander of the Elks and Moose. He died on October 29, 2017, at age 90; and

Whereas, It is fitting that an enduring memorial be established to commemorate SSGT Herbert “Herbie” D. Barnes and his contributions to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 17A361 (17-025/99-000.34), locally known as Camden Street Bridge, over the West Fork River in Harrison County, the “U.S.M.C. SSGT Herbert ‘Herbie’ D. Barnes Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “U.S.M.C SSGT Herbert ‘Herbie’ D. Barnes Memorial Bridge”; and, be it

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

A message from the Senate, by

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

**Com. Sub. for S. C. R. 50** - “Requesting the Division of Highways name bridge number 13-060/29-000.01 (13A271), (37.99398, -80.74791), locally known as Reese Bridge, carrying

County Route 60/29 over Meadow River in Greenbrier County, the 'U. S. Army T/5 John William (J.W.) Cruse Jr. Memorial Bridge'."

Whereas, John William (J.W.) Cruse Jr. was born on March 30, 1924, in Oak Hill, West Virginia to John William and Anna Cruse; and

Whereas, Technician Fifth Grade (T/5) John William (J.W.) Cruse Jr. served in the US Army during World War II from July 13th, 1944, to December 18, 1945, when he was honorably discharged. During his service, he was a T/5 under George Patton with the 2nd Armored Division nicknamed "Hell on Wheels". While T/5 John William (J.W.) Cruse Jr. was serving, he had four brothers also deployed for active duty during WWII; and

Whereas, T/5 John William (J.W.) Cruse Jr. received a Purple Heart after being wounded in action on the Rhine River. He was also awarded the Bronze Star; and

Whereas, In a picture taken during his service, T/5 John William (J.W.) Cruse Jr. is seen cracking a smile after learning that Germany had surrendered and the war was over; in that moment, he and his unit were 10 miles outside of Berlin; and

Whereas, T/5 John William (J.W.) Cruse Jr. married Margaret Dollie Gipson Cruse in 1951, and they had four children; and

Whereas, T/5 John William (J.W.) Cruse Jr. raised his family in McRoss, which is just across the bridge proposed to be named in his honor herein; and

Whereas, According to his children, T/5 John William (J.W.) Cruse Jr. was a family man who valued Christianity and education, and he was often a quiet man unless he had an opinion, in which case he would let you know what he thought; and

Whereas, T/5 John William (J.W.) Cruse Jr. passed away on June 5, 2003. He was survived by his wife, Margaret Dolly Cruse, and his children, Rev. Bill Cruse, Judy Cruse Dean, Don Cruse, and John Melvin Cruse (d.2004); and

Whereas, It is fitting that an enduring memorial be established to commemorate T/5 John William (J.W.) Cruse Jr. and his contributions to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 13-060/29-000.01 (13A271), (37.99398, - 80.74791), locally known as Reese Bridge, carrying County Route 60/29 over Meadow River in Greenbrier County, the “U. S. Army T/5 John William (J.W.) Cruse Jr. Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “U. S. Army T/5 John William (J.W.) Cruse Jr. Memorial Bridge”; and, be it

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

### **Special Calendar**

#### **Second Reading**

**Com. Sub. for S. B. 468**, Creating Unborn Child with Down Syndrome Protection and Education Act; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

**Com. Sub. for S. B. 533**, Relating to funding for health sciences and medical schools in state; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to

amend, and the rule was suspended to permit the consideration of amendments on that reading.

**Com. Sub. for S. B. 536**, Relating generally to controlled substance criminal offenses; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

**S. B. 548**, Authorizing Workforce WV employers to obtain employment classifications and work locations; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

**Com. Sub. for S. B. 552**, Relating to tax sale process; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

**Com. Sub. for S. B. 568**, Relating to health insurance loss ratio information; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

**Com. Sub. for S. B. 573**, Providing system where magistrates shall preside in certain instances outside normal court hours; on

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

Delegate Summers moved to dispense with the constitutional rule requiring the bill to be fully and distinctly read on three different days.

On this question, the yeas and nays were taken (**Roll No. 582**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Westfall.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 583**), and there were—yeas 89, nays 9, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Boggs, Brown, D. Kelly, Miller, Nestor, Pethtel, Pushkin, B. Ward and Zukoff.

Absent and Not Voting: Cooper and Westfall.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 573) passed.

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

**Com. Sub. for S. B. 582**, Creating WV Workforce Resiliency Act; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to

amend, and the rule was suspended to permit the consideration of amendments on that reading.

**Com. Sub. for S. B. 588**, Relating to WV Rails to Trails Program; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

**Com. Sub. for S. B. 590**, Clarifying that tenancy includes persons who reside in sober living home; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

**Com. Sub. for S. B. 606**, Relating to WV Medical Practice Act; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Delegate Summers moved to dispense with the constitutional rule requiring the bill to be fully and distinctly read on three different days.

On this question, the yeas and nays were taken (**Roll No. 584**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Westfall.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 585**), and there were—yeas 98, nays none,

absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Westfall.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 606) passed.

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

**Com. Sub. for S. B. 609**, Allowing DOH Commissioner to accept ownership of rented and leased equipment; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Delegate Summers moved to dispense with the constitutional rule requiring the bill to be fully and distinctly read on three different days.

The bill was then read a third time.

On this question, the yeas and nays were taken (**Roll No. 586**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Longanacre and Westfall.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 587**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Westfall.



So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 609) passed.

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

**Com. Sub. for S. B. 610**, Relating to duties, powers and responsibilities of DOT Secretary; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 611**, Removing cap on bidder's contract bond; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

**S. B. 617**, Relating to qualifications for members of boards, commissions, and other entities; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

**Com. Sub. for S. B. 647**, Prohibiting discrimination in organ donation process; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Delegate Summers moved to dispense with the constitutional rule requiring the bill to be fully and distinctly read on three different days.

On this question, the yeas and nays were taken (**Roll No. 588**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Westfall.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 589**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Westfall.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 647) passed.

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

**Com. Sub. for S. B. 653**, Relating to public higher education governance; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

**Com. Sub. for S. B. 656**, Providing tax credit for certain corporations with child-care facilities for employees; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

**Com. Sub. for S. B. 662**, Relating to creation, expansion, and authority of resort area district; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Delegate Summers moved to dispense with the constitutional rule requiring the bill to be fully and distinctly read on three different days.

On this question, the yeas and nays were taken (**Roll No. 590**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Westfall.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 591**), and there were—yeas 91, nays 7, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Hanna, Keaton, Kimes, Miller, Pack, Pinson and Young.

Absent and Not Voting: Cooper and Westfall.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 662) passed.

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

**S. B. 685**, Relating to WV Real Estate License Act; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

**S. B. 686**, Clarifying use of notes and bonds of WV Housing Development Fund; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

**S. B. 693**, Clarifying meeting voting requirements for political party executive committees; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 711**, Establishing alternative educational opportunities for elective course credit; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

**S. B. 714**, Relating to tie votes by Coal Mine Safety and Technical Review Committee; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Delegate Summers moved to dispense with the constitutional rule requiring the bill to be fully and distinctly read on three different days.

On this question, the yeas and nays were taken (**Roll No. 592**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Capito, Cooper and Westfall.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 593**), and there were—yeas 91, nays 7, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Burkhammer, Foster, Graves, Kimes, Maynard, Pack and Steele.

Absent and Not Voting: Cooper and Westfall.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 714) passed.

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

On this question, the yeas and nays were taken (**Roll No. 594**), and there were—yeas 95, nays 3, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Burkhammer, Foster and Steele.

Absent and Not Voting: Cooper and Westfall.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 714) takes effect from its passage.

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

**S. B. 726**, Relating to pre-trial diversion agreements and deferred prosecution agreements; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

### **Messages from the Senate**

A message from the Senate, by

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

**Com. Sub. for S. B. 250, Budget Bill.**

This message was received but not acted upon and will be on Unfinished Business on tomorrow.

**Miscellaneous Business**

Pursuant to House Rule 132, unanimous consent was requested and obtained to print the remarks of the following Members in the Appendix to the Journal:

- Delegate Zatezalo regarding Com. Sub. for S. B. 262
- Delegates Gearheart and Pack regarding S. B. 1
- Delegates Crouse and Steele regarding the amendment offered by Delegate Evans to Com. Sub. for S. B. 268 on yesterday
- Delegates Hornbuckle, Lovejoy, Storch and Walker regarding Com. Sub. for S. B. 498

Delegate Espinosa noted to the Clerk that he was absent when the votes were taken on Roll Nos. 317 through 377, and had he been present, he would have voted “Yea” thereon, except for Roll Nos. 320, 349, 358 and 364, on which he would have voted “Nay”.

Delegate Howell noted to the Clerk that he was absent when the vote was taken on the passage of S. B. 1, and had he been present, he would have voted “Yea” thereon.

At 9:40 p.m., the House of Delegates adjourned until 10:00 a.m., Saturday, March 12, 2022.

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**SIXTIETH DAY**

[DELEGATE HOWELL, SPEAKER PRO TEMPORE, IN THE CHAIR]

The House of Delegates was called to order by the Honorable Gary Howell, Speaker Pro Tempore.

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

The Clerk proceeded to read the Journal of Friday, March 11, 2022, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Reordering of the Calendar**

Pursuant to the action of the Committee on Rules, Delegate Summers announced that Com. Sub. for S. B. 138 and S. B. 247 on Third Reading, House Calendar, had been transferred to the Special Calendar, the foot of all bills.

Delegate Summers asked and obtained unanimous consent to move to Unfinished Business for further consideration of Com. Sub. for S. B. 250.

**Special Calendar**

**Unfinished Business**

The following message was received but not acted upon on yesterday.

A message from the Senate, by

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

**Com. Sub. for S. B. 250, Budget Bill.**

Delegate Espinosa moved that the House concur in the following amendment of the bill by the Senate:

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

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

~~Senator Tarr moved to amend the bill by striking out everything after the enacting clause and inserting in lieu thereof the following:~~

## TITLE I – GENERAL PROVISIONS.

**Section 1. General policy.** – The purpose of this bill is to appropriate money necessary for the economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year 2023.

**Sec. 2. Definitions.** — For the purpose of this bill:

“Governor” shall mean the Governor of the State of West Virginia.

“Code” shall mean the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

“Spending unit” shall mean the department, bureau, division, office, board, commission, agency or institution to which an appropriation is made.

The “fiscal year 2023” shall mean the period from July 1, 2022, through June 30, 2023.

“General revenue fund” shall mean the general operating fund of the state and includes all moneys received or collected by the state except as provided in W.Va. Code §12-2-2 or as otherwise provided.

“Special revenue funds” shall mean specific revenue sources which by legislative enactments are not required to be accounted for as general revenue, including federal funds.



“From collections” shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collections. If the amount collected exceeds the amount designated “from collections,” the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by Article 2, Chapter 11B of the Code.

**Sec. 3. Classification of appropriations.** — An appropriation for:

“Personal services” shall mean salaries, wages and other compensation paid to full-time, part-time and temporary employees of the spending unit but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit. “Personal services” shall include “annual increment” for “eligible employees” and shall be disbursed only in accordance with Article 5, Chapter 5 of the Code.

Unless otherwise specified, appropriations for “personal services” shall include salaries of heads of spending units.

“Employee benefits” shall mean social security matching, workers’ compensation, unemployment compensation, pension and retirement contributions, public employees insurance matching, personnel fees or any other benefit normally paid by the employer as a direct cost of employment. Should the appropriation be insufficient to cover such costs, the remainder of such cost shall be paid by each spending unit from its “unclassified” appropriation, or its “current expenses” appropriation or other appropriate appropriation. Each spending unit is hereby authorized and required to make such payments in accordance with the provisions of Article 2, Chapter 11B of the Code.

Each spending unit shall be responsible for all contributions, payments or other costs related to coverage and claims of its employees for unemployment compensation and workers

compensation. Such expenditures shall be considered an employee benefit.

“BRIM Premiums” shall mean the amount charged as consideration for insurance protection and includes the present value of projected losses and administrative expenses. Premiums are assessed for coverages, as defined in the applicable policies, for claims arising from, inter alia, general liability, wrongful acts, property, professional liability and automobile exposures.

Should the appropriation for “BRIM Premium” be insufficient to cover such cost, the remainder of such costs shall be paid by each spending unit from its “unclassified” appropriation, its “current expenses” appropriation or any other appropriate appropriation to the Board of Risk and Insurance Management. Each spending unit is hereby authorized and required to make such payments. If there is no appropriation for “BRIM Premium” such costs shall be paid by each spending unit from its “current expenses” appropriation, “unclassified” appropriation or other appropriate appropriation.

West Virginia Council for Community and Technical College Education and Higher Education Policy Commission entities operating with special revenue funds and/or federal funds shall pay their proportionate share of the Board of Risk and Insurance Management total insurance premium cost for their respective institutions.

“Current expenses” shall mean operating costs other than personal services and shall not include equipment, repairs and alterations, buildings or lands. Each spending unit shall be responsible for and charged monthly for all postage meter service and shall reimburse the appropriate revolving fund monthly for all such amounts. Such expenditures shall be considered a current expense.

“Equipment” shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year.

“Repairs and alterations” shall mean routine maintenance and repairs to structures and minor improvements to property which do not increase the capital assets.

“Buildings” shall include new construction and major alteration of existing structures and the improvement of lands and shall include shelter, support, storage, protection or the improvement of a natural condition.

“Lands” shall mean the purchase of real property or interest in real property.

“Capital outlay” shall mean and include buildings, lands or buildings and lands, with such category or item of appropriation to remain in effect as provided by W.Va. Code §12-3-12.

From appropriations made to the spending units of state government, upon approval of the Governor there may be transferred to a special account an amount sufficient to match federal funds under any federal act.

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: *Provided*, That the secretary of each department shall have the authority to transfer within the department those general revenue funds appropriated to the various agencies of the department: *Provided, however*, That no more than five percent of the general revenue funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: and no funds may be transferred to a “personal services and employee benefits” appropriation unless the source funds are also wholly from a “personal services and employee benefits” line, or unless the source funds are from another appropriation that has exclusively funded employment expenses for at least twelve consecutive months prior to the time of transfer and the position(s) supported by the transferred funds are also permanently transferred to the receiving agency or board within the department: *Provided further*, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed

by a departmental secretary as established by Chapter 5F of the Code shall have the authority to transfer funds appropriated to “personal services and employee benefits,” “current expenses,” “repairs and alterations,” “equipment,” “other assets,” “land,” and “buildings” to other appropriations within the same account and no funds from other appropriations shall be transferred to the “personal services and employee benefits” or the “unclassified” appropriation except that during Fiscal Year 2023, and upon approval from the State Budget Office, agencies with the appropriation “Salary and Benefits of Cabinet Secretary and Agency Heads” may transfer between this appropriation and the appropriation “Personal Services and Employee Benefits” an amount to cover annualized salaries and employee benefits for the fiscal year ending June 30, 2023, as provided by W.V. Code §6-7-2a: *And provided further*, That no authority exists hereunder to transfer funds into appropriations to which no funds are legislatively appropriated: *And provided further*, That if the Legislature consolidates, reorganizes or terminates agencies, boards or functions, within any fiscal year the secretary or other appropriate agency head, or in the case of the termination of a spending unit of the state, the Director of the State Budget Office, in the absence of general law providing otherwise, may transfer the funds formerly appropriated to such agency, board or function, allocating items of appropriation as may be necessary if only part of the item may be allocated, in order to implement such consolidation, reorganization or termination. No funds may be transferred from a Special Revenue Account, dedicated account, capital expenditure account or any other account or fund specifically exempted by the Legislature from transfer, except that the use of the appropriations from the State Road Fund for the office of the Secretary of the Department of Transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

Appropriations otherwise classified shall be expended only where the distribution of expenditures for different purposes cannot well be determined in advance or it is necessary or desirable to permit the spending unit the freedom to spend an appropriation for more than one of the above classifications.

**Sec. 4. Method of expenditure.** — Money appropriated by this bill, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of Article 3, Chapter 12 of the Code or according to any law detailing a procedure specifically limiting that article.

**Sec. 5. Maximum expenditures.** — No authority or requirement of law shall be interpreted as requiring or permitting an expenditure in excess of the appropriations set out in this bill.

## TITLE II – APPROPRIATIONS.

### ORDER OF SECTIONS

- |             |                                                                   |
|-------------|-------------------------------------------------------------------|
| SECTION 1.  | Appropriations from general revenue.                              |
| SECTION 2.  | Appropriations from state road fund.                              |
| SECTION 3.  | Appropriations from other funds.                                  |
| SECTION 4.  | Appropriations from lottery net profits.                          |
| SECTION 5.  | Appropriations from state excess lottery revenue.                 |
| SECTION 6.  | Appropriations of federal funds.                                  |
| SECTION 7.  | Appropriations from federal block grants.                         |
| SECTION 8.  | Awards for claims against the state.                              |
| SECTION 9.  | Appropriations from general revenue fund surplus accrued.         |
| SECTION 10. | Appropriations from lottery net profits surplus accrued.          |
| SECTION 11. | Appropriations from state excess lottery revenue surplus accrued. |
| SECTION 12. | Special revenue appropriations.                                   |
| SECTION 13. | State improvement fund appropriations.                            |

- SECTION 14.       Specific funds and collection accounts.
- SECTION 15.       Appropriations for refunding erroneous payment.
- SECTION 16.       Sinking fund deficiencies.
- SECTION 17.       Appropriations for local governments.
- SECTION 18.       Total appropriations.
- SECTION 19.       General school fund.

**Section 1. Appropriations from general revenue.** – From the State Fund, General Revenue, there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B the following amounts, as itemized, for expenditure during the fiscal year 2023.

LEGISLATIVE

*I - Senate*

Fund 0165 FY 2023 Org 2100

|                                                                       | General<br>Revenue<br>Fund | Appro-<br>piation |
|-----------------------------------------------------------------------|----------------------------|-------------------|
| Compensation of Members (R).....00300                                 | \$                         | 1,010,000         |
| Compensation and Per Diem of<br>Officers and Employees (R) .....00500 |                            | 4,011,332         |
| Current Expenses and<br>Contingent Fund (R).....02100                 |                            | 321,392           |
| Repairs and Alterations (R) .....06400                                |                            | 35,000            |
| Technology Repair and<br>Modernization (R) .....29800                 |                            | 80,000            |
| Expenses of Members (R).....39900                                     |                            | 450,000           |
| BRIM Premium (R) .....91300                                           |                            | 44,482            |
| Total.....                                                            | \$                         | 5,952,206         |

The appropriations for the Senate for the fiscal year 2022 are to remain in full force and effect and are hereby reappropriated to June 30, 2023. Any balances so reappropriated may be transferred and credited to the fiscal year 2022 accounts.

Upon the written request of the Clerk of the Senate, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The Clerk of the Senate, with the approval of the President, is authorized to draw his or her requisitions upon the Auditor, payable out of the Current Expenses and Contingent Fund of the Senate, for any bills for supplies and services that may have been incurred by the Senate and not included in the appropriation bill, for supplies and services incurred in preparation for the opening, the conduct of the business and after adjournment of any regular or extraordinary session, and for the necessary operation of the Senate offices, the requisitions for which are to be accompanied by bills to be filed with the Auditor.

The Clerk of the Senate, with the approval of the President, or the President of the Senate shall have authority to employ such staff personnel during any session of the Legislature as shall be needed in addition to staff personnel authorized by the Senate resolution adopted during any such session. The Clerk of the Senate, with the approval of the President, or the President of the Senate shall have authority to employ such staff personnel between sessions of the Legislature as shall be needed, the compensation of all staff personnel during and between sessions of the Legislature, notwithstanding any such Senate resolution, to be fixed by the President of the Senate. The Clerk is hereby authorized to draw his or her requisitions upon the Auditor for the payment of all such staff personnel for such services, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate.

For duties imposed by law and by the Senate, the Clerk of the Senate shall be paid a monthly salary as provided by the Senate resolution, unless increased between sessions under the authority of the President, payable out of the appropriation for Compensation

and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate.

Included in the above appropriation for Senate (fund 0165, appropriation 02100), an amount not less than \$5,000 is to be used for the West Virginia Academy of Family Physicians - Doc of the Day Program.

*2 - House of Delegates*

Fund 0170 FY 2023 Org 2200

|                                                                  |       |    |           |
|------------------------------------------------------------------|-------|----|-----------|
| Compensation of Members (R).....                                 | 00300 | \$ | 3,000,000 |
| Compensation and Per Diem of<br>Officers and Employees (R) ..... | 00500 |    | 575,000   |
| Current Expenses and<br>Contingent Fund (R) .....                | 02100 |    | 4,399,031 |
| Expenses of Members (R).....                                     | 39900 |    | 1,350,000 |
| Capitol Outlay, Repairs and<br>Equipment (R) .....               | 58900 |    | 500,000   |
| BRIM Premium (R) .....                                           | 91300 |    | 80,000    |
| Total.....                                                       |       | \$ | 9,904,031 |

The appropriations for the House of Delegates for the fiscal year 2022 are to remain in full force and effect and are hereby reappropriated to June 30, 2023. Any balances so reappropriated may be transferred and credited to the fiscal year 2022 accounts.

Upon the written request of the Clerk of the House of Delegates, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The Clerk of the House of Delegates, with the approval of the Speaker, is authorized to draw his or her requisitions upon the Auditor, payable out of the Current Expenses and Contingent Fund of the House of Delegates, for any bills for supplies and services that may have been incurred by the House of Delegates and not included in the appropriation bill, for bills for services and supplies incurred in preparation for the opening of the session and after adjournment, and for the necessary operation of the House of



Delegates' offices, the requisitions for which are to be accompanied by bills to be filed with the Auditor.

The Speaker of the House of Delegates shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, in addition to personnel designated in the House resolution, and the compensation of all personnel shall be as fixed in such House resolution for the session, or fixed by the Speaker during and between sessions of the Legislature, notwithstanding such House resolution. The Clerk of the House of Delegates is hereby authorized to draw requisitions upon the Auditor for such services, payable out of the appropriation for the Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the House of Delegates.

For duties imposed by law and by the House of Delegates, including salary allowed by law as keeper of the rolls, the Clerk of the House of Delegates shall be paid a monthly salary as provided in the House resolution, unless increased between sessions under the authority of the Speaker and payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the House of Delegates.

Included in the above appropriation for House of Delegates (fund 0170, appropriation 02100), an amount not less than \$5,000 is to be used for the West Virginia Academy of Family Physicians - Doc of the Day Program.

### *3 - Joint Expenses*

(WV Code Chapter 4)

Fund 0175 FY 2023 Org 2300

|                                      |       |              |
|--------------------------------------|-------|--------------|
| Joint Committee on Government        |       |              |
| and Finance (R).....                 | 10400 | \$ 7,725,138 |
| Legislative Printing (R).....        | 10500 | 260,000      |
| Legislative Rule-Making Review       |       |              |
| Committee (R) .....                  | 10600 | 147,250      |
| Legislative Computer System (R)..... | 10700 | 1,447,500    |
| Legislative Dues and Fees (R) .....  | 10701 | 600,000      |

|                        |       |               |
|------------------------|-------|---------------|
| BRIM Premium (R) ..... | 91300 | <u>60,569</u> |
| Total.....             |       | \$ 10,240,457 |

The appropriations for the Joint Expenses for the fiscal year 2022 are to remain in full force and effect and are hereby reappropriated to June 30, 2023. Any balances reappropriated may be transferred and credited to the fiscal year 2022 accounts.

Upon the written request of the Clerk of the Senate, with the approval of the President of the Senate, and the Clerk of the House of Delegates, with the approval of the Speaker of the House of Delegates, and a copy to the Legislative Auditor, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

## JUDICIAL

### *4 - Supreme Court –*

#### *General Judicial*

Fund 0180 FY 2023 Org 2400

#### Personal Services and

|                                     |       |                |
|-------------------------------------|-------|----------------|
| Employee Benefits (R) .....         | 00100 | \$ 124,201,587 |
| Current Expenses (R) .....          | 13000 | 21,063,451     |
| Repairs and Alterations (R) .....   | 06400 | 40,000         |
| Equipment (R).....                  | 07000 | 2,482,300      |
| Military Service Members            |       |                |
| Court (R).....                      | 09002 | 300,000        |
| Judges' Retirement System (R) ..... | 11000 | 797,000        |
| Buildings (R).....                  | 25800 | 10,000         |
| Other Assets (R).....               | 69000 | 200,000        |
| BRIM Premium (R) .....              | 91300 | <u>834,000</u> |
| Total.....                          |       | \$ 149,928,338 |

The appropriations to the Supreme Court of Appeals for the fiscal years 2020, 2021 and 2022 are to remain in full force and effect and are hereby reappropriated to June 30, 2023. Any balances so reappropriated may be transferred and credited to the fiscal year 2022 accounts.

This fund shall be administered by the Administrative Director of the Supreme Court of Appeals, who shall draw requisitions for warrants in payment in the form of payrolls, making deductions therefrom as required by law for taxes and other items.

The appropriation for the Judges' Retirement System (fund 0180, appropriation 11000) is to be transferred to the Consolidated Public Retirement Board, in accordance with the law relating thereto, upon requisition of the Administrative Director of the Supreme Court of Appeals.

## EXECUTIVE

### *5 - Governor's Office*

(WV Code Chapter 5)

#### Fund 0101 FY 2023 Org 0100

|                                     |       |                |
|-------------------------------------|-------|----------------|
| Personal Services and               |       |                |
| Employee Benefits.....              | 00100 | \$ 3,332,448   |
| Current Expenses (R).....           | 13000 | 799,000        |
| Repairs and Alterations.....        | 06400 | 25,000         |
| Equipment.....                      | 07000 | 1,000          |
| National Governors Association..... | 12300 | 60,700         |
| Herbert Henderson Office of         |       |                |
| Minority Affairs.....               | 13400 | 396,726        |
| Community Food Program .....        | 18500 | 1,000,000      |
| Office of Resiliency (R).....       | 18600 | 605,234        |
| BRIM Premium.....                   | 91300 | <u>183,645</u> |
| Total.....                          |       | \$ 6,403,753   |

Any unexpended balances remaining in the appropriations for Unclassified (fund 0101, appropriation 09900), Current Expenses (fund 0101, appropriation 13000), and Office of Resiliency (fund 0101, appropriation 18600) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The above appropriation for Herbert Henderson Office of Minority Affairs (fund 0101, appropriation 13400) shall be transferred to the Minority Affairs Fund (fund 1058).

*6 - Governor's Office –**Custodial Fund*

(WV Code Chapter 5)

Fund 0102 FY 2023 Org 0100

|                              |       |              |
|------------------------------|-------|--------------|
| Personal Services and        |       |              |
| Employee Benefits.....       | 00100 | \$ 396,421   |
| Current Expenses (R).....    | 13000 | 182,158      |
| Repairs and Alterations..... | 06400 | 5,000        |
| Equipment.....               | 07000 | <u>1,000</u> |
| Total.....                   |       | \$ 584,579   |

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0102, appropriation 13000) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

Appropriations are to be used for current general expenses, including compensation of employees, household maintenance, cost of official functions and additional household expenses occasioned by such official functions.

*7 - Governor's Office –**Civil Contingent Fund*

(WV Code Chapter 5)

Fund 0105 FY 2023 Org 0100

|                             |       |                  |
|-----------------------------|-------|------------------|
| Milton Flood Wall (R) ..... | 75701 | \$ 3,500,000     |
| Court Improvement.....      | xxxxx | <u>5,000,000</u> |
| Total.....                  |       | \$ 8,500,000     |

Any unexpended balances remaining in the appropriations for Business and Economic Development Stimulus – Surplus (fund 0105, appropriation 08400), Civil Contingent Fund – Total (fund 0105, appropriation 11400), 2012 Natural Disasters – Surplus (fund 0105, appropriation 13500), Civil Contingent Fund – Total –

Surplus (fund 0105, appropriation 23800), Civil Contingent Fund – Surplus (fund 0105, appropriation 26300), Local Economic Development Assistance – Surplus (fund 0105, appropriation 26600), Business and Economic Development Stimulus (fund 0105, appropriation 58600), Civil Contingent Fund (fund 0105, appropriation 61400), Milton Flood Wall (fund 0105, appropriation 75701), Milton Flood Wall – Surplus (fund 0105, appropriation 75799), Natural Disasters – Surplus (fund 0105, appropriation 76400), and Local Economic Development Assistance (fund 0105, appropriation 81900) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

From this fund there may be expended, at the discretion of the Governor, an amount not to exceed \$1,000 as West Virginia's contribution to the interstate oil compact commission.

The above fund is intended to provide contingency funding for accidental, unanticipated, emergency or unplanned events which may occur during the fiscal year and is not to be expended for the normal day-to-day operations of the Governor's Office.

*8 - Auditor's Office –*

*General Administration*

(WV Code Chapter 12)

Fund 0116 FY 2023 Org 1200

Personal Services and

|                                |    |               |
|--------------------------------|----|---------------|
| Employee Benefits.....00100    | \$ | 2,461,609     |
| Current Expenses (R).....13000 |    | 13,429        |
| BRIM Premium.....91300         |    | <u>12,077</u> |
| Total.....                     | \$ | 2,487,115     |

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0116, appropriation 13000) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0116, appropriation 00100), is \$95,000 for the Salary of the Auditor.

*9 - Treasurer's Office*

(WV Code Chapter 12)

Fund 0126 FY 2023 Org 1300

|                                 |       |                     |
|---------------------------------|-------|---------------------|
| Personal Services and           |       |                     |
| Employee Benefits.....          | 00100 | \$ 2,649,270        |
| Unclassified.....               | 09900 | 31,463              |
| Current Expenses (R).....       | 13000 | 572,684             |
| Abandoned Property Program..... | 11800 | 41,794              |
| Other Assets.....               | 69000 | 10,000              |
| ABLE Program .....              | 69201 | 150,000             |
| BRIM Premium.....               | 91300 | 59,169              |
| Total.....                      |       | <u>\$ 3,514,380</u> |

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0126, appropriation 13000) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0126, appropriation 00100), is \$95,000 for the Salary of the Treasurer.

*10 - Department of Agriculture*

(WV Code Chapter 19)

Fund 0131 FY 2023 Org 1400

|                                     |       |              |
|-------------------------------------|-------|--------------|
| Personal Services and               |       |              |
| Employee Benefits.....              | 00100 | \$ 6,559,737 |
| Current Expenses (R).....           | 13000 | 848,115      |
| Animal Identification Program ..... | 03900 | 134,060      |
| State Farm Museum .....             | 05500 | 87,759       |
| Gypsy Moth Program (R) .....        | 11900 | 1,051,759    |

|                                                            |       |               |
|------------------------------------------------------------|-------|---------------|
| WV Farmers Market .....                                    | 12801 | 150,467       |
| Black Fly Control.....                                     | 13700 | 456,724       |
| HEMP Program.....                                          | 13701 | 363,162       |
| Donated Foods Program .....                                | 36300 | 45,000        |
| Veterans to Agriculture Program (R)...                     | 36301 | 262,432       |
| Predator Control (R) .....                                 | 47000 | 176,400       |
| Bee Research.....                                          | 69100 | 72,752        |
| Microbiology Program.....                                  | 78500 | 102,854       |
| Moorefield Agriculture Center.....                         | 78600 | 1,017,582     |
| Chesapeake Bay Watershed .....                             | 83000 | 115,453       |
| Livestock Care Standards Board.....                        | 84300 | 8,820         |
| BRIM Premium.....                                          | 91300 | 138,905       |
| State FFA-FHA Camp and<br>Conference Center .....          | 94101 | 756,707       |
| Threat Preparedness .....                                  | 94200 | 75,618        |
| WV Food Banks.....                                         | 96900 | 426,000       |
| Senior's Farmers' Market<br>Nutrition Coupon Program ..... | 97000 | <u>55,835</u> |
| Total.....                                                 |       | \$ 12,906,141 |

Any unexpended balances remaining in the appropriations for Gypsy Moth Program (fund 0131, appropriation 11900), Current Expenses (fund 0131, appropriation 13000), Veterans to Agriculture Program (fund 0131, appropriation 36301), Predator Control (fund 0131, appropriation 47000), and Agricultural Disaster and Mitigation Needs – Surplus (fund 0131, appropriation 85000) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0131, appropriation 00100), is \$95,000 for the Salary of the Commissioner.

The above appropriation for Predator Control (fund 0131, appropriation 47000) is to be made available to the United States Department of Agriculture, Wildlife Services to administer the Predator Control Program.

A portion of the Current Expenses appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for marketing and development activities.

From the above appropriation for WV Food Banks (fund 0131, appropriation 96900), \$20,000 is for House of Hope and the remainder of the appropriation shall be allocated to the Huntington Food Bank and the Mountaineer Food Bank in Braxton County.

*11 - West Virginia Conservation Agency*

(WV Code Chapter 19)

Fund 0132 FY 2023 Org 1400

|                                     |       |                      |
|-------------------------------------|-------|----------------------|
| Personal Services and               |       |                      |
| Employee Benefits.....              | 00100 | \$ 836,549           |
| Unclassified.....                   | 09900 | 77,059               |
| Current Expenses (R).....           | 13000 | 317,848              |
| Soil Conservation Projects (R)..... | 12000 | 9,962,895            |
| BRIM Premium.....                   | 91300 | 34,428               |
| Total.....                          |       | <u>\$ 11,228,779</u> |

Any unexpended balances remaining in the appropriations for Soil Conservation Projects (fund 0132, appropriation 12000) and Current Expenses (fund 0132, appropriation 13000) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*12 - Department of Agriculture –*

*Meat Inspection Fund*

(WV Code Chapter 19)

Fund 0135 FY 2023 Org 1400

|                        |       |                     |
|------------------------|-------|---------------------|
| Personal Services and  |       |                     |
| Employee Benefits..... | 00100 | \$ 995,260          |
| Unclassified.....      | 09900 | 7,090               |
| Current Expenses ..... | 13000 | <u>82,605</u>       |
| Total.....             |       | <u>\$ 1,084,955</u> |



Any part or all of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.

*13 - Department of Agriculture –*

*Agricultural Awards Fund*

(WV Code Chapter 19)

Fund 0136 FY 2023 Org 1400

|                            |       |               |
|----------------------------|-------|---------------|
| Programs and Awards for    |       |               |
| 4-H Clubs and FFA/FHA..... | 57700 | \$ 15,000     |
| Commissioner's Awards      |       |               |
| and Programs .....         | 73700 | <u>39,250</u> |
| Total.....                 |       | \$ 54,250     |

*14 - Department of Agriculture –*

*West Virginia Agricultural Land Protection Authority*

(WV Code Chapter 8A)

Fund 0607 FY 2023 Org 1400

|                        |       |            |
|------------------------|-------|------------|
| Personal Services and  |       |            |
| Employee Benefits..... | 00100 | \$ 102,573 |
| Unclassified.....      | 09900 | <u>950</u> |
| Total.....             |       | \$ 103,523 |

*15 - Attorney General*

(WV Code Chapters 5, 14, 46A and 47)

Fund 0150 FY 2023 Org 1500

|                              |       |              |
|------------------------------|-------|--------------|
| Personal Services and        |       |              |
| Employee Benefits (R) .....  | 00100 | \$ 3,114,386 |
| Unclassified (R) .....       | 09900 | 24,428       |
| Current Expenses (R).....    | 13000 | 687,795      |
| Repairs and Alterations..... | 06400 | 1,000        |

|                                |       |                |
|--------------------------------|-------|----------------|
| Equipment.....                 | 07000 | 1,000          |
| Criminal Convictions           |       |                |
| Habeas Corpus Appeals (R)..... | 26000 | 970,283        |
| Better Government Bureau ..... | 74000 | 283,648        |
| BRIM Premium.....              | 91300 | <u>120,654</u> |
| Total.....                     |       | \$ 5,203,194   |

Any unexpended balances remaining in the appropriations for Personal Services and Employee Benefits (fund 0150, appropriation 00100), Unclassified (fund 0150, appropriation 09900), Current Expenses (fund 0150, appropriation 13000), Criminal Convictions and Habeas Corpus Appeals (fund 0150, appropriation 26000), and Agency Client Revolving Liquidity Pool (fund 0150, appropriation 36200) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0150, appropriation 00100), is \$95,000 for the Salary of the Attorney General.

When legal counsel or secretarial help is appointed by the Attorney General for any state spending unit, this account shall be reimbursed from such spending units specifically appropriated account or from accounts appropriated by general language contained within this bill: *Provided*, That the spending unit shall reimburse at a rate and upon terms agreed to by the state spending unit and the Attorney General: *Provided, however*, That if the spending unit and the Attorney General are unable to agree on the amount and terms of the reimbursement, the spending unit and the Attorney General shall submit their proposed reimbursement rates and terms to the Governor for final determination.

### *16 - Secretary of State*

(WV Code Chapters 3, 5, and 59)

Fund 0155 FY 2023 Org 1600

|                        |       |            |
|------------------------|-------|------------|
| Personal Services and  |       |            |
| Employee Benefits..... | 00100 | \$ 118,794 |

|                            |       |               |
|----------------------------|-------|---------------|
| Unclassified (R) .....     | 09900 | 8,352         |
| Current Expenses (R) ..... | 13000 | 781,584       |
| BRIM Premium.....          | 91300 | <u>34,500</u> |
| Total.....                 |       | \$ 943,230    |

Any unexpended balances remaining in the appropriations for Unclassified (fund 0155, appropriation 09900) and Current Expenses (fund 0155, appropriation 13000) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0155, appropriation 00100), is \$95,000 for the Salary of the Secretary of State.

*17 - State Election Commission*

(WV Code Chapter 3)

Fund 0160 FY 2023 Org 1601

|                        |       |              |
|------------------------|-------|--------------|
| Personal Services and  |       |              |
| Employee Benefits..... | 00100 | \$ 2,477     |
| Unclassified.....      | 09900 | 75           |
| Current Expenses ..... | 13000 | <u>4,956</u> |
| Total.....             |       | \$ 7,508     |

**DEPARTMENT OF ADMINISTRATION**

*18 - Department of Administration –*

*Office of the Secretary*

(WV Code Chapter 5F)

Fund 0186 FY 2023 Org 0201

|                                  |       |            |
|----------------------------------|-------|------------|
| Personal Services and            |       |            |
| Employee Benefits.....           | 00100 | \$ 452,199 |
| Salary and Benefits of Cabinet   |       |            |
| Secretary and Agency Heads ..... | 00201 | 168,000    |
| Unclassified.....                | 09900 | 9,177      |

|                               |       |               |
|-------------------------------|-------|---------------|
| Current Expenses .....        | 13000 | 85,009        |
| Repairs and Alterations ..... | 06400 | 100           |
| Equipment .....               | 07000 | 1,000         |
| Financial Advisor (R) .....   | 30400 | 27,546        |
| Lease Rental Payments .....   | 51600 | 14,850,000    |
| Design-Build Board .....      | 54000 | 4,000         |
| Other Assets .....            | 69000 | 100           |
| BRIM Premium .....            | 91300 | 6,736         |
| Total .....                   |       | \$ 15,603,867 |

Any unexpended balance remaining in the appropriation for Financial Advisor (fund 0186, appropriation 30400) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

The appropriation for Lease Rental Payments (fund 0186, appropriation 51600) shall be disbursed as provided by W.Va. Code §31-15-6b.

### *19 - Consolidated Public Retirement Board*

(WV Code Chapter 5)

Fund 0195 FY 2023 Org 0205

The Division of Highways, Division of Motor Vehicles, Public Service Commission and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.

### *20 - Division of Finance*

(WV Code Chapter 5A)

Fund 0203 FY 2023 Org 0209

|                         |       |           |
|-------------------------|-------|-----------|
| Personal Services and   |       |           |
| Employee Benefits ..... | 00100 | \$ 65,453 |

|                        |       |               |
|------------------------|-------|---------------|
| Unclassified.....      | 09900 | 1,400         |
| Current Expenses ..... | 13000 | 53,563        |
| GAAP Project (R) ..... | 12500 | 632,332       |
| BRIM Premium.....      | 91300 | <u>20,675</u> |
| Total.....             |       | \$ 773,423    |

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, appropriation 12500) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

*21 - Division of General Services*

(WV Code Chapter 5A)

Fund 0230 FY 2023 Org 0211

|                                 |       |                |
|---------------------------------|-------|----------------|
| Personal Services and           |       |                |
| Employee Benefits.....          | 00100 | \$ 2,860,163   |
| Unclassified.....               | 09900 | 20,000         |
| Current Expenses .....          | 13000 | 1,148,349      |
| Repairs and Alterations.....    | 06400 | 500            |
| Equipment.....                  | 07000 | 5,000          |
| Fire Service Fee .....          | 12600 | 14,000         |
| Preservation and Maintenance of |       |                |
| Statues and Monuments           |       |                |
| on Capitol Grounds.....         | 37100 | 68,000         |
| Capital Outlay, Repairs and     |       |                |
| Equipment (R) .....             | 58900 | 23,660,888     |
| BRIM Premium.....               | 91300 | <u>129,983</u> |
| Total.....                      |       | \$ 27,906,883  |

Any unexpended balance remaining in the appropriation for Capital Outlay, Repairs and Equipment (fund 0230, appropriation 58900) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriation for Preservation and Maintenance of Statues and Monuments on Capitol Grounds (fund 0230, appropriation 37100), the Division shall consult the Division

of Culture and History and Capitol Building Commission in all aspects of planning, assessment, maintenance and restoration.

The above appropriation for Capital Outlay, Repairs and Equipment (fund 0230, appropriation 58900) shall be expended for capital improvements, maintenance, repairs and equipment for state-owned buildings.

*22 - Division of Purchasing*

(WV Code Chapter 5A)

Fund 0210 FY 2023 Org 0213

|                              |       |              |
|------------------------------|-------|--------------|
| Personal Services and        |       |              |
| Employee Benefits.....       | 00100 | \$ 1,072,747 |
| Unclassified.....            | 09900 | 144          |
| Current Expenses .....       | 13000 | 1,285        |
| Repairs and Alterations..... | 06400 | 200          |
| BRIM Premium.....            | 91300 | <u>6,922</u> |
| Total.....                   |       | \$ 1,081,298 |

The Division of Highways shall reimburse Fund 2031 within the Division of Purchasing for all actual expenses incurred pursuant to the provisions of W.Va. Code §17-2A-13.

*23 - Travel Management*

(WV Code Chapter 5A)

Fund 0615 FY 2023 Org 0215

|                              |       |              |
|------------------------------|-------|--------------|
| Personal Services and        |       |              |
| Employee Benefits.....       | 00100 | \$ 823,542   |
| Unclassified.....            | 09900 | 12,032       |
| Current Expenses .....       | 13000 | 440,247      |
| Repairs and Alterations..... | 06400 | 1,000        |
| Equipment.....               | 07000 | 5,000        |
| Buildings (R).....           | 25800 | 100          |
| Other Assets.....            | 69000 | <u>100</u>   |
| Total.....                   |       | \$ 1,282,021 |

Any unexpended balance remaining in the appropriation for Buildings (fund 0615, appropriation 25800) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

*24 - Commission on Uniform State Laws*

(WV Code Chapter 29)

Fund 0214 FY 2023 Org 0217

|                        |       |    |        |
|------------------------|-------|----|--------|
| Current Expenses ..... | 13000 | \$ | 45,550 |
|------------------------|-------|----|--------|

To pay expenses for members of the commission on uniform state laws.

*25 - West Virginia Public Employees Grievance Board*

(WV Code Chapter 6C)

Fund 0220 FY 2023 Org 0219

|                        |       |    |           |
|------------------------|-------|----|-----------|
| Personal Services and  |       |    |           |
| Employee Benefits..... | 00100 | \$ | 999,883   |
| Unclassified.....      | 09900 |    | 1,000     |
| Current Expenses ..... | 13000 |    | 145,295   |
| Equipment.....         | 07000 |    | 50        |
| BRIM Premium.....      | 91300 |    | 8,740     |
| Total.....             |       | \$ | 1,154,968 |

*26 - Ethics Commission*

(WV Code Chapter 6B)

Fund 0223 FY 2023 Org 0220

|                              |       |    |         |
|------------------------------|-------|----|---------|
| Personal Services and        |       |    |         |
| Employee Benefits.....       | 00100 | \$ | 624,669 |
| Unclassified.....            | 09900 |    | 2,200   |
| Current Expenses .....       | 13000 |    | 104,501 |
| Repairs and Alterations..... | 06400 |    | 500     |
| Other Assets.....            | 69000 |    | 100     |

|                   |       |              |
|-------------------|-------|--------------|
| BRIM Premium..... | 91300 | <u>5,574</u> |
| Total.....        |       | \$ 737,544   |

*27 - Public Defender Services*

(WV Code Chapter 29)

Fund 0226 FY 2023 Org 0221

|                                   |       |               |
|-----------------------------------|-------|---------------|
| Personal Services and             |       |               |
| Employee Benefits.....            | 00100 | \$ 1,859,148  |
| Salary and Benefits of Cabinet    |       |               |
| Secretary and Agency Heads .....  | 00201 | 119,000       |
| Unclassified.....                 | 09900 | 333,300       |
| Current Expenses .....            | 13000 | 12,740        |
| Public Defender Corporations..... | 35200 | 22,155,232    |
| Appointed Counsel Fees (R).....   | 78800 | 12,691,113    |
| BRIM Premium.....                 | 91300 | <u>10,575</u> |
| Total.....                        |       | \$ 37,181,108 |

Any unexpended balance remaining in the appropriation for Appointed Counsel Fees (fund 0226, appropriation 78800) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

The director shall have the authority to transfer funds from the appropriation to Public Defender Corporations (fund 0226, appropriation 35200) to Appointed Counsel Fees (fund 0226, appropriation 78800).

*28 - Committee for the Purchase of*

*Commodities and Services from the Handicapped*

(WV Code Chapter 5A)

Fund 0233 FY 2023 Org 0224

|                        |       |            |
|------------------------|-------|------------|
| Personal Services and  |       |            |
| Employee Benefits..... | 00100 | \$ 3,187   |
| Current Expenses ..... | 13000 | <u>868</u> |
| Total.....             |       | \$ 4,055   |



*29 - Public Employees Insurance Agency*

(WV Code Chapter 5)

Fund 0200 FY 2023 Org 0225

|                   |       |               |
|-------------------|-------|---------------|
| PEIA Subsidy..... | 80100 | \$ 21,000,000 |
|-------------------|-------|---------------|

The Division of Highways, Division of Motor Vehicles, Public Service Commission and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the public employees health insurance cost for their respective divisions.

The above appropriation for PEIA Subsidy (fund 0200, appropriation 80100) may be transferred to a special revenue fund and shall be utilized by the West Virginia Public Employees Insurance Agency for the purposes of offsetting benefit changes to offset the aggregate premium cost-sharing percentage requirements between employers and employees. Such amount shall not be included in the calculation of the plan year aggregate premium cost-sharing percentages between employers and employees.

*30 - West Virginia Prosecuting Attorneys Institute*

(WV Code Chapter 7)

Fund 0557 FY 2023 Org 0228

|                                        |       |                |
|----------------------------------------|-------|----------------|
| Forensic Medical Examinations (R) .... | 68300 | \$ 143,697     |
| Federal Funds/Grant Match (R) .....    | 74900 | <u>109,007</u> |
| Total.....                             |       | \$ 252,704     |

Any unexpended balances remaining in the appropriations for Forensic Medical Examinations (fund 0557, appropriation 68300) and Federal Funds/Grant Match (fund 0557, appropriation 74900) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*31 - Real Estate Division*

(WV Code Chapter 5A)

Fund 0610 FY 2023 Org 0233

|                              |       |                   |
|------------------------------|-------|-------------------|
| Personal Services and        |       |                   |
| Employee Benefits.....       | 00100 | \$ 704,366        |
| Unclassified.....            | 09900 | 124               |
| Current Expenses .....       | 13000 | 137,381           |
| Repairs and Alterations..... | 06400 | 100               |
| Equipment.....               | 07000 | 2,500             |
| BRIM Premium.....            | 91300 | 9,784             |
| Total.....                   |       | <u>\$ 854,255</u> |

**DEPARTMENT OF COMMERCE***32 - Division of Forestry*

(WV Code Chapter 19)

Fund 0250 FY 2023 Org 0305

|                                  |       |                     |
|----------------------------------|-------|---------------------|
| Personal Services and            |       |                     |
| Employee Benefits.....           | 00100 | \$ 4,798,258        |
| Salary and Benefits of Cabinet   |       |                     |
| Secretary and Agency Heads ..... | 00201 | 111,674             |
| Unclassified.....                | 09900 | 21,435              |
| Current Expenses .....           | 13000 | 558,024             |
| Repairs and Alterations.....     | 06400 | 80,000              |
| BRIM Premium.....                | 91300 | 98,754              |
| Total.....                       |       | <u>\$ 5,668,145</u> |

Any unexpended balance remaining in the appropriation for Equipment (fund 0250, appropriation 07000) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

Out of the above appropriations a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.

*33 - Geological and Economic Survey*

(WV Code Chapter 29)

Fund 0253 FY 2023 Org 0306

|                                  |       |                     |
|----------------------------------|-------|---------------------|
| Personal Services and            |       |                     |
| Employee Benefits.....           | 00100 | \$ 1,645,283        |
| Salary and Benefits of Cabinet   |       |                     |
| Secretary and Agency Heads ..... | 00201 | 112,753             |
| Unclassified.....                | 09900 | 27,678              |
| Current Expenses .....           | 13000 | 51,524              |
| Repairs and Alterations.....     | 06400 | 968                 |
| Mineral Mapping System (R) ..... | 20700 | 1,117,464           |
| BRIM Premium.....                | 91300 | 24,486              |
| Total.....                       |       | <u>\$ 2,980,156</u> |

Any unexpended balance remaining in the appropriation for Mineral Mapping System (fund 0253, appropriation 20700) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

The above Unclassified and Current Expense appropriations include funding to secure federal and other contracts and may be transferred to a special revolving fund (fund 3105) for the purpose of providing advance funding for such contracts.

*34 - Division of Labor*

(WV Code Chapters 21 and 47)

Fund 0260 FY 2023 Org 0308

|                              |       |                     |
|------------------------------|-------|---------------------|
| Personal Services and        |       |                     |
| Employee Benefits.....       | 00100 | \$ 1,606,616        |
| Current Expenses .....       | 13000 | 227,000             |
| Repairs and Alterations..... | 06400 | 28,000              |
| Equipment.....               | 07000 | 15,000              |
| BRIM Premium.....            | 91300 | 8,500               |
| Total.....                   |       | <u>\$ 1,885,116</u> |

*35 - Division of Natural Resources*

(WV Code Chapter 20)

Fund 0265 FY 2023 Org 0310

|                                    |       |               |
|------------------------------------|-------|---------------|
| Personal Services and              |       |               |
| Employee Benefits.....             | 00100 | \$ 17,909,107 |
| Salary and Benefits of Cabinet     |       |               |
| Secretary and Agency Heads .....   | 00201 | 113,188       |
| Unclassified.....                  | 09900 | 184,711       |
| Current Expenses .....             | 13000 | 196,302       |
| Repairs and Alterations.....       | 06400 | 100           |
| Equipment .....                    | 07000 | 100           |
| Buildings (R).....                 | 25800 | 100           |
| Capital Outlay – Parks (R).....    | 28800 | 3,000,000     |
| Litter Control Conservation        |       |               |
| Officers .....                     | 56400 | 151,662       |
| Upper Mud River Flood Control..... | 65400 | 166,304       |
| Other Assets .....                 | 69000 | 100           |
| Land (R).....                      | 73000 | 100           |
| Law Enforcement.....               | 80600 | 2,628,555     |
| BRIM Premium.....                  | 91300 | <u>45,141</u> |
| Total.....                         |       | \$ 24,395,470 |

Any unexpended balances remaining in the appropriations for Buildings (fund 0265, appropriation 25800), Capital Outlay – Parks (fund 0265, appropriation 28800), Land (fund 0265, appropriation 73000), and State Park Improvements – Surplus (fund 0265, appropriation 76300) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

Any revenue derived from mineral extraction at any state park shall be deposited in a special revenue account of the Division of Natural Resources, first for bond debt payment purposes and with any remainder to be for park operation and improvement purposes.

*36 - Division of Miners' Health, Safety and Training*

(WV Code Chapter 22)

Fund 0277 FY 2023 Org 0314

## Personal Services and

|                                       |       |    |            |
|---------------------------------------|-------|----|------------|
| Employee Benefits.....                | 00100 | \$ | 9,662,673  |
| Unclassified.....                     | 09900 |    | 111,016    |
| Current Expenses .....                | 13000 |    | 1,396,141  |
| Coal Dust and Rock Dust Sampling .... | 27000 |    | 493,803    |
| BRIM Premium.....                     | 91300 |    | 80,668     |
| Total.....                            |       | \$ | 11,744,301 |

Included in the above appropriation for Current Expenses (fund 0277, appropriation 13000) is \$500,000 to be used for coal mine training activities at an established mine training facility in southern West Virginia.

*37 - Board of Coal Mine Health and Safety*

(WV Code Chapter 22)

Fund 0280 FY 2023 Org 0319

## Personal Services and

|                        |       |    |         |
|------------------------|-------|----|---------|
| Employee Benefits..... | 00100 | \$ | 240,032 |
| Unclassified.....      | 09900 |    | 3,480   |
| Current Expenses ..... | 13000 |    | 118,138 |
| Total.....             |       | \$ | 361,650 |

Included in the above appropriation for Current Expenses (fund 0280, appropriation 13000) up to \$29,000 shall be used for the Coal Mine Safety and Technical Review Committee.

*38 - WorkForce West Virginia*

(WV Code Chapter 23)

Fund 0572 FY 2023 Org 0323

## Personal Services and

|                        |       |    |        |
|------------------------|-------|----|--------|
| Employee Benefits..... | 00100 | \$ | 51,433 |
| Unclassified.....      | 09900 |    | 593    |
| Current Expenses ..... | 13000 |    | 6,447  |
| Total.....             |       | \$ | 58,473 |

*39 - Department of Commerce –**Office of the Secretary*

(WV Code Chapter 19)

Fund 0606 FY 2023 Org 0327

|                                  |       |                |
|----------------------------------|-------|----------------|
| Personal Services and            |       |                |
| Employee Benefits.....           | 00100 | \$ 1,374,092   |
| Salary and Benefits of Cabinet   |       |                |
| Secretary and Agency Heads ..... | 00201 | 153,750        |
| Unclassified.....                | 09900 | 1,490          |
| Current Expenses .....           | 13000 | <u>353,147</u> |
| Total.....                       |       | \$ 1,882,479   |

*40 - State Board of Rehabilitation –**Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 0310 FY 2023 Org 0932

|                                  |       |               |
|----------------------------------|-------|---------------|
| Personal Services and            |       |               |
| Employee Benefits.....           | 00100 | \$ 11,913,813 |
| Current Expenses .....           | 13000 | 558,815       |
| Independent Living Services..... | 00900 | 429,418       |
| Workshop Development .....       | 16300 | 1,817,427     |
| Supported Employment             |       |               |
| Extended Services.....           | 20600 | 77,960        |
| Ron Yost Personal                |       |               |
| Assistance Fund .....            | 40700 | 333,828       |
| Employment Attendant             |       |               |
| Care Program .....               | 59800 | 131,575       |
| BRIM Premium.....                | 91300 | <u>77,464</u> |
| Total.....                       |       | \$ 15,340,300 |

The above appropriation for Workshop Development (fund 0310, appropriation 16300) shall be used exclusively with the private nonprofit community rehabilitation program organizations

known as work centers or sheltered workshops. The appropriation shall also be used to continue the support of the program, services, and individuals with disabilities currently in place at those organizations.

## DEPARTMENT OF TOURISM

### *41 - Department of Tourism –*

#### *Office of the Secretary*

(WV Code Chapter 5B)

Fund 0246 FY 2023 Org 0304

|                                                     |       |                  |
|-----------------------------------------------------|-------|------------------|
| Tourism – Brand Promotion (R) .....                 | 61803 | \$ 3,000,000     |
| Tourism – Public Relations (R) .....                | 61804 | 1,500,000        |
| Tourism – Events and<br>Sponsorships (R) .....      | 61805 | 500,000          |
| Tourism – Industry<br>Development (R) .....         | 61806 | 500,000          |
| State Parks and Recreation<br>Advertising (R) ..... | 61900 | <u>1,500,000</u> |
| Total .....                                         |       | \$ 7,000,000     |

Any unexpended balances remaining in the appropriations for Tourism – Development Opportunity Fund (fund 0245, appropriation 11601), Tourism – Brand Promotion (fund 0246, appropriation 61803), Tourism – Public Relations (fund 0246, appropriation 61804), Tourism – Events and Sponsorships (fund 0246, appropriation 61805), Tourism – Industry Development (fund 0246, appropriation 61806), and State Parks and Recreation Advertising (fund 0246, appropriation 61900) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The Secretary of the Department of Tourism shall have the authority to transfer between the above items of appropriation.

**DEPARTMENT OF ECONOMIC DEVELOPMENT***42 - Department of Economic Development –**Office of the Secretary*

(WV Code Chapter 5B)

Fund 0256 FY 2023 Org 0307

|                                        |       |                      |
|----------------------------------------|-------|----------------------|
| Personal Services and                  |       |                      |
| Employee Benefits.....                 | 00100 | \$ 4,151,904         |
| Unclassified.....                      | 09900 | 108,055              |
| Current Expenses .....                 | 13000 | 4,738,464            |
| National Youth Science Camp.....       | 13200 | 241,570              |
| Local Economic Development             |       |                      |
| Partnerships (R) .....                 | 13300 | 1,250,000            |
| ARC Assessment .....                   | 13600 | 152,585              |
| Global Economic Development            |       |                      |
| Partnerships (R) .....                 | 20201 | 150,000              |
| Guaranteed Work Force Grant (R).....   | 24200 | 982,630              |
| Mainstreet Program.....                | 79400 | 170,493              |
| BRIM Premium.....                      | 91300 | 3,157                |
| Hatfield McCoy Recreational Trail..... | 96000 | 198,415              |
| Total.....                             |       | <u>\$ 12,147,273</u> |

Any unexpended balances remaining in the appropriations for Unclassified – Surplus (fund 0256, appropriation 09700), Partnership Grants (fund 0256, appropriation 13100), Local Economic Development Partnerships (fund 0256, appropriation 13300), Global Economic Development Partnership (fund 0256, appropriation 20201), and Guaranteed Work Force Grant (fund 0256, appropriation 24200) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriation for Current Expenses (fund 0256, appropriation 13000), \$50,000 shall be used for the Western Potomac Economic Partnership, \$100,000 shall be used for Advantage Valley, \$750,000 shall be used for the Robert C. Byrd Institute, \$548,915 shall be used for West Virginia University, \$298,915 shall be used for Southern West Virginia Community and



Technical College for the Mine Training and Energy Technologies Academy.

The above appropriation to Local Economic Development Partnerships (fund 0256, appropriation 13300) shall be used by the Department of Economic Development for the award of funding assistance to county and regional economic development corporations or authorities participating in the Certified Development Community Program developed under the provisions of W.Va. Code §5B-2-14. The Department of Economic Development shall award the funding assistance through a matching grant program, based upon a formula whereby funding assistance may not exceed \$30,000 per county served by an economic development or redevelopment corporation or authority.

### DEPARTMENT OF EDUCATION

#### *43 - State Board of Education –*

##### *School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2023 Org 0402

#### Personal Services and

|                        |       |    |                  |
|------------------------|-------|----|------------------|
| Employee Benefits..... | 00100 | \$ | 360,144          |
| Current Expenses ..... | 13000 |    | <u>2,118,865</u> |
| Total.....             |       | \$ | 2,479,009        |

#### *44 - State Board of Education –*

##### *State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2023 Org 0402

#### Personal Services and

|                            |       |    |           |
|----------------------------|-------|----|-----------|
| Employee Benefits.....     | 00100 | \$ | 4,719,032 |
| Unclassified (R) .....     | 09900 |    | 420,000   |
| Current Expenses (R) ..... | 13000 |    | 4,580,000 |

|                                            |       |            |
|--------------------------------------------|-------|------------|
| Teachers' Retirement                       |       |            |
| Savings Realized.....                      | 09500 | 40,523,000 |
| Center for Professional                    |       |            |
| Development (R) .....                      | 11500 | 150,000    |
| Increased Enrollment .....                 | 14000 | 3,260,000  |
| Safe Schools.....                          | 14300 | 4,530,281  |
| Attendance Incentive Bonus (R).....        | 15001 | 2,056,717  |
| National Teacher Certification (R) .....   | 16100 | 300,000    |
| Jobs & Hope – Childhood                    |       |            |
| Drug Prevention Education.....             | 21901 | 5,000,000  |
| Technology Repair and                      |       |            |
| Modernization.....                         | 29800 | 951,003    |
| Hope Scholarship Program .....             | 30401 | 23,350,520 |
| HVAC Technicians .....                     | 35500 | 529,650    |
| Early Retirement Notification              |       |            |
| Incentive .....                            | 36600 | 300,000    |
| MATH Program .....                         | 36800 | 336,532    |
| Assessment Programs (R) .....              | 39600 | 3,909,374  |
| Benedum Professional                       |       |            |
| Development Collaborative (R).....         | 42700 | 429,775    |
| Governor's Honors Academy (R) .....        | 47800 | 1,059,270  |
| 21 <sup>st</sup> Century Fellows .....     | 50700 | 274,899    |
| English as a Second Language.....          | 52800 | 96,000     |
| Teacher Reimbursement .....                | 57300 | 297,188    |
| Hospitality Training .....                 | 60000 | 275,498    |
| Youth in Government .....                  | 61600 | 100,000    |
| High Acuity Special Needs (R).....         | 63400 | 1,500,000  |
| Foreign Student Education.....             | 63600 | 100,899    |
| State Board of Education                   |       |            |
| Administrative Costs .....                 | 68400 | 280,429    |
| IT Academy (R) .....                       | 72100 | 500,000    |
| Early Literacy Program.....                | 75600 | 5,711,675  |
| School Based Truancy                       |       |            |
| Prevention (R).....                        | 78101 | 2,047,366  |
| Communities in Schools (R).....            | 78103 | 4,903,026  |
| Mastery Based Education .....              | 78104 | 125,000    |
| Mountain State Digital                     |       |            |
| Literacy Program .....                     | 86401 | 415,500    |
| 21 <sup>st</sup> Century Learners (R)..... | 88600 | 1,790,508  |

|                                                                                              |       |                |
|----------------------------------------------------------------------------------------------|-------|----------------|
| BRIM Premium.....                                                                            | 91300 | 342,859        |
| 21 <sup>st</sup> Century Assessment and<br>Professional Development .....                    | 93100 | 2,009,701      |
| 21 <sup>st</sup> Century Technology<br>Infrastructure Network<br>Tools and Support (R) ..... | 93300 | 9,764,417      |
| Special Olympic Games.....                                                                   | 96600 | 25,000         |
| Educational Program Allowance .....                                                          | 99600 | <u>516,250</u> |
| Total.....                                                                                   |       | \$ 127,481,369 |

The above appropriations include funding for the state board of education and their executive office.

From the above appropriation for Current Expenses (fund 0313, appropriation 13000), \$2,000,000 shall be used for the Department of Education Child Nutrition Program – Non-traditional Child Hunger Solutions.

Any unexpended balances remaining in the appropriations for Unclassified (fund 0313, appropriation 09900), Current Expenses (fund 0313, appropriation 13000), Center for Professional Development (fund 0313, appropriation 11500), Attendance Incentive Bonus (fund 0313, appropriation 15001), National Teacher Certification (fund 0313, appropriation 16100), Assessment Programs (fund 0313, appropriation 39600), Benedum Professional Development Collaborative (fund 0313, appropriation 42700), Governor's Honors Academy (fund 0313, appropriation 47800), High Acuity Special Needs (fund 0313, appropriation 63400), IT Academy (fund 0313, appropriation 72100), School Based Truancy Prevention (fund 0313, appropriation 78101), Communities in Schools (fund 0313, appropriation 78103), 21<sup>st</sup> Century Learners (fund 0313, appropriation 88600), and 21<sup>st</sup> Century Technology Infrastructure Network Tools and Support (fund 0313, appropriation 93300) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The above appropriation for Teachers' Retirement Savings Realized (fund 0313, appropriation 09500) shall be transferred to the Employee Pension and Health Care Benefit Fund (fund 2044).

From the above appropriation for Unclassified (fund 0313, appropriation 09900), \$120,000 shall be for assisting low income students with AP and CLEP exam fees.

The above appropriation for Hospitality Training (fund 0313, appropriation 60000), shall be allocated only to entities that have a plan approved for funding by the Department of Education, at the funding level determined by the State Superintendent of Schools. Plans shall be submitted to the State Superintendent of Schools to be considered for funding.

From the above appropriation for Educational Program Allowance (fund 0313, appropriation 99600), \$100,000 shall be expended for the Morgan County Board of Education for Paw Paw Schools; \$150,000 shall be for the Randolph County Board of Education for Pickens School; \$100,000 shall be for the Preston County Board of Education for the Aurora School; \$100,000 shall be for the Fayette County Board of Education for Meadow Bridge and \$66,250 is for Project Based Learning in STEM fields.

*45 - State Board of Education –*

*Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2023 Org 0402

|                                       |       |    |                   |
|---------------------------------------|-------|----|-------------------|
| Special Education – Counties .....    | 15900 | \$ | 7,271,757         |
| Special Education – Institutions..... | 16000 |    | 4,078,883         |
| Education of Juveniles Held in        |       |    |                   |
| Predispositional                      |       |    |                   |
| Juvenile Detention Centers .....      | 30200 |    | 683,479           |
| Education of Institutionalized        |       |    |                   |
| Juveniles and Adults (R).....         | 47200 |    | <u>21,195,471</u> |
| Total.....                            |       | \$ | 33,229,590        |

Any unexpended balance remaining in the appropriation for Education of Institutionalized Juveniles and Adults (fund 0314, appropriation 47200) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriations, the superintendent shall have authority to expend funds for the costs of special education for those children residing in out-of-state placements.

*46 - State Board of Education –*

*State Aid to Schools*

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2023 Org 0402

|                                       |       |                    |
|---------------------------------------|-------|--------------------|
| Other Current Expenses .....          | 02200 | \$ 159,483,873     |
| Advanced Placement.....               | 05300 | 594,563            |
| Professional Educators.....           | 15100 | 904,942,470        |
| Service Personnel.....                | 15200 | 303,757,447        |
| Fixed Charges .....                   | 15300 | 105,298,651        |
| Transportation .....                  | 15400 | 65,257,311         |
| Improved Instructional Programs ..... | 15600 | 51,974,496         |
| Professional Student Support          |       |                    |
| Services.....                         | 65500 | 61,488,888         |
| 21 <sup>st</sup> Century Strategic    |       |                    |
| Technology Learning Growth.....       | 93600 | 26,443,757         |
| Teacher and Leader Induction.....     | 93601 | <u>5,478,876</u>   |
| Basic Foundation Allowances.....      |       | 1,684,720,332      |
| Less Local Share .....                |       | (474,379,513)      |
| Adjustments .....                     |       | <u>(2,495,004)</u> |
| Total Basic State Aid .....           |       | 1,207,845,815      |
| Public Employees' Insurance           |       |                    |
| Matching .....                        | 01200 | 214,702,113        |
| Teachers' Retirement System .....     | 01900 | 68,915,309         |
| School Building Authority (R).....    | 45300 | 24,000,000         |
| Retirement Systems – Unfunded         |       |                    |
| Liability.....                        | 77500 | <u>276,328,760</u> |
| Total.....                            |       | \$ 1,791,791,997   |

Any unexpended balances remaining in the appropriations for School Building Authority (fund 0317, appropriation 45300) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The above appropriation for School Building Authority (fund 0317, appropriation 45300) shall be transferred to the School Construction Fund (fund 3952).

*47 - State Board of Education –*

*Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2023 Org 0402

|                                       |       |                      |
|---------------------------------------|-------|----------------------|
| Personal Services and                 |       |                      |
| Employee Benefits.....                | 00100 | \$ 1,376,322         |
| Unclassified.....                     | 09900 | 268,800              |
| Current Expenses .....                | 13000 | 883,106              |
| Wood Products – Forestry              |       |                      |
| Vocational Program .....              | 14600 | 82,713               |
| Albert Yanni Vocational Program ..... | 14700 | 132,123              |
| Vocational Aid.....                   | 14800 | 24,516,692           |
| Adult Basic Education .....           | 14900 | 5,460,891            |
| Jobs & Hope.....                      | 14902 | 6,250,000            |
| Program Modernization .....           | 30500 | 884,313              |
| High School Equivalency               |       |                      |
| Diploma Testing (R).....              | 72600 | 807,935              |
| FFA Grant Awards.....                 | 83900 | 11,496               |
| Pre-Engineering Academy Program ....  | 84000 | 265,294              |
| Total.....                            |       | <u>\$ 40,939,685</u> |

Any unexpended balances remaining in the appropriations for Jim's Dream (fund 0390, appropriation 14901) and High School Equivalency Diploma Testing (fund 0390, appropriation 72600) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*48 - State Board of Education –*

*West Virginia Schools for the Deaf and the Blind*

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2023 Org 0403

|                              |       |                |
|------------------------------|-------|----------------|
| Personal Services and        |       |                |
| Employee Benefits.....       | 00100 | \$ 10,573,588  |
| Unclassified (R) .....       | 09900 | 110,000        |
| Current Expenses (R).....    | 13000 | 2,250,696      |
| Repairs and Alterations..... | 06400 | 164,675        |
| Equipment.....               | 07000 | 77,000         |
| Buildings (R).....           | 25800 | 45,000         |
| Capital Outlay and           |       |                |
| Maintenance (R) .....        | 75500 | 1,670,000      |
| BRIM Premium.....            | 91300 | <u>130,842</u> |
| Total.....                   |       | \$ 15,021,801  |

Any unexpended balances remaining in the appropriations for Unclassified ( fund 0320, appropriation 09900), Current Expenses (fund 0320, appropriation 13000), Buildings (fund 0320, appropriation 25800) and Capital Outlay and Maintenance (fund 0320, appropriation 75500) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

## **DEPARTMENT OF ARTS, CULTURE, AND HISTORY**

### *49 - Division of Culture and History*

(WV Code Chapter 29)

Fund 0293 FY 2023 Org 0432

|                                  |       |              |
|----------------------------------|-------|--------------|
| Personal Services and            |       |              |
| Employee Benefits.....           | 00100 | \$ 3,513,485 |
| Salary and Benefits of Cabinet   |       |              |
| Secretary and Agency Heads ..... | 00201 | 120,106      |
| Unclassified (R) .....           | 09900 | 28,483       |
| Current Expenses .....           | 13000 | 610,843      |
| Repairs and Alterations.....     | 06400 | 1,000        |
| Equipment.....                   | 07000 | 1            |
| WV Humanities Council.....       | 16800 | 250,000      |
| Buildings (R).....               | 25800 | 1            |
| Other Assets .....               | 69000 | 1            |
| Educational Enhancements .....   | 69500 | 73,500       |
| Land (R).....                    | 73000 | 1            |

|                                             |       |              |
|---------------------------------------------|-------|--------------|
| Culture and History Programming .....       | 73200 | 231,573      |
| Capital Outlay and<br>Maintenance (R) ..... | 75500 | 19,600       |
| Historical Highway<br>Marker Program.....   | 84400 | 57,548       |
| BRIM Premium.....                           | 91300 | 39,337       |
| Total.....                                  |       | \$ 4,945,479 |

Any unexpended balances remaining in the appropriations for Unclassified (fund 0293, appropriation 09900), WV Women's Suffragist Memorial (fund 0293, appropriation 22101), Buildings (fund 0293, appropriation 25800), Capital Outlay, Repairs and Equipment (fund 0293, appropriation 58900), Capital Improvements – Surplus (fund 0293, appropriation 66100), Capital Outlay, Repairs and Equipment – Surplus (fund 0293, appropriation 67700), Land (fund 0293, appropriation 73000), and Capital Outlay and Maintenance (fund 0293, appropriation 75500) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriation for Educational Enhancements (fund 0293, appropriation 69500) \$73,500 shall be used for the Clay Center.

The Current Expenses appropriation includes funding for the arts funds, department programming funds, grants, fairs and festivals and Camp Washington Carver and shall be expended only upon authorization of the Division of Culture and History and in accordance with the provisions of Chapter 5A, Article 3, and Chapter 12 of the Code.

### *50 - Library Commission*

(WV Code Chapter 10)

Fund 0296 FY 2023 Org 0433

|                                                                    |       |              |
|--------------------------------------------------------------------|-------|--------------|
| Personal Services and<br>Employee Benefits.....                    | 00100 | \$ 1,119,022 |
| Salary and Benefits of Cabinet<br>Secretary and Agency Heads ..... | 00201 | 112,000      |



|                                      |       |               |
|--------------------------------------|-------|---------------|
| Current Expenses .....               | 13000 | 139,624       |
| Repairs and Alterations .....        | 06400 | 6,500         |
| Services to Blind & Handicapped..... | 18100 | 161,717       |
| BRIM Premium.....                    | 91300 | <u>18,205</u> |
| Total.....                           |       | \$ 1,557,068  |

*51 - Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 0300 FY 2023 Org 0439

|                                  |       |               |
|----------------------------------|-------|---------------|
| Personal Services and            |       |               |
| Employee Benefits.....           | 00100 | \$ 3,274,206  |
| Salary and Benefits of Cabinet   |       |               |
| Secretary and Agency Heads ..... | 00201 | 120,106       |
| Current Expenses .....           | 13000 | 113,844       |
| Mountain Stage .....             | 24900 | 450,000       |
| Capital Outlay and               |       |               |
| Maintenance (R) .....            | 75500 | 49,250        |
| BRIM Premium.....                | 91300 | <u>47,727</u> |
| Total.....                       |       | \$ 4,055,133  |

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 0300, appropriation 75500) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*52 - Environmental Quality Board*

(WV Code Chapter 20)

Fund 0270 FY 2023 Org 0311

|                              |       |           |
|------------------------------|-------|-----------|
| Personal Services and        |       |           |
| Employee Benefits.....       | 00100 | \$ 88,590 |
| Current Expenses .....       | 13000 | 28,453    |
| Repairs and Alterations..... | 06400 | 800       |
| Equipment.....               | 07000 | 500       |

|                   |       |                   |
|-------------------|-------|-------------------|
| Other Assets..... | 69000 | 400               |
| BRIM Premium..... | 91300 | 791               |
| Total.....        |       | <u>\$ 119,534</u> |

*53 - Division of Environmental Protection*

(WV Code Chapter 22)

Fund 0273 FY 2023 Org 0313

|                                  |       |                     |
|----------------------------------|-------|---------------------|
| Personal Services and            |       |                     |
| Employee Benefits.....           | 00100 | \$ 4,144,818        |
| Salary and Benefits of Cabinet   |       |                     |
| Secretary and Agency Heads ..... | 00201 | 168,000             |
| Current Expenses .....           | 13000 | 85,816              |
| Water Resources Protection and   |       |                     |
| Management .....                 | 06800 | 583,086             |
| Dam Safety.....                  | 60700 | 245,842             |
| West Virginia Stream             |       |                     |
| Partners Program .....           | 63700 | 77,396              |
| Meth Lab Cleanup.....            | 65600 | 91,888              |
| WV Contributions to River        |       |                     |
| Commissions.....                 | 77600 | 148,485             |
| Office of Water Resources        |       |                     |
| Non-Enforcement Activity .....   | 85500 | <u>1,040,868</u>    |
| Total.....                       |       | <u>\$ 6,586,199</u> |

*54 - Air Quality Board*

(WV Code Chapter 16)

Fund 0550 FY 2023 Org 0325

|                              |       |                  |
|------------------------------|-------|------------------|
| Personal Services and        |       |                  |
| Employee Benefits.....       | 00100 | \$ 60,737        |
| Current Expenses .....       | 13000 | 11,612           |
| Repairs and Alterations..... | 06400 | 800              |
| Equipment.....               | 07000 | 400              |
| Other Assets.....            | 69000 | 200              |
| BRIM Premium.....            | 91300 | <u>2,304</u>     |
| Total.....                   |       | <u>\$ 76,053</u> |

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES***55 - Department of Health and Human Resources –**Office of the Secretary*

(WV Code Chapter 5F)

Fund 0400 FY 2023 Org 0501

|                             |       |                |
|-----------------------------|-------|----------------|
| Personal Services and       |       |                |
| Employee Benefits.....      | 00100 | \$ 387,664     |
| Unclassified.....           | 09900 | 6,459          |
| Current Expenses .....      | 13000 | 50,613         |
| Commission for the Deaf and |       |                |
| Hard of Hearing .....       | 70400 | <u>228,560</u> |
| Total.....                  |       | \$ 673,296     |

*56 - Division of Health –**Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2023 Org 0506

|                                         |       |               |
|-----------------------------------------|-------|---------------|
| Personal Services and                   |       |               |
| Employee Benefits.....                  | 00100 | \$ 13,051,133 |
| Unclassified.....                       | 09900 | 671,795       |
| Current Expenses .....                  | 13000 | 5,388,459     |
| Chief Medical Examiner (R).....         | 04500 | 8,887,105     |
| State Aid for Local and                 |       |               |
| Basic Public Health Services .....      | 18400 | 15,672,592    |
| Safe Drinking Water Program (R) .....   | 18700 | 1,915,528     |
| Women, Infants and Children .....       | 21000 | 38,621        |
| Early Intervention .....                | 22300 | 8,134,060     |
| Cancer Registry.....                    | 22500 | 211,359       |
| Office of Drug Control Policy (R) ..... | 35401 | 554,230       |
| Statewide EMS Program                   |       |               |
| Support (R) .....                       | 38300 | 1,711,912     |
| Office of Medical Cannabis (R).....     | 42001 | 1,487,219     |

|                                         |       |                |
|-----------------------------------------|-------|----------------|
| Black Lung Clinics .....                | 46700 | 170,885        |
| Vaccine for Children .....              | 55100 | 341,261        |
| Tuberculosis Control .....              | 55300 | 335,307        |
| Maternal and Child Health               |       |                |
| Clinics, Clinicians Medical             |       |                |
| Contracts and Fees (R) .....            | 57500 | 5,905,414      |
| Epidemiology Support .....              | 62600 | 1,530,473      |
| Primary Care Support .....              | 62800 | 1,233,045      |
| Sexual Assault Intervention             |       |                |
| and Prevention .....                    | 72300 | 2,000,000      |
| Health Right Free Clinics .....         | 72700 | 4,250,000      |
| Capital Outlay and                      |       |                |
| Maintenance (R) .....                   | 75500 | 70,000         |
| Healthy Lifestyles .....                | 77800 | 898,169        |
| Maternal Mortality Review .....         | 83400 | 50,841         |
| Diabetes Education and Prevention ..... | 87300 | 97,125         |
| BRIM Premium .....                      | 91300 | 169,791        |
| State Trauma and Emergency              |       |                |
| Care System .....                       | 91800 | 1,936,450      |
| WVU Charleston Poison                   |       |                |
| Control Hotline .....                   | 94400 | <u>712,942</u> |
| Total .....                             |       | \$ 77,425,716  |

Any unexpended balances remaining in the appropriations for Chief Medical Examiner (fund 0407, appropriation 04500), Safe Drinking Water Program (fund 0407, appropriation 18700), Office of Drug Control Policy (fund 0407, appropriation 35401), Office of Drug Control Policy – Surplus (fund 0407, appropriation 35402), Statewide EMS Program Support (fund 0407, appropriation 38300), Office of Medical Cannabis (fund 0407, appropriation 42001), Medical Cannabis Surplus (fund 0407, appropriation 42099), Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500), Capital Outlay and Maintenance (fund 0407, appropriation 75500), Emergency Response Entities – Special Projects (fund 0407, appropriation 82200), and Tobacco Education Program (fund 0407, appropriation 90600) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the Department of Health and Human Resources shall have the authority to transfer funds within the above appropriations: *Provided*, That no more than five percent of the funds appropriated to one appropriation may be transferred to other appropriations: *Provided, however*, That no funds from other appropriations shall be transferred to the personal services and employee benefits appropriation.

From the above appropriation for Current Expenses (fund 0407, appropriation 13000), an amount not less than \$100,000 is for the West Virginia Cancer Coalition; \$50,000 shall be expended for the West Virginia Aids Coalition; \$100,000 is for Adolescent Immunization Education; \$73,065 is for informal dispute resolution relating to nursing home administrative appeals; and \$1,000,000 shall be used for the administration of the Telestroke program.

From the above appropriation for Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500) up to \$400,000 may be transferred to the Breast and Cervical Cancer Diagnostic Treatment Fund (fund 5197) and \$11,000 is for the Marshall County Health Department for dental services.

*57 - Consolidated Medical Services Fund*

(WV Code Chapter 16)

Fund 0525 FY 2023 Org 0506

|                                        |       |              |
|----------------------------------------|-------|--------------|
| Personal Services and                  |       |              |
| Employee Benefits.....                 | 00100 | \$ 1,693,100 |
| Current Expenses .....                 | 13000 | 14,113       |
| Behavioral Health Program (R) .....    | 21900 | 70,186,648   |
| Institutional Facilities               |       |              |
| Operations (R) .....                   | 33500 | 150,992,263  |
| Substance Abuse Continuum              |       |              |
| of Care (R) .....                      | 35400 | 1,840,000    |
| Capital Outlay and Maintenance (R) ... | 75500 | 950,000      |

|                   |       |                  |
|-------------------|-------|------------------|
| BRIM Premium..... | 91300 | <u>1,296,098</u> |
| Total.....        |       | \$ 226,972,222   |

Any unexpended balances remaining in the appropriations for Jim's Dream (fund 0525, appropriation 14901), Behavioral Health Program (fund 0525, appropriation 21900), Institutional Facilities Operations (fund 0525, appropriation 33500), Substance Abuse Continuum of Care (fund 0525, appropriation 35400), Institutional Facilities Operations – Surplus (fund 0525, appropriation 63200), and Capital Outlay and Maintenance (fund 0525, appropriation 75500) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the Department of Health and Human Resources shall have the authority to transfer funds within the above appropriations: *Provided*, That no more than five percent of the funds appropriated to one appropriation may be transferred to other appropriations: *Provided, however*, That no funds from other appropriations shall be transferred to the personal services and employee benefits appropriation.

Included in the above appropriation for Behavioral Health Program (fund 0525, appropriation 21900) is \$100,000 for the Healing Place of Huntington.

The above appropriation for Institutional Facilities Operations (fund 0525, appropriation 33500) contains prior year salary increases due to the Hartley court order in the amount of \$2,202,013 for William R. Sharpe Jr. Hospital, and \$2,067,984 for Mildred Mitchel-Bateman Hospital.

From the above appropriation for Substance Abuse Continuum of Care (fund 0525, appropriation 35400), the funding will be consistent with the goal areas outlined in the Comprehensive Substance Abuse Strategic Action Plan.

Additional funds have been appropriated in fund 5156, fiscal year 2023, organization 0506, for the operation of the institutional facilities. The secretary of the Department of Health and Human

Resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations appropriation to facilitate cost effective and cost saving services at the community level.

*58 - Division of Health –*

*West Virginia Drinking Water Treatment*

(WV Code Chapter 16)

Fund 0561 FY 2023 Org 0506

West Virginia Drinking Water

Treatment Revolving

|                     |       |    |         |
|---------------------|-------|----|---------|
| Fund-Transfer ..... | 68900 | \$ | 647,500 |
|---------------------|-------|----|---------|

The above appropriation for Drinking Water Treatment Revolving Fund – Transfer shall be transferred to the West Virginia Drinking Water Treatment Revolving Fund or appropriate bank depository and the Drinking Water Treatment Revolving – Administrative Expense Fund as provided by Chapter 16 of the Code.

*59 - Human Rights Commission*

(WV Code Chapter 5)

Fund 0416 FY 2023 Org 0510

Personal Services and

|                        |       |    |           |
|------------------------|-------|----|-----------|
| Employee Benefits..... | 00100 | \$ | 1,003,911 |
|------------------------|-------|----|-----------|

Salary and Benefits of Cabinet

|                                  |       |  |         |
|----------------------------------|-------|--|---------|
| Secretary and Agency Heads ..... | 00201 |  | 112,000 |
|----------------------------------|-------|--|---------|

|                   |       |  |       |
|-------------------|-------|--|-------|
| Unclassified..... | 09900 |  | 4,024 |
|-------------------|-------|--|-------|

|                        |       |  |         |
|------------------------|-------|--|---------|
| Current Expenses ..... | 13000 |  | 331,304 |
|------------------------|-------|--|---------|

|                   |       |  |        |
|-------------------|-------|--|--------|
| BRIM Premium..... | 91300 |  | 10,764 |
|-------------------|-------|--|--------|

|            |  |    |           |
|------------|--|----|-----------|
| Total..... |  | \$ | 1,462,003 |
|------------|--|----|-----------|

*60 - Division of Human Services*

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2023 Org 0511

|                                      |       |               |
|--------------------------------------|-------|---------------|
| Personal Services and                |       |               |
| Employee Benefits.....               | 00100 | \$ 53,717,120 |
| Salary and Benefits of Cabinet       |       |               |
| Secretary and Agency Heads .....     | 00201 | 45,531        |
| Unclassified.....                    | 09900 | 5,688,944     |
| Current Expenses .....               | 13000 | 12,072,050    |
| Child Care Development.....          | 14400 | 3,118,451     |
| Medical Services .....               | 18900 | 294,317,213   |
| Social Services .....                | 19500 | 226,056,151   |
| Family Preservation Program .....    | 19600 | 1,565,000     |
| Family Resource Networks.....        | 27400 | 1,762,464     |
| Domestic Violence Legal              |       |               |
| Services Fund.....                   | 38400 | 400,000       |
| James “Tiger” Morton Catastrophic    |       |               |
| Illness Fund.....                    | 45500 | 60,164        |
| I/DD Waiver.....                     | 46600 | 108,541,736   |
| Child Protective Services            |       |               |
| Case Workers.....                    | 46800 | 28,889,529    |
| Title XIX Waiver for Seniors.....    | 53300 | 13,593,620    |
| WV Teaching Hospitals Tertiary       |       |               |
| Safety Net .....                     | 54700 | 6,356,000     |
| In-Home Family Education.....        | 68800 | 1,000,000     |
| WV Works Separate State Program..... | 69800 | 135,000       |
| Child Support Enforcement .....      | 70500 | 6,711,478     |
| Temporary Assistance for Needy       |       |               |
| Families/Maintenance of Effort ..... | 70700 | 25,819,096    |
| Child Care – Maintenance of          |       |               |
| Effort Match.....                    | 70800 | 5,693,743     |
| Grants for Licensed Domestic         |       |               |
| Violence Programs and                |       |               |
| Statewide Prevention .....           | 75000 | 2,500,000     |
| Capital Outlay and                   |       |               |
| Maintenance (R) .....                | 75500 | 11,875        |
| Community Based Services and         |       |               |
| Pilot Programs for Youth.....        | 75900 | 1,000,000     |
| Medical Services                     |       |               |
| Administrative Costs .....           | 78900 | 43,681,857    |



|                                       |       |                  |
|---------------------------------------|-------|------------------|
| Traumatic Brain Injury Waiver.....    | 83500 | 800,000          |
| Indigent Burials (R) .....            | 85100 | 1,550,000        |
| CHIP Administrative Costs.....        | 85601 | 701,815          |
| CHIP Services .....                   | 85602 | 6,390,665        |
| BRIM Premium.....                     | 91300 | 892,642          |
| Rural Hospitals Under 150 Beds.....   | 94000 | 2,596,000        |
| Children's Trust Fund – Transfer..... | 95100 | 220,000          |
| PATH .....                            | 95400 | <u>7,217,367</u> |
| Total.....                            |       | \$ 863,105,511   |

From the above appropriation of Current Expenses (fund 0403, appropriation 13000) \$300,000 shall be used for Green Acres Regional Center Inc.

Any unexpended balances remaining in the appropriations for Capital Outlay and Maintenance (fund 0403, appropriation 75500) and Indigent Burials (fund 0403, appropriation 85100) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the Department of Health and Human Resources shall have the authority to transfer funds within the above appropriations: *Provided*, That no more than five percent of the funds appropriated to one appropriation may be transferred to other appropriations: *Provided, however*, That no funds from other appropriations shall be transferred to the personal services and employee benefits appropriation.

The secretary shall have authority to expend funds for the educational costs of those children residing in out-of-state placements, excluding the costs of special education programs.

Included in the above appropriation for Social Services (fund 0403, appropriation 19500) is funding for continuing education requirements relating to the practice of social work.

The above appropriation for Domestic Violence Legal Services Fund (fund 0403, appropriation 38400) shall be transferred to the Domestic Violence Legal Services Fund (fund 5455).

The above appropriation for James “Tiger” Morton Catastrophic Illness Fund (fund 0403, appropriation 45500) shall be transferred to the James “Tiger” Morton Catastrophic Illness Fund (fund 5454) as provided by Article 5Q, Chapter 16 of the Code.

The above appropriation for WV Works Separate State Program (fund 0403, appropriation 69800), shall be transferred to the WV Works Separate State College Program Fund (fund 5467), and the WV Works Separate State Two-Parent Program Fund (fund 5468) as determined by the secretary of the Department of Health and Human Resources.

From the above appropriation for Child Support Enforcement (fund 0403, appropriation 70500) an amount not to exceed \$300,000 may be transferred to a local banking depository to be utilized to offset funds determined to be uncollectible.

From the above appropriation for the Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund 0403, appropriation 75000), 50% of the total shall be divided equally and distributed among the fourteen (14) licensed programs and the West Virginia Coalition Against Domestic Violence (WVCADV). The balance remaining in the appropriation for Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund 0403, appropriation 75000), shall be distributed according to the formula established by the Family Protection Services Board.

The above appropriation for Children’s Trust Fund – Transfer (fund 0403, appropriation 95100) shall be transferred to the Children’s Trust Fund (fund 5469, org 0511).

## **DEPARTMENT OF HOMELAND SECURITY**

*61 - Department of Homeland Security –*

*Office of the Secretary*

(WV Code Chapter 5F)

Fund 0430 FY 2023 Org 0601

|                                  |       |                |
|----------------------------------|-------|----------------|
| Personal Services and            |       |                |
| Employee Benefits.....           | 00100 | \$ 780,510     |
| Salary and Benefits of Cabinet   |       |                |
| Secretary and Agency Heads ..... | 00201 | 168,000        |
| Unclassified (R) .....           | 09900 | 30,000         |
| Current Expenses .....           | 13000 | 91,636         |
| Repairs and Alterations.....     | 06400 | 500            |
| Equipment.....                   | 07000 | 500            |
| Fusion Center (R).....           | 46900 | 2,739,870      |
| Other Assets .....               | 69000 | 500            |
| Directed Transfer .....          | 70000 | 32,000         |
| BRIM Premium.....                | 91300 | 22,563         |
| WV Fire and EMS                  |       |                |
| Benefit (R) .....                | 93900 | <u>200,000</u> |
| Total.....                       |       | \$ 4,066,079   |

Any unexpended balances remaining in the appropriations for Unclassified (fund 0430, appropriation 09900), Fusion Center (fund 0430, appropriation 46900), Justice Reinvestment Training – Surplus (fund 0430, appropriation 69900), WV Fire and EMS Survivor Benefit (fund 0430, appropriation 93900), and Homeland State Security Administrative Agency (fund 0430, appropriation 95300) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The above appropriation for Directed Transfer (fund 0430, appropriation 70000) shall be transferred to the Law-Enforcement, Safety and Emergency Worker Funeral Expense Payment Fund (fund 6003).

*62 - Division of Emergency Management*

(WV Code Chapter 15)

Fund 0443 FY 2023 Org 0606

|                                |       |              |
|--------------------------------|-------|--------------|
| Personal Services and          |       |              |
| Employee Benefits.....         | 00100 | \$ 2,177,053 |
| Salary and Benefits of Cabinet |       |              |

|                                      |       |              |
|--------------------------------------|-------|--------------|
| Secretary and Agency Heads .....     | 00201 | 61,250       |
| Unclassified.....                    | 09900 | 21,022       |
| Current Expenses .....               | 13000 | 51,065       |
| Repairs and Alterations.....         | 06400 | 600          |
| Radiological Emergency               |       |              |
| Preparedness .....                   | 55400 | 17,052       |
| SIRN.....                            | 55401 | 600,000      |
| Federal Funds/Grant Match (R) .....  | 74900 | 1,449,990    |
| Mine and Industrial Accident         |       |              |
| Rapid Response Call Center .....     | 78100 | 489,577      |
| Early Warning Flood System (R) ..... | 87700 | 1,290,499    |
| BRIM Premium.....                    | 91300 | 96,529       |
| Total.....                           |       | \$ 6,254,637 |

Any unexpended balances remaining in the appropriations for Federal Funds/Grant Match (fund 0443, appropriation 74900), Early Warning Flood System (fund 0443, appropriation 87700), and Disaster Mitigation (fund 0443, appropriation 95200) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*63 - Division of Corrections and Rehabilitation –*

*West Virginia Parole Board*

(WV Code Chapter 62)

Fund 0440 FY 2023 Org 0608

|                                 |       |              |
|---------------------------------|-------|--------------|
| Personal Services and           |       |              |
| Employee Benefits.....          | 00100 | \$ 310,869   |
| Unclassified.....               | 09900 | 10,000       |
| Current Expenses .....          | 13000 | 334,440      |
| Salaries of Members of          |       |              |
| West Virginia Parole Board..... | 22700 | 734,286      |
| BRIM Premium.....               | 91300 | 6,149        |
| Total.....                      |       | \$ 1,395,744 |

The above appropriation for Salaries of Members of West Virginia Parole Board (fund 0440, appropriation 22700) includes

funding for salary, annual increment (as provided for in W.Va. Code §5-5-1), and related employee benefits of board members.

*64 - Division of Corrections and Rehabilitation –*

*Central Office*

(WV Code Chapter 15A)

Fund 0446 FY 2023 Org 0608

|                                  |       |              |
|----------------------------------|-------|--------------|
| Personal Services and            |       |              |
| Employee Benefits.....           | 00100 | \$ 250,577   |
| Salary and Benefits of Cabinet   |       |              |
| Secretary and Agency Heads ..... | 00201 | 126,000      |
| Current Expenses .....           | 13000 | <u>2,400</u> |
| Total.....                       |       | \$ 378,977   |

*65 - Division of Corrections and Rehabilitation –*

*Correctional Units*

(WV Code Chapter 15A)

Fund 0450 FY 2023 Org 0608

|                                        |       |              |
|----------------------------------------|-------|--------------|
| Employee Benefits .....                | 01000 | \$ 1,258,136 |
| Unclassified.....                      | 09900 | 1,578,800    |
| Current Expenses (R).....              | 13000 | 57,690,483   |
| Children's Protection Act (R) .....    | 09000 | 838,437      |
| Facilities Planning and                |       |              |
| Administration (R).....                | 38600 | 1,274,200    |
| Charleston Correctional Center .....   | 45600 | 3,530,502    |
| Beckley Correctional Center.....       | 49000 | 2,633,846    |
| Anthony Correctional Center .....      | 50400 | 6,281,339    |
| Huttonsville Correctional Center ..... | 51400 | 19,975,709   |
| Northern Correctional Center.....      | 53400 | 8,154,113    |
| Inmate Medical Expenses (R).....       | 53500 | 62,226,064   |
| Pruntytown Correctional Center .....   | 54300 | 8,946,953    |
| Corrections Academy.....               | 56900 | 1,983,466    |
| Information Technology Services.....   | 59901 | 2,759,052    |

|                                       |       |                  |
|---------------------------------------|-------|------------------|
| Martinsburg Correctional Center ..... | 66300 | 4,482,115        |
| Parole Services.....                  | 68600 | 6,023,661        |
| Special Services .....                | 68700 | 5,894,456        |
| Investigative Services .....          | 71600 | 3,502,991        |
| Capital Outlay and                    |       |                  |
| Maintenance (R) .....                 | 75500 | 2,000,000        |
| Salem Correctional Center .....       | 77400 | 11,678,166       |
| McDowell County                       |       |                  |
| Correctional Center.....              | 79000 | 2,542,590        |
| Stevens Correctional Center .....     | 79100 | 7,863,195        |
| Parkersburg Correctional Center.....  | 82800 | 6,418,300        |
| St. Mary's Correctional Center .....  | 88100 | 15,081,470       |
| Denmar Correctional Center .....      | 88200 | 5,367,552        |
| Ohio County Correctional Center ..... | 88300 | 2,211,029        |
| Mt. Olive Correctional Complex .....  | 88800 | 23,032,441       |
| Lakin Correctional Center.....        | 89600 | 11,141,496       |
| BRIM Premium.....                     | 91300 | <u>2,527,657</u> |
| Total.....                            |       | \$ 288,898,219   |

Any unexpended balances remaining in the appropriations for Children's Protection Act (fund 0450, appropriation 09000), Unclassified – Surplus (fund 0450, appropriation 09700), Current Expenses (fund 0450, appropriation 13000), Facilities Planning and Administration (fund 0450, appropriation 38600), Inmate Medical Expenses (fund 0450, appropriation 53500), Capital Improvements – Surplus (fund 0450, appropriation 66100), Capital Outlay, Repairs and Equipment – Surplus (fund 0450, appropriation 67700), Capital Outlay and Maintenance (fund 0450, appropriation 75500), Security System Improvements – Surplus (fund 0450, appropriation 75501), and Roof Repairs and Mechanical System Upgrades (fund 0450, appropriation 75502) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The Commissioner of Corrections and Rehabilitation shall have the authority to transfer between appropriations.

From the above appropriation to Current Expenses (fund 0450, appropriation 13000) payment shall be made to house Division of

Corrections and Rehabilitation inmates in federal, county, and /or regional jails.

Any realized savings from Energy Savings Contract may be transferred to Facilities Planning and Administration (fund 0450, appropriation 38600).

*66 - Division of Corrections and Rehabilitation –*

*Bureau of Juvenile Services*

(WV Code Chapter 15A)

Fund 0570 FY 2023 Org 0608

|                                         |       |    |                  |
|-----------------------------------------|-------|----|------------------|
| Statewide Reporting Centers.....        | 26200 | \$ | 6,991,498        |
| Robert L. Shell Juvenile Center .....   | 26700 |    | 2,649,168        |
| Resident Medical Expenses (R) .....     | 53501 |    | 3,604,999        |
| Central Office.....                     | 70100 |    | 1,779,854        |
| Capital Outlay and                      |       |    |                  |
| Maintenance (R) .....                   | 75500 |    | 250,000          |
| Gene Spadaro Juvenile Center .....      | 79300 |    | 2,789,569        |
| BRIM Premium.....                       | 91300 |    | 115,967          |
| Kenneth Honey Rubenstein                |       |    |                  |
| Juvenile Center (R) .....               | 98000 |    | 5,941,605        |
| Vicki Douglas Juvenile Center .....     | 98100 |    | 2,471,185        |
| Northern Regional Juvenile Center.....  | 98200 |    | 2,876,302        |
| Lorrie Yeager Jr. Juvenile Center ..... | 98300 |    | 2,537,852        |
| Sam Perdue Juvenile Center .....        | 98400 |    | 2,741,571        |
| Tiger Morton Center .....               | 98500 |    | 2,754,083        |
| Donald R. Kuhn Juvenile Center .....    | 98600 |    | 5,287,575        |
| J.M. “Chick” Buckbee                    |       |    |                  |
| Juvenile Center .....                   | 98700 |    | <u>2,615,359</u> |
| Total.....                              |       | \$ | 45,406,587       |

Any unexpended balances remaining in the appropriations for Resident Medical Expenses (fund 0570, appropriation 53501), Capital Outlay and Maintenance (fund 0570, appropriation 75500), Roof Repairs and Mechanical System Upgrades (fund 0570, appropriation 75502), and Kenneth Honey Rubenstein Juvenile Center (fund 0570, appropriation 98000) at the close of the fiscal

year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The Director of Juvenile Services shall have the authority to transfer between appropriations to the individual juvenile centers above including statewide reporting centers and central office and may transfer funds from the individual juvenile centers to Resident Medical Expenses (fund 0570, appropriation 53501).

*67 - West Virginia State Police*

(WV Code Chapter 15)

Fund 0453 FY 2023 Org 0612

|                                      |       |                  |
|--------------------------------------|-------|------------------|
| Personal Services and                |       |                  |
| Employee Benefits.....               | 00100 | \$ 73,886,203    |
| Salary and Benefits of Cabinet       |       |                  |
| Secretary and Agency Heads .....     | 00201 | 139,300          |
| Children's Protection Act .....      | 09000 | 1,040,805        |
| Current Expenses .....               | 13000 | 10,384,394       |
| Repairs and Alterations.....         | 06400 | 450,523          |
| Trooper Class.....                   | 52100 | 3,207,832        |
| Barracks Lease Payments .....        | 55600 | 237,898          |
| Communications and                   |       |                  |
| Other Equipment (R) .....            | 55800 | 1,070,968        |
| Trooper Retirement Fund.....         | 60500 | 13,324,749       |
| Handgun Administration Expense ..... | 74700 | 80,918           |
| Capital Outlay and                   |       |                  |
| Maintenance (R) .....                | 75500 | 250,000          |
| Retirement Systems –                 |       |                  |
| Unfunded Liability.....              | 77500 | 35,000           |
| Automated Fingerprint                |       |                  |
| Identification System.....           | 89800 | 2,229,846        |
| BRIM Premium.....                    | 91300 | <u>5,743,921</u> |
| Total.....                           |       | \$ 112,082,357   |

Any unexpended balances remaining in the appropriations for Communications and Other Equipment (fund 0453, appropriation 55800) and Capital Outlay and Maintenance (fund 0453,



appropriation 75500) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriation for Personal Services and Employee Benefits (fund 0453, appropriation 00100), an amount not less than \$25,000 shall be expended to offset the costs associated with providing police services for the West Virginia State Fair.

*68 - Fire Commission*

(WV Code Chapter 29)

Fund 0436 FY 2023 Org 0619

|                        |       |    |        |
|------------------------|-------|----|--------|
| Current Expenses ..... | 13000 | \$ | 63,061 |
|------------------------|-------|----|--------|

*69 - Division of Protective Services*

(WV Code Chapter 5F)

Fund 0585 FY 2023 Org 0622

|                              |       |    |               |
|------------------------------|-------|----|---------------|
| Personal Services and        |       |    |               |
| Employee Benefits.....       | 00100 | \$ | 3,186,789     |
| Unclassified (R) .....       | 09900 |    | 21,991        |
| Current Expenses .....       | 13000 |    | 422,981       |
| Repairs and Alterations..... | 06400 |    | 8,500         |
| Equipment (R).....           | 07000 |    | 64,171        |
| BRIM Premium.....            | 91300 |    | <u>32,602</u> |
| Total.....                   |       | \$ | 3,737,034     |

Any unexpended balances remaining in the appropriations for Equipment (fund 0585, appropriation 07000) and Unclassified (fund 0585, appropriation 09900) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*70 - Division of Administrative Services*

(WV Code Chapter 15A)

Fund 0546 FY 2023 Org 0623

|                                           |       |                      |
|-------------------------------------------|-------|----------------------|
| Personal Services and                     |       |                      |
| Employee Benefits.....                    | 00100 | \$ 591,795           |
| Current Expenses (R).....                 | 13000 | 233,360              |
| Repairs and Alterations.....              | 06400 | 1,804                |
| Child Advocacy Centers (R).....           | 45800 | 2,209,526            |
| Community Corrections (R) .....           | 56100 | 4,599,155            |
| Statistical Analysis Program .....        | 59700 | 50,122               |
| Sexual Assault Forensic                   |       |                      |
| Examination Commission (R) .....          | 71400 | 79,340               |
| Qualitative Analysis and                  |       |                      |
| Training for Youth Services (R) ....      | 76200 | 136,732              |
| Law Enforcement Professional              |       |                      |
| Standards.....                            | 83800 | 170,172              |
| Justice Reinvestment Initiative (R) ..... | 89501 | 2,333,795            |
| BRIM Premium.....                         | 91300 | 2,123                |
| Total.....                                |       | <u>\$ 10,407,924</u> |

Any unexpended balances remaining in the appropriations for Current Expenses (fund 0546, appropriation 13000), Child Advocacy Centers (fund 0546, appropriation 45800), Community Corrections (fund 0546, appropriation 56100), Sexual Assault Forensic Examination Commission (fund 0546 appropriation 71400), Qualitative Analysis and Training for Youth Services (fund 0546, appropriation 76200), and Justice Reinvestment Initiative (fund 0546, appropriation 89501) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriation for Current Expenses (fund 0546, appropriation 13000), \$100,000 shall be used for Court Appointed Special Advocates.

From the above appropriation for Child Advocacy Centers (fund 0546, appropriation 45800), the division may retain an amount not to exceed four percent of the appropriation for administrative purposes.

### *71 - Division of Administrative Services*

(WV Code Chapter 15A)

Fund 0619 FY 2023 Org 0623

|                        |       |                |
|------------------------|-------|----------------|
| Personal Services and  |       |                |
| Employee Benefits..... | 00100 | \$ 5,155,206   |
| Unclassified.....      | 09900 | 5,000          |
| Current Expenses ..... | 13000 | <u>600,000</u> |
| Total.....             |       | \$ 5,760,206   |

## DEPARTMENT OF REVENUE

### *72 - Office of the Secretary*

(WV Code Chapter 11)

Fund 0465 FY 2023 Org 0701

|                                  |       |            |
|----------------------------------|-------|------------|
| Personal Services and            |       |            |
| Employee Benefits.....           | 00100 | \$ 364,034 |
| Salary and Benefits of Cabinet   |       |            |
| Secretary and Agency Heads ..... | 00201 | 168,000    |
| Unclassified.....                | 09900 | 437        |
| Current Expenses .....           | 13000 | 81,594     |
| Repairs and Alterations.....     | 06400 | 1,262      |
| Equipment.....                   | 07000 | 8,000      |
| Other Assets.....                | 69000 | <u>500</u> |
| Total.....                       |       | \$ 623,827 |

Any unexpended balance remaining in the appropriation for Unclassified – Total (fund 0465, appropriation 09600) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

### *73 - Tax Division*

(WV Code Chapter 11)

Fund 0470 FY 2023 Org 0702

|                                  |       |               |
|----------------------------------|-------|---------------|
| Personal Services and            |       |               |
| Employee Benefits (R) .....      | 00100 | \$ 19,015,878 |
| Salary and Benefits of Cabinet   |       |               |
| Secretary and Agency Heads ..... | 00201 | 147,000       |
| Unclassified (R) .....           | 09900 | 174,578       |

|                                  |       |               |
|----------------------------------|-------|---------------|
| Current Expenses (R) .....       | 13000 | 6,823,635     |
| Repairs and Alterations .....    | 06400 | 10,150        |
| Equipment .....                  | 07000 | 54,850        |
| Tax Technology Upgrade .....     | 09400 | 3,700,000     |
| Multi State Tax Commission ..... | 65300 | 77,958        |
| Other Assets .....               | 69000 | 10,000        |
| BRIM Premium .....               | 91300 | 15,579        |
| Total .....                      |       | \$ 30,029,628 |

Any unexpended balances remaining in the appropriations for Personal Services and Employee Benefits (fund 0470, appropriation 00100), Unclassified (fund 0470, appropriation 09900), Current Expenses (fund 0470, appropriation 13000), and Integrated Tax Assessment System (fund 0470, appropriation 29200) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*74 - State Budget Office*

(WV Code Chapter 11B)

Fund 0595 FY 2023 Org 0703

|                            |       |            |
|----------------------------|-------|------------|
| Personal Services and      |       |            |
| Employee Benefits .....    | 00100 | \$ 819,147 |
| Unclassified (R) .....     | 09900 | 9,200      |
| Current Expenses (R) ..... | 13000 | 119,449    |
| Total .....                |       | \$ 947,796 |

Any unexpended balances remaining in the appropriations for Unclassified (fund 0595, appropriation 09900) and Current Expenses (fund 0595, appropriation 13000) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*75 - West Virginia Office of Tax Appeals*

(WV Code Chapter 11)

Fund 0593 FY 2023 Org 0709

## Personal Services and

|                           |       |    |              |
|---------------------------|-------|----|--------------|
| Employee Benefits.....    | 00100 | \$ | 935,715      |
| Unclassified.....         | 09900 |    | 5,255        |
| Current Expenses (R)..... | 13000 |    | 229,374      |
| BRIM Premium.....         | 91300 |    | <u>3,062</u> |
| Total.....                |       | \$ | 1,173,406    |

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0593, appropriation 13000) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

*76 - Division of Professional and Occupational Licenses –*

*State Athletic Commission*

(WV Code Chapter 29)

Fund 0523 FY 2023 Org 0933

## Personal Services and

|                        |       |    |               |
|------------------------|-------|----|---------------|
| Employee Benefits..... | 00100 | \$ | 7,200         |
| Current Expenses ..... | 13000 |    | <u>29,611</u> |
| Total.....             |       | \$ | 36,811        |

**DEPARTMENT OF TRANSPORTATION**

*77 - State Rail Authority*

(WV Code Chapter 29)

Fund 0506 FY 2023 Org 0804

## Personal Services and

|                        |       |    |                |
|------------------------|-------|----|----------------|
| Employee Benefits..... | 00100 | \$ | 370,704        |
| Current Expenses ..... | 13000 |    | 287,707        |
| Other Assets (R).....  | 69000 |    | 1,270,019      |
| BRIM Premium.....      | 91300 |    | <u>201,541</u> |
| Total.....             |       | \$ | 2,129,971      |

Any unexpended balance remaining in the appropriation for Other Assets (fund 0506, appropriation 69000) at the close of the

fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

*78 - Division of Public Transit*

(WV Code Chapter 17)

Fund 0510 FY 2023 Org 0805

|                           |       |    |               |
|---------------------------|-------|----|---------------|
| Equipment (R).....        | 07000 | \$ | 100,000       |
| Current Expenses (R)..... | 13000 |    | 2,042,989     |
| Buildings (R).....        | 25800 |    | 100,000       |
| Other Assets (R).....     | 69000 |    | <u>50,000</u> |
| Total.....                |       | \$ | 2,292,989     |

Any unexpended balances remaining in the appropriations for Equipment (fund 0510, appropriation 07000), Current Expenses (fund 0510, appropriation 13000), Buildings (fund 0510, appropriation 25800), and Other Assets (fund 0510, appropriation 69000) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriation for Current Expenses (fund 0510, appropriation 13000), \$30,000 shall be used to support the Sistersville Ferry.

*79 - Aeronautics Commission*

(WV Code Chapter 29)

Fund 0582 FY 2023 Org 0807

|                              |       |    |              |
|------------------------------|-------|----|--------------|
| Personal Services and        |       |    |              |
| Employee Benefits.....       | 00100 | \$ | 229,791      |
| Current Expenses (R).....    | 13000 |    | 591,839      |
| Repairs and Alterations..... | 06400 |    | 100          |
| BRIM Premium.....            | 91300 |    | <u>4,438</u> |
| Total.....                   |       | \$ | 826,168      |

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0582, appropriation 13000) at the close of

the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

## DEPARTMENT OF VETERANS' ASSISTANCE

### *80 - Department of Veterans' Assistance*

(WV Code Chapter 9A)

Fund 0456 FY 2023 Org 0613

|                                  |       |               |
|----------------------------------|-------|---------------|
| Personal Services and            |       |               |
| Employee Benefits.....           | 00100 | \$ 2,036,851  |
| Salary and Benefits of Cabinet   |       |               |
| Secretary and Agency Heads ..... | 00201 | 110,880       |
| Unclassified.....                | 09900 | 20,000        |
| Current Expenses .....           | 13000 | 161,450       |
| Repairs and Alterations.....     | 06400 | 5,000         |
| Veterans' Field Offices .....    | 22800 | 405,550       |
| Buildings .....                  | 25800 | 8,181,000     |
| Veterans' Nursing Home (R) ..... | 28600 | 7,103,125     |
| Veterans' Toll Free              |       |               |
| Assistance Line .....            | 32800 | 2,015         |
| Veterans' Reeducation            |       |               |
| Assistance (R).....              | 32900 | 40,000        |
| Veterans' Grant Program (R)..... | 34200 | 560,000       |
| Veterans' Grave Markers .....    | 47300 | 10,000        |
| Veterans' Cemetery .....         | 80800 | 402,074       |
| BRIM Premium.....                | 91300 | 50,000        |
| Total.....                       |       | \$ 19,087,945 |

Any unexpended balances remaining in the appropriations for Buildings – Surplus (fund 0456, appropriation 25899), Veterans' Nursing Home (fund 0456, appropriation 28600), Veterans' Reeducation Assistance (fund 0456, appropriation 32900), Veterans' Grant Program (fund 0456, appropriation 34200), Veterans' Bonus – Surplus (fund 0456, appropriation 34400), and Educational Opportunities for Children of Deceased Veterans (fund 0456, appropriation 85400) at the close of the fiscal year

2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*81 - Department of Veterans' Assistance –*

*Veterans' Home*

(WV Code Chapter 9A)

Fund 0460 FY 2023 Org 0618

Personal Services and

|                                      |       |    |                |
|--------------------------------------|-------|----|----------------|
| Employee Benefits.....               | 00100 | \$ | 1,296,064      |
| Current Expenses (R).....            | 13000 |    | 46,759         |
| Veterans Outreach Programs (R) ..... | 61700 |    | <u>203,766</u> |
| Total.....                           |       | \$ | 1,546,589      |

Any unexpended balances remaining in the appropriations for Current Expenses (fund 0460, appropriation 13000) and Veterans Outreach Programs (fund 0456, appropriation 61700) at the close of fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

**BUREAU OF SENIOR SERVICES**

*82 - Bureau of Senior Services*

(WV Code Chapter 29)

Fund 0420 FY 2023 Org 0508

Transfer to Division of

Human Services for Health  
Care and Title XIX Waiver

|                           |       |    |            |
|---------------------------|-------|----|------------|
| for Senior Citizens ..... | 53900 | \$ | 19,612,957 |
|---------------------------|-------|----|------------|

The above appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens (fund 0420, appropriation 53900) along with the federal moneys generated thereby shall be used for reimbursement for services provided under the program.



The above appropriation is in addition to funding provided in fund 5405 for this program.

**WEST VIRGINIA COUNCIL FOR COMMUNITY  
AND TECHNICAL COLLEGE EDUCATION**

*83 - West Virginia Council for*

*Community and Technical College Education –*

*Control Account*

(WV Code Chapter 18B)

Fund 0596 FY 2023 Org 0420

|                                    |       |                  |
|------------------------------------|-------|------------------|
| West Virginia Council for          |       |                  |
| Community and Technical            |       |                  |
| Education (R).....                 | 39200 | \$ 744,232       |
| Transit Training Partnership ..... | 78300 | 34,293           |
| Community College Workforce        |       |                  |
| Development (R) .....              | 87800 | 2,788,387        |
| College Transition Program.....    | 88700 | 278,222          |
| West Virginia Advance              |       |                  |
| Workforce Development (R) .....    | 89300 | 3,121,387        |
| Technical Program                  |       |                  |
| Development (R) .....              | 89400 | 1,800,735        |
| WV Invests Grant Program (R) ..... | 89401 | <u>7,037,672</u> |
| Total.....                         |       | \$ 15,804,928    |

Any unexpended balances remaining in the appropriations for West Virginia Council for Community and Technical Education (fund 0596, appropriation 39200), Capital Improvements – Surplus (fund 0596, appropriation 66100), Community College Workforce Development (fund 0596, appropriation 87800), West Virginia Advance Workforce Development (fund 0596, appropriation 89300), Technical Program Development (fund 0596, appropriation 89400), and WV Invests Grant Program (fund 0596, appropriation 89401) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*84 - Mountwest Community and Technical College*

(WV Code Chapter 18B)

Fund 0599 FY 2023 Org 0444

Mountwest Community and

Technical College .....48700      \$      6,716,176

*85 - New River Community and Technical College*

(WV Code Chapter 18B)

Fund 0600 FY 2023 Org 0445

New River Community

and Technical College .....35800      \$      6,088,539

*86 - Pierpont Community and Technical College*

(WV Code Chapter 18B)

Fund 0597 FY 2023 Org 0446

Pierpont Community and

Technical College .....93000      \$      8,119,152

*87 - Blue Ridge Community and Technical College*

(WV Code Chapter 18B)

Fund 0601 FY 2023 Org 0447

Blue Ridge Community

and Technical College .....88500      \$      8,139,835

*88 - West Virginia University at Parkersburg*

(WV Code Chapter 18B)

Fund 0351 FY 2023 Org 0464

West Virginia University –

Parkersburg .....47100      \$      10,799,686

*89 - Southern West Virginia Community and Technical College*

(WV Code Chapter 18B)

Fund 0380 FY 2023 Org 0487

Southern West Virginia

Community and

Technical College ..... 44600      \$      8,557,086

*90 - West Virginia Northern Community and Technical College*

(WV Code Chapter 18B)

Fund 0383 FY 2023 Org 0489

West Virginia Northern

Community and

Technical College ..... 44700      \$      7,580,697

*91 - Eastern West Virginia Community and Technical College*

(WV Code Chapter 18B)

Fund 0587 FY 2023 Org 0492

Eastern West Virginia

Community and

Technical College ..... 41200      \$      2,264,340

*92 - BridgeValley Community and Technical College*

(WV Code Chapter 18B)

Fund 0618 FY 2023 Org 0493

BridgeValley Community and

Technical College ..... 71700      \$      8,364,587

**HIGHER EDUCATION POLICY COMMISSION***93 - Higher Education Policy Commission –**Administration – Control Account*

## (WV Code Chapter 18B)

Fund 0589 FY 2023 Org 0441

|                                      |       |                      |
|--------------------------------------|-------|----------------------|
| Personal Services and                |       |                      |
| Employee Benefits.....               | 00100 | \$ 2,789,394         |
| Current Expenses .....               | 13000 | 1,096,902            |
| RHI Program and Site Support –       |       |                      |
| RHEP Program                         |       |                      |
| Administration (R).....              | 03700 | 80,000               |
| Mental Health Provider               |       |                      |
| Loan Repayment (R).....              | 11301 | 330,000              |
| Higher Education Grant Program ..... | 16400 | 40,619,864           |
| Tuition Contract Program (R).....    | 16500 | 1,225,412            |
| Underwood-Smith Scholarship          |       |                      |
| Program-Student Awards.....          | 16700 | 628,349              |
| Facilities Planning and              |       |                      |
| Administration .....                 | 38600 | 1,760,254            |
| Higher Education                     |       |                      |
| System Initiatives.....              | 48801 | 1,635,847            |
| PROMISE Scholarship – Transfer.....  | 80000 | 18,500,000           |
| HEAPS Grant Program (R).....         | 86700 | 5,017,974            |
| Health Professionals’ Student        |       |                      |
| Loan Program (R).....                | 86701 | 547,470              |
| BRIM Premium.....                    | 91300 | 17,817               |
| Total.....                           |       | <u>\$ 74,249,283</u> |

Any unexpended balances remaining in the appropriations for RHI Program and Site Support – RHEP Program Administration (fund 0589, 03700), Mental Health Provider Loan Repayment (fund 0589, appropriation 11301), Tuition Contract Program (fund 0589, appropriation 16500), Workforce Development Initiative (fund 0589, appropriation 52901), HEAPS Grant Program (fund 0589, appropriation 86700), and Health Professionals’ Student Loan Program (fund 0589, appropriation 86701) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The above appropriation for Facilities Planning and Administration (fund 0589, appropriation 38600) is for operational

expenses of the West Virginia Education, Research and Technology Park between construction and full occupancy.

The above appropriation for Higher Education Grant Program (fund 0589, appropriation 16400) shall be transferred to the Higher Education Grant Fund (fund 4933, org 0441) established by W.Va. Code §18C-5-3.

The above appropriation for Underwood-Smith Scholarship Program Student Awards (fund 0589, appropriation 16700) shall be transferred to the Underwood-Smith Teacher Scholarship and Loan Assistance Fund (4922, org 0441) established by W.Va. Code §18C-4-1.

The above appropriation for PROMISE Scholarship-Transfer (fund 0589, appropriation 80000) shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by W.Va. Code §18C-7-7.

*94 - West Virginia University –*

*School of Medicine*

*Medical School Fund*

(WV Code Chapter 18B)

Fund 0343 FY 2023 Org 0463

|                                       |       |                  |
|---------------------------------------|-------|------------------|
| WVU School of Health                  |       |                  |
| Science – Eastern Division .....      | 05600 | \$ 2,277,794     |
| WVU – School of Health Sciences ..... | 17400 | 15,490,163       |
| WVU – School of Health                |       |                  |
| Sciences – Charleston Division .....  | 17500 | 2,351,833        |
| Rural Health Outreach                 |       |                  |
| Programs (R).....                     | 37700 | 165,979          |
| West Virginia University              |       |                  |
| School of Medicine                    |       |                  |
| BRIM Subsidy .....                    | 46000 | <u>1,203,087</u> |
| Total.....                            |       | \$ 21,488,856    |

Any unexpended balance remaining in the appropriation for Rural Health Outreach Programs (fund 0343, appropriation 37700) at the close of fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

*95 - West Virginia University –*

*General Administrative Fund*

(WV Code Chapter 18B)

Fund 0344 FY 2023 Org 0463

|                                   |       |    |                  |
|-----------------------------------|-------|----|------------------|
| West Virginia University .....    | 45900 | \$ | 99,166,182       |
| Jackson's Mill (R).....           | 46100 |    | 502,471          |
| West Virginia University          |       |    |                  |
| Institute of Technology.....      | 47900 |    | 8,320,240        |
| State Priorities – Brownfield     |       |    |                  |
| Professional Development (R)..... | 53100 |    | 316,556          |
| Energy Express (R).....           | 86100 |    | 382,935          |
| West Virginia University –        |       |    |                  |
| Potomac State .....               | 99400 |    | <u>4,709,664</u> |
| Total.....                        |       | \$ | 113,398,048      |

Any unexpended balances remaining in the appropriations for Jackson's Mill (fund 0344, appropriation 46100), State Priorities – Brownfield Professional Development (fund 0344, appropriation 53100), and Energy Express (fund 0344, appropriation 86100) at the close of fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*96 - Marshall University –*

*School of Medicine*

(WV Code Chapter 18B)

Fund 0347 FY 2023 Org 0471

|                               |       |    |           |
|-------------------------------|-------|----|-----------|
| Marshall Medical School ..... | 17300 | \$ | 7,272,947 |
| Rural Health Outreach         |       |    |           |
| Programs (R).....             | 37700 |    | 157,572   |

|                                   |       |                |
|-----------------------------------|-------|----------------|
| Forensic Lab (R) .....            | 37701 | 227,415        |
| Center for Rural Health (R) ..... | 37702 | 161,043        |
| Marshall University Medical       |       |                |
| School BRIM Subsidy .....         | 44900 | <u>872,612</u> |
| Total.....                        |       | \$ 8,691,589   |

Any unexpended balances remaining in the appropriations for Rural Health Outreach Program (fund 0347, appropriation 37700), Forensic Lab (fund 0347, appropriation 37701), and Center for Rural Health (fund 0347, appropriation 37702) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*97 - Marshall University –*

*General Administration Fund*

(WV Code Chapter 18B)

Fund 0348 FY 2023 Org 0471

|                                     |       |                  |
|-------------------------------------|-------|------------------|
| Marshall University .....           | 44800 | \$ 48,961,949    |
| Luke Lee Listening Language         |       |                  |
| and Learning Lab (R).....           | 44801 | 151,939          |
| Vista E-Learning (R).....           | 51900 | 229,019          |
| State Priorities – Brownfield       |       |                  |
| Professional Development (R).....   | 53100 | 309,606          |
| Marshall University Graduate        |       |                  |
| College Writing Project (R).....    | 80700 | 25,412           |
| WV Autism Training Center (R) ..... | 93200 | <u>1,869,776</u> |
| Total.....                          |       | \$ 51,547,701    |

Any unexpended balances remaining in the appropriations for Luke Lee Listening Language and Learning Lab (fund 0348, appropriation 44801), Vista E-Learning (fund 0348, appropriation 51900), State Priorities – Brownfield Professional Development (fund 0348, appropriation 53100), Marshall University Graduate College Writing Project (fund 0348, appropriation 80700), and WV Autism Training Center (fund 0348, appropriation 93200) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*98 - West Virginia School of Osteopathic Medicine*

(WV Code Chapter 18B)

Fund 0336 FY 2023 Org 0476

|                                                                       |       |    |                |
|-----------------------------------------------------------------------|-------|----|----------------|
| West Virginia School of<br>Osteopathic Medicine .....                 | 17200 | \$ | 5,247,095      |
| Rural Health Outreach<br>Programs (R).....                            | 37700 |    | 169,035        |
| West Virginia School of<br>Osteopathic Medicine<br>BRIM Subsidy ..... | 40300 |    | 153,405        |
| Rural Health Initiative –<br>Medical Schools Support.....             | 58100 |    | <u>403,439</u> |
| Total.....                                                            |       | \$ | 5,972,974      |

Any unexpended balance remaining in the appropriation for Rural Health Outreach Programs (fund 0336, appropriation 37700) at the close of fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

*99 - Bluefield State College*

(WV Code Chapter 18B)

Fund 0354 FY 2023 Org 0482

|                               |       |    |           |
|-------------------------------|-------|----|-----------|
| Bluefield State College ..... | 40800 | \$ | 6,648,770 |
|-------------------------------|-------|----|-----------|

*100 - Concord University*

(WV Code Chapter 18B)

Fund 0357 FY 2023 Org 0483

|                          |       |    |            |
|--------------------------|-------|----|------------|
| Concord University ..... | 41000 | \$ | 10,836,709 |
|--------------------------|-------|----|------------|

*101 - Fairmont State University*

(WV Code Chapter 18B)

Fund 0360 FY 2023 Org 0484



2022] HOUSE OF DELEGATES 2731

|                                 |       |               |
|---------------------------------|-------|---------------|
| Fairmont State University ..... | 41400 | \$ 19,273,190 |
|---------------------------------|-------|---------------|

102 - Glenville State University

(WV Code Chapter 18B)

Fund 0363 FY 2023 Org 0485

|                                      |              |
|--------------------------------------|--------------|
| Glenville State University.....xxxxx | \$ 6,768,535 |
|--------------------------------------|--------------|

103 - Shepherd University

(WV Code Chapter 18B)

Fund 0366 FY 2023 Org 0486

|                          |       |               |
|--------------------------|-------|---------------|
| Shepherd University..... | 43200 | \$ 13,026,830 |
|--------------------------|-------|---------------|

104 - West Liberty University

(WV Code Chapter 18B)

Fund 0370 FY 2023 Org 0488

|                              |       |    |           |
|------------------------------|-------|----|-----------|
| West Liberty University..... | 43900 | \$ | 9,552,600 |
|------------------------------|-------|----|-----------|

105 - West Virginia State University

(WV Code Chapter 18B)

Fund 0373 FY 2023 Org 0490

|                                      |       |               |
|--------------------------------------|-------|---------------|
| West Virginia State University ..... | 44100 | \$ 11,380,098 |
|--------------------------------------|-------|---------------|

|                                |        |         |
|--------------------------------|--------|---------|
| Healthy Grandfamilies (R)..... | xxxxxx | 800,000 |
|--------------------------------|--------|---------|

West Virginia State University

|                       |       |                  |
|-----------------------|-------|------------------|
| Land Grant Match..... | 95600 | <u>3,950,192</u> |
|-----------------------|-------|------------------|

|            |               |
|------------|---------------|
| Total..... | \$ 16,130,290 |
|------------|---------------|

106 - Higher Education Policy Commission –

### Administration -

*West Virginia Network for Educational Telecomputing (WVNET)*

(WV Code Chapter 18B)

Fund 0551 FY 2023 Org 0495

WVNET ..... 16900      \$      1,817,992

**MISCELLANEOUS BOARDS AND COMMISSIONS***107 - Adjutant General –**State Militia*

(WV Code Chapter 15)

Fund 0433 FY 2023 Org 0603

## Salary and Benefits of

Cabinet Secretary and

|                                     |       |    |                  |
|-------------------------------------|-------|----|------------------|
| Agency Heads.....                   | 00201 | \$ | 189,000          |
| Unclassified (R) .....              | 09900 |    | 106,798          |
| College Education Fund.....         | 23200 |    | 4,000,000        |
| Civil Air Patrol.....               | 23400 |    | 249,664          |
| Armory Board Transfer.....          | 70015 |    | 2,317,555        |
| Mountaineer ChalleNGe Academy ..... | 70900 |    | 3,324,624        |
| Military Authority (R).....         | 74800 |    | 6,251,727        |
| Drug Enforcement and Support .....  | 74801 |    | <u>1,532,374</u> |
| Total.....                          |       | \$ | 17,971,742       |

Any unexpended balances remaining in the appropriations for Unclassified (fund 0433, appropriation 09900), Military Authority (fund 0433, appropriation 74800), and Military Authority – Surplus (fund 0433, appropriation 74899) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriations an amount approved by the Adjutant General may be transferred to the State Armory Board for operation and maintenance of National Guard Armories.

The adjutant general shall have the authority to transfer between appropriations.

From the above appropriation and other state and federal funding, the Adjutant General shall provide an amount not less than \$3,324,624 to the Mountaineer Challenge Academy to meet anticipated program demand.

*108 - Adjutant General –*

*Military Fund*

(WV Code Chapter 15)

Fund 0605 FY 2023 Org 0603

|                                |       |                         |
|--------------------------------|-------|-------------------------|
| Personal Services and          |       |                         |
| Employee Benefits.....         | 00100 | \$ 100,000              |
| Current Expenses .....         | 13000 | <u>57,775</u>           |
| Total.....                     |       | \$ 157,775              |
| Total TITLE II, Section 1 –    |       |                         |
| General Revenue (Including     |       |                         |
| claims against the state)..... |       | <u>\$ 4,635,701,389</u> |

**Sec. 2. Appropriations from state road fund.** — From the state road fund there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2023.

**DEPARTMENT OF TRANSPORTATION**

*109 - Division of Motor Vehicles*

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20, and 24A)

Fund 9007 FY 2023 Org 0802

|                                |          | State         | Road |
|--------------------------------|----------|---------------|------|
|                                | Appro-   |               | Fund |
|                                | priation |               |      |
| Personal Services and          |          |               |      |
| Employee Benefits.....         | 00100    | \$ 36,894,264 |      |
| Salary and Benefits of Cabinet |          |               |      |

|                                  |       |                      |
|----------------------------------|-------|----------------------|
| Secretary and Agency Heads ..... | 00201 | 129,500              |
| Current Expenses .....           | 13000 | 22,334,363           |
| Repairs and Alterations .....    | 06400 | 144,000              |
| Equipment .....                  | 07000 | 1,080,000            |
| Buildings .....                  | 25800 | 10,000               |
| Other Assets .....               | 69000 | 2,480,000            |
| BRIM Premium .....               | 91300 | 75,117               |
| Total .....                      |       | <u>\$ 63,147,244</u> |

*110 - Division of Highways*

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2023 Org 0803

Salary and Benefits of Cabinet

|                                  |       |                         |
|----------------------------------|-------|-------------------------|
| Secretary and Agency Heads ..... | 00201 | \$ 200,000              |
| Debt Service .....               | 04000 | 135,500,000             |
| Maintenance .....                | 23700 | 529,881,528             |
| Inventory Revolving .....        | 27500 | 4,000,000               |
| Equipment Revolving .....        | 27600 | 19,400,841              |
| General Operations .....         | 27700 | 178,042,168             |
| Interstate Construction .....    | 27800 | 115,000,000             |
| Other Federal Aid Programs ..... | 27900 | 345,000,000             |
| Appalachian Programs .....       | 28000 | 100,000,000             |
| Highway Litter Control .....     | 28200 | 1,650,000               |
| Total .....                      |       | <u>\$ 1,428,674,537</u> |

The above appropriations are to be expended in accordance with the provisions of Chapters 17 and 17C of the code.

The Commissioner of Highways shall have the authority to operate revolving funds within the State Road Fund for the operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories and materials and supplies.

There is hereby appropriated in addition to the above appropriations, sufficient money for the payment of claims, accrued or arising during this budgetary period, to be paid in

accordance with Sections 17 and 18, Article 2, Chapter 14 of the code.

It is the intent of the Legislature to capture and match all federal funds available for expenditure on the Appalachian highway system at the earliest possible time. Therefore, should amounts in excess of those appropriated be required for the purposes of Appalachian programs, funds in excess of the amount appropriated may be made available upon recommendation of the commissioner and approval of the Governor. Further, for the purpose of Appalachian programs, funds appropriated by appropriation may be transferred to other appropriations upon recommendation of the commissioner and approval of the Governor.

Total TITLE II, Section 2 –

|                                                               |                         |
|---------------------------------------------------------------|-------------------------|
| State Road Fund (Including<br>claims against the state) ..... | <u>\$ 1,492,255,013</u> |
|---------------------------------------------------------------|-------------------------|

**Sec. 3. Appropriations from other funds.** — From the funds designated there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2023.

## LEGISLATIVE

### *III - Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 1731 FY 2023 Org 2300

|                                   | <b>Appro-<br/>priation</b> | <b>Other<br/>Funds</b> |
|-----------------------------------|----------------------------|------------------------|
| Personal Services and             |                            |                        |
| Employee Benefits.....00100       | \$                         | 498,020                |
| Current Expenses .....13000       |                            | 133,903                |
| Repairs and Alterations.....06400 |                            | 1,000                  |
| Economic Loss Claim               |                            |                        |
| Payment Fund .....33400           |                            | 2,000,000              |

|                   |       |    |              |
|-------------------|-------|----|--------------|
| Other Assets..... | 69000 |    | <u>3,700</u> |
| Total.....        |       | \$ | 2,636,623    |

JUDICIAL

112 - Supreme Court –

Court Advanced Technology Subscription Fund

(WV Code Chapter 51)

Fund 1704 FY 2023 Org 2400

|                        |       |    |         |
|------------------------|-------|----|---------|
| Current Expenses ..... | 13000 | \$ | 100,000 |
|------------------------|-------|----|---------|

113 - Supreme Court –

Adult Drug Court Participation Fund

(WV Code Chapter 62)

Fund 1705 FY 2023 Org 2400

|                        |       |    |         |
|------------------------|-------|----|---------|
| Current Expenses ..... | 13000 | \$ | 200,000 |
|------------------------|-------|----|---------|

114 - Supreme Court –

Family Court Fund

(WV Code Chapter 51)

Fund 1763 FY 2023 Org 2400

|                        |       |    |           |
|------------------------|-------|----|-----------|
| Current Expenses ..... | 13000 | \$ | 1,050,000 |
|------------------------|-------|----|-----------|

115 - Supreme Court –

Court Facilities Maintenance Fund

(WV Code Chapter 51)

Fund 1766 FY 2023 Org 2400

|                        |       |    |         |
|------------------------|-------|----|---------|
| Current Expenses ..... | 13000 | \$ | 250,000 |
|------------------------|-------|----|---------|

|                              |       |    |                |
|------------------------------|-------|----|----------------|
| Repairs and Alterations..... | 06400 |    | <u>250,000</u> |
| 3 Total.....                 |       | \$ | 500,000        |

**EXECUTIVE***116 - Governor's Office –**Minority Affairs Fund*

(WV Code Chapter 5)

Fund 1058 FY 2023 Org 0100

|                          |       |    |              |
|--------------------------|-------|----|--------------|
| Personal Services and    |       |    |              |
| Employee Benefits.....   | 00100 | \$ | 233,788      |
| Current Expenses .....   | 13000 |    | 453,200      |
| Martin Luther King, Jr.  |       |    |              |
| Holiday Celebration..... | 03100 |    | <u>8,926</u> |
| Total.....               |       | \$ | 695,914      |

*117 - Auditor's Office –**Grant Recovery Fund*

(WV Code Chapter 12)

Fund 1205 FY 2023 Org 1200

|                              |       |    |                |
|------------------------------|-------|----|----------------|
| Repairs and Alterations..... | 06400 | \$ | 2,000          |
| Equipment .....              | 07000 |    | 7,000          |
| Current Expenses .....       | 13000 |    | <u>191,000</u> |
| Total.....                   |       | \$ | 200,000        |

*118 - Auditor's Office –**Land Operating Fund*

(WV Code Chapters 11A, 12, and 36)

Fund 1206 FY 2023 Org 1200

|                        |       |    |         |
|------------------------|-------|----|---------|
| Personal Services and  |       |    |         |
| Employee Benefits..... | 00100 | \$ | 832,826 |

|                                     |       |                  |
|-------------------------------------|-------|------------------|
| Unclassified.....                   | 09900 | 15,139           |
| Current Expenses .....              | 13000 | 715,291          |
| Repairs and Alterations.....        | 06400 | 2,600            |
| Equipment.....                      | 07000 | 426,741          |
| Cost of Delinquent Land Sales ..... | 76800 | <u>1,841,168</u> |
| Total.....                          |       | \$ 3,833,765     |

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the necessary amount for the expenditure of funds other than Personal Services and Employee Benefits to enable the division to pay the direct expenses relating to land sales as provided in Chapter 11A of the West Virginia Code.

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by law.

*119 - Auditor's Office –*

*Local Government Purchasing Card Expenditure Fund*

(WV Code Chapter 6)

Fund 1224 FY 2023 Org 1200

|                                     |       |                  |
|-------------------------------------|-------|------------------|
| Personal Services and               |       |                  |
| Employee Benefits.....              | 00100 | \$ 639,881       |
| Current Expenses .....              | 13000 | 282,030          |
| Repairs and Alterations.....        | 06400 | 6,000            |
| Equipment.....                      | 07000 | 10,805           |
| Other Assets.....                   | 69000 | 50,000           |
| Statutory Revenue Distribution..... | 74100 | <u>3,500,000</u> |
| Total.....                          |       | \$ 4,488,716     |

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the amount necessary to meet the transfer of revenue distribution requirements to provide a proportionate share of rebates back to the general fund of local governments based on utilization of the program in accordance with W.Va. Code §6-9-2b.



*120 - Auditor's Office –**Securities Regulation Fund*

(WV Code Chapter 32)

Fund 1225 FY 2023 Org 1200

|                              |       |                  |
|------------------------------|-------|------------------|
| Personal Services and        |       |                  |
| Employee Benefits.....       | 00100 | \$ 2,826,332     |
| Unclassified.....            | 09900 | 31,866           |
| Current Expenses .....       | 13000 | 1,463,830        |
| Repairs and Alterations..... | 06400 | 12,400           |
| Equipment.....               | 07000 | 594,700          |
| Other Assets.....            | 69000 | <u>1,200,000</u> |
| Total.....                   |       | \$ 6,129,128     |

*121 - Auditor's Office –**Technology Support and Acquisition Fund*

(WV Code Chapter 12)

Fund 1233 FY 2023 Org 1200

|                        |       |              |
|------------------------|-------|--------------|
| Current Expenses ..... | 13000 | \$ 10,000    |
| Other Assets.....      | 69000 | <u>5,000</u> |
| Total.....             |       | \$ 15,000    |

Fifty percent of the deposits made into this fund shall be transferred to the Treasurer's Office – Technology Support and Acquisition Fund (fund 1329, org 1300) for expenditure for the purposes described in W.Va. Code §12-3-10c.

*122 - Auditor's Office –**Purchasing Card Administration Fund*

(WV Code Chapter 12)

Fund 1234 FY 2023 Org 1200

## Personal Services and

|                                     |       |                  |
|-------------------------------------|-------|------------------|
| Employee Benefits.....              | 00100 | \$ 3,192,502     |
| Current Expenses .....              | 13000 | 2,303,622        |
| Repairs and Alterations.....        | 06400 | 5,500            |
| Equipment .....                     | 07000 | 850,000          |
| Other Assets.....                   | 69000 | 508,886          |
| Statutory Revenue Distribution..... | 74100 | <u>8,000,000</u> |
| Total.....                          |       | \$ 14,860,510    |

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the amount necessary to meet the transfer and revenue distribution requirements to the Purchasing Improvement Fund (fund 2264), the Entrepreneurship and Innovation Investment Fund (fund 3014), the Hatfield-McCoy Regional Recreation Authority, and the State Park Operating Fund (fund 3265) per W.Va. Code §12-3-10d.

*123 - Auditor's Office –*

*Chief Inspector's Fund*

(WV Code Chapter 6)

Fund 1235 FY 2023 Org 1200

## Personal Services and

|                        |       |               |
|------------------------|-------|---------------|
| Employee Benefits..... | 00100 | \$ 3,682,850  |
| Current Expenses ..... | 13000 | 765,915       |
| Equipment.....         | 07000 | <u>50,000</u> |
| Total.....             |       | \$ 4,498,765  |

*124 - Auditor's Office –*

*Volunteer Fire Department Workers'*

*Compensation Premium Subsidy Fund*

(WV Code Chapters 12 and 33)

Fund 1239 FY 2023 Org 1200

## Volunteer Fire Department

## Workers' Compensation

|               |       |    |           |
|---------------|-------|----|-----------|
| Subsidy ..... | 83200 | \$ | 2,500,000 |
|---------------|-------|----|-----------|

*125 - Treasurer's Office –**College Prepaid Tuition and Savings Program**Administrative Account*

(WV Code Chapter 18)

Fund 1301 FY 2023 Org 1300

## Personal Services and

|                        |       |    |         |
|------------------------|-------|----|---------|
| Employee Benefits..... | 00100 | \$ | 830,643 |
|------------------------|-------|----|---------|

|                   |       |  |        |
|-------------------|-------|--|--------|
| Unclassified..... | 09900 |  | 14,000 |
|-------------------|-------|--|--------|

|                        |       |  |           |
|------------------------|-------|--|-----------|
| Current Expenses ..... | 13000 |  | 1,397,559 |
|------------------------|-------|--|-----------|

|            |  |    |           |
|------------|--|----|-----------|
| Total..... |  | \$ | 2,242,202 |
|------------|--|----|-----------|

*126 - Treasurer's Office-**Jumpstart Savings Program Expense Fund*

(WV Code Chapter 18)

Fund 1303 FY 2023 Org 1300

|                   |       |    |         |
|-------------------|-------|----|---------|
| Unclassified..... | 09900 | \$ | 188,502 |
|-------------------|-------|----|---------|

|                        |       |  |         |
|------------------------|-------|--|---------|
| Current Expenses ..... | 13000 |  | 411,498 |
|------------------------|-------|--|---------|

|            |  |    |         |
|------------|--|----|---------|
| Total..... |  | \$ | 600,000 |
|------------|--|----|---------|

*127 - Department of Agriculture –**Agriculture Fees Fund*

(WV Code Chapter 19)

Fund 1401 FY 2023 Org 1400

## Personal Services and

|                        |       |    |           |
|------------------------|-------|----|-----------|
| Employee Benefits..... | 00100 | \$ | 2,534,889 |
|------------------------|-------|----|-----------|

|                   |       |  |        |
|-------------------|-------|--|--------|
| Unclassified..... | 09900 |  | 37,425 |
|-------------------|-------|--|--------|

|                               |       |               |
|-------------------------------|-------|---------------|
| Current Expenses .....        | 13000 | 1,856,184     |
| Repairs and Alterations ..... | 06400 | 158,500       |
| Equipment .....               | 07000 | 436,209       |
| Other Assets .....            | 69000 | <u>10,000</u> |
| Total .....                   |       | \$ 5,033,207  |

*128 - Department of Agriculture –*

*West Virginia Rural Rehabilitation Program*

(WV Code Chapter 19)

Fund 1408 FY 2023 Org 1400

|                         |       |                  |
|-------------------------|-------|------------------|
| Personal Services and   |       |                  |
| Employee Benefits ..... | 00100 | \$ 80,974        |
| Unclassified .....      | 09900 | 10,476           |
| Current Expenses .....  | 13000 | <u>2,200,000</u> |
| Total .....             |       | \$ 2,291,450     |

*129 - Department of Agriculture –*

*General John McCausland Memorial Farm Fund*

(WV Code Chapter 19)

Fund 1409 FY 2023 Org 1400

|                               |       |               |
|-------------------------------|-------|---------------|
| Personal Services and         |       |               |
| Employee Benefits .....       | 00100 | \$ 76,415     |
| Unclassified .....            | 09900 | 2,100         |
| Current Expenses .....        | 13000 | 89,500        |
| Repairs and Alterations ..... | 06400 | 36,400        |
| Equipment .....               | 07000 | <u>15,000</u> |
| Total .....                   |       | \$ 219,415    |

The above appropriations shall be expended in accordance with Article 26, Chapter 19 of the Code.

*130 - Department of Agriculture –*

*Farm Operating Fund*

## (WV Code Chapter 19)

Fund 1412 FY 2023 Org 1400

|                              |       |                     |
|------------------------------|-------|---------------------|
| Personal Services and        |       |                     |
| Employee Benefits.....       | 00100 | \$ 888,219          |
| Unclassified.....            | 09900 | 15,173              |
| Current Expenses .....       | 13000 | 1,367,464           |
| Repairs and Alterations..... | 06400 | 388,722             |
| Equipment .....              | 07000 | 399,393             |
| Other Assets .....           | 69000 | 20,000              |
| Total.....                   |       | <u>\$ 3,078,971</u> |

*131 - Department of Agriculture –**Capital Improvements Fund*

## (WV Code Chapter 19)

Fund 1413 FY 2023 Org 1400

|                              |       |                     |
|------------------------------|-------|---------------------|
| Unclassified.....            | 09900 | 20,000              |
| Current Expenses .....       | 13000 | 510,000             |
| Repairs and Alterations..... | 06400 | 250,000             |
| Equipment .....              | 07000 | 350,000             |
| Building Improvements .....  | 25800 | 670,000             |
| Other Assets .....           | 69000 | 200,000             |
| Total.....                   |       | <u>\$ 2,000,000</u> |

*132 - Department of Agriculture –**Donated Food Fund*

## (WV Code Chapter 19)

Fund 1446 FY 2023 Org 1400

|                              |       |              |
|------------------------------|-------|--------------|
| Personal Services and        |       |              |
| Employee Benefits.....       | 00100 | \$ 1,074,322 |
| Unclassified.....            | 09900 | 45,807       |
| Current Expenses .....       | 13000 | 3,410,542    |
| Repairs and Alterations..... | 06400 | 128,500      |

|                    |       |                |
|--------------------|-------|----------------|
| Equipment .....    | 07000 | 10,000         |
| Other Assets ..... | 69000 | 27,000         |
| Land .....         | 73000 | <u>250,000</u> |
| Total .....        |       | \$ 4,946,171   |

*133 - Department of Agriculture –  
Integrated Predation Management Fund*

(WV Code Chapter 7)

Fund 1465 FY 2023 Org 1400

|                        |       |            |
|------------------------|-------|------------|
| Current Expenses ..... | 13000 | \$ 112,500 |
|------------------------|-------|------------|

*134 - Department of Agriculture –  
West Virginia Spay Neuter Assistance Fund*

(WV Code Chapter 19)

Fund 1481 FY 2023 Org 1400

|                        |       |            |
|------------------------|-------|------------|
| Current Expenses ..... | 13000 | \$ 600,000 |
|------------------------|-------|------------|

*135 - Department of Agriculture –  
Veterans and Warriors to Agriculture Fund*

(WV Code Chapter 19)

Fund 1483 FY 2023 Org 1400

|                        |       |          |
|------------------------|-------|----------|
| Current Expenses ..... | 13000 | \$ 7,500 |
|------------------------|-------|----------|

*136 - Department of Agriculture –  
State FFA-FHA Camp and Conference Center*

(WV Code Chapters 18 and 18A)

Fund 1484 FY 2023 Org 1400

|                              |       |                     |
|------------------------------|-------|---------------------|
| Personal Services and        |       |                     |
| Employee Benefits.....       | 00100 | \$ 1,218,564        |
| Unclassified.....            | 09900 | 17,000              |
| Current Expenses .....       | 13000 | 1,143,306           |
| Repairs and Alterations..... | 06400 | 82,500              |
| Equipment.....               | 07000 | 76,000              |
| Buildings.....               | 25800 | 1,000               |
| Other Assets.....            | 69000 | 10,000              |
| Land .....                   | 73000 | 1,000               |
| Total.....                   |       | <u>\$ 2,549,370</u> |

*137 - Attorney General –*

*Antitrust Enforcement Fund*

(WV Code Chapter 47)

Fund 1507 FY 2023 Org 1500

|                              |       |                   |
|------------------------------|-------|-------------------|
| Personal Services and        |       |                   |
| Employee Benefits.....       | 00100 | \$ 363,466        |
| Current Expenses .....       | 13000 | 148,803           |
| Repairs and Alterations..... | 06400 | 1,000             |
| Equipment.....               | 07000 | 1,000             |
| Total.....                   |       | <u>\$ 514,269</u> |

*138 - Attorney General –*

*Preneed Burial Contract Regulation Fund*

(WV Code Chapter 47)

Fund 1513 FY 2023 Org 1500

|                              |       |                   |
|------------------------------|-------|-------------------|
| Personal Services and        |       |                   |
| Employee Benefits.....       | 00100 | \$ 228,620        |
| Current Expenses .....       | 13000 | 54,615            |
| Repairs and Alterations..... | 06400 | 1,000             |
| Equipment.....               | 07000 | 1,000             |
| Total.....                   |       | <u>\$ 285,235</u> |

*139 - Attorney General –*

*Preneed Funeral Guarantee Fund*

(WV Code Chapter 47)

Fund 1514 FY 2023 Org 1500

|                        |       |    |         |
|------------------------|-------|----|---------|
| Current Expenses ..... | 13000 | \$ | 901,135 |
|------------------------|-------|----|---------|

*140 - Secretary of State –*

*Service Fees and Collection Account*

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2023 Org 1600

|                        |       |    |           |
|------------------------|-------|----|-----------|
| Personal Services and  |       |    |           |
| Employee Benefits..... | 00100 | \$ | 1,110,490 |
| Unclassified.....      | 09900 |    | 4,524     |
| Current Expenses ..... | 13000 |    | 8,036     |
| Total.....             |       | \$ | 1,123,050 |

*141 - Secretary of State –*

*General Administrative Fees Account*

(WV Code Chapters 3, 5, and 59)

Fund 1617 FY 2023 Org 1600

|                               |       |    |           |
|-------------------------------|-------|----|-----------|
| Personal Services and         |       |    |           |
| Employee Benefits.....        | 00100 | \$ | 3,041,423 |
| Unclassified.....             | 09900 |    | 25,529    |
| Current Expenses .....        | 13000 |    | 976,716   |
| Technology Improvements ..... | 59900 |    | 870,000   |
| Total.....                    |       | \$ | 4,913,668 |

**DEPARTMENT OF ADMINISTRATION**

*142 - Department of Administration –*



*Office of the Secretary –**Tobacco Settlement Fund*

(WV Code Chapter 4)

Fund 2041 FY 2023 Org 0201

## Tobacco Settlement Securitization

|                         |       |    |            |
|-------------------------|-------|----|------------|
| Trustee Pass Thru ..... | 65000 | \$ | 80,000,000 |
|-------------------------|-------|----|------------|

*143 - Department of Administration –**Office of the Secretary –**Employee Pension and Health Care Benefit Fund*

(WV Code Chapter 18)

Fund 2044 FY 2023 Org 0201

|                        |       |    |            |
|------------------------|-------|----|------------|
| Current Expenses ..... | 13000 | \$ | 40,523,000 |
|------------------------|-------|----|------------|

The above appropriation for Current Expenses (fund 2044, appropriation 13000) shall be transferred to the Consolidated Public Retirement Board – Teachers’ Accumulation Fund (fund 2600).

*144 - Department of Administration –**Division of Finance –**Shared Services Section Fund*

(WV Code Chapter 5A)

Fund 2020 FY 2023 Org 0209

## Personal Services and

|                        |       |    |                |
|------------------------|-------|----|----------------|
| Employee Benefits..... | 00100 | \$ | 1,545,384      |
| Current Expenses ..... | 13000 |    | <u>500,000</u> |
| Total.....             |       | \$ | 2,045,384      |

*145 - Division of Information Services and Communications*

(WV Code Chapter 5A)

Fund 2220 FY 2023 Org 0210

|                        |       |                  |
|------------------------|-------|------------------|
| Personal Services and  |       |                  |
| Employee Benefits..... | 00100 | \$ 23,052,937    |
| Unclassified.....      | 09900 | 344,119          |
| Current Expenses ..... | 13000 | 13,418,001       |
| Equipment.....         | 07000 | 2,050,000        |
| Other Assets.....      | 69000 | <u>1,045,000</u> |
| Total.....             |       | \$ 39,910,057    |

The total amount of these appropriations shall be paid from a special revenue fund out of collections made by the Division of Information Services and Communications as provided by law.

Each spending unit operating from the General Revenue Fund, from special revenue funds or receiving reimbursement for postage from the federal government shall be charged monthly for all postage meter service and shall reimburse the revolving fund monthly for all such amounts.

*146 - Division of Purchasing –**Vendor Fee Fund*

(WV Code Chapter 5A)

Fund 2263 FY 2023 Org 0213

|                        |       |            |
|------------------------|-------|------------|
| Personal Services and  |       |            |
| Employee Benefits..... | 00100 | \$ 579,296 |
| Current Expenses ..... | 13000 | 9,115      |
| BRIM Premium.....      | 91300 | <u>810</u> |
| Total.....             |       | \$ 589,221 |

*147 - Division of Purchasing –**Purchasing Improvement Fund*

## (WV Code Chapter 5A)

Fund 2264 FY 2023 Org 0213

## Personal Services

|                              |       |    |           |
|------------------------------|-------|----|-----------|
| Employee Benefits.....       | 00100 | \$ | 992,206   |
| Unclassified.....            | 09900 |    | 5,562     |
| Current Expenses .....       | 13000 |    | 492,066   |
| Repairs and Alterations..... | 06400 |    | 500       |
| Equipment.....               | 07000 |    | 500       |
| Other Assets.....            | 69000 |    | 500       |
| BRIM Premium.....            | 91300 |    | 850       |
| Total.....                   |       | \$ | 1,492,184 |

*148 - Travel Management –**Aviation Fund*

## (WV Code Chapter 5A)

Fund 2302 FY 2023 Org 0215

|                              |       |    |           |
|------------------------------|-------|----|-----------|
| Unclassified.....            | 09900 | \$ | 1,000     |
| Current Expenses .....       | 13000 |    | 149,700   |
| Repairs and Alterations..... | 06400 |    | 1,275,237 |
| Equipment.....               | 07000 |    | 1,000     |
| Buildings.....               | 25800 |    | 100       |
| Other Assets.....            | 69000 |    | 100       |
| Land .....                   | 73000 |    | 100       |
| Total.....                   |       | \$ | 1,427,237 |

*149 - Fleet Management Division Fund*

## (WV Code Chapter 5A)

Fund 2301 FY 2023 Org 0216

## Personal Services and

|                              |       |    |            |
|------------------------------|-------|----|------------|
| Employee Benefits.....       | 00100 | \$ | 784,375    |
| Unclassified.....            | 09900 |    | 4,000      |
| Current Expenses .....       | 13000 |    | 11,630,614 |
| Repairs and Alterations..... | 06400 |    | 12,000     |

|                    |       |               |
|--------------------|-------|---------------|
| Equipment .....    | 07000 | 800,000       |
| Other Assets ..... | 69000 | <u>2,000</u>  |
| Total .....        |       | \$ 13,232,989 |

*150 - Division of Personnel*

(WV Code Chapter 29)

Fund 2440 FY 2023 Org 0222

|                                  |       |               |
|----------------------------------|-------|---------------|
| Personal Services and            |       |               |
| Employee Benefits .....          | 00100 | \$ 4,781,898  |
| Salary and Benefits of Cabinet   |       |               |
| Secretary and Agency Heads ..... | 00201 | 122,500       |
| Unclassified .....               | 09900 | 51,418        |
| Current Expenses .....           | 13000 | 1,262,813     |
| Repairs and Alterations .....    | 06400 | 5,000         |
| Equipment .....                  | 07000 | 20,000        |
| Other Assets .....               | 69000 | <u>60,000</u> |
| Total .....                      |       | \$ 6,303,629  |

The total amount of these appropriations shall be paid from a special revenue fund out of fees collected by the Division of Personnel.

*151 - West Virginia Prosecuting Attorneys Institute*

(WV Code Chapter 7)

Fund 2521 FY 2023 Org 0228

|                                  |       |            |
|----------------------------------|-------|------------|
| Personal Services and            |       |            |
| Employee Benefits .....          | 00100 | \$ 136,097 |
| Salary and Benefits of Cabinet   |       |            |
| Secretary and Agency Heads ..... | 00201 | 119,000    |
| Unclassified .....               | 09900 | 4,023      |
| Current Expenses .....           | 13000 | 297,528    |
| Repairs and Alterations .....    | 06400 | 600        |
| Equipment .....                  | 07000 | 500        |
| Other Assets .....               | 69000 | <u>500</u> |
| Total .....                      |       | \$ 558,248 |

*152 - Office of Technology –**Chief Technology Officer Administration Fund*

(WV Code Chapter 5A)

Fund 2531 FY 2023 Org 0231

|                              |       |                   |
|------------------------------|-------|-------------------|
| Personal Services and        |       |                   |
| Employee Benefits.....       | 00100 | \$ 454,411        |
| Unclassified.....            | 09900 | 6,949             |
| Current Expenses .....       | 13000 | 196,504           |
| Repairs and Alterations..... | 06400 | 1,000             |
| Equipment.....               | 07000 | 50,000            |
| Other Assets.....            | 69000 | 10,000            |
| Total.....                   |       | <u>\$ 718,864</u> |

From the above fund, the provisions of W.Va. Code §11B-2-18 shall not operate to permit expenditures in excess of the funds authorized for expenditure herein.

**DEPARTMENT OF COMMERCE***153 - Division of Forestry*

(WV Code Chapter 19)

Fund 3081 FY 2023 Org 0305

|                              |       |                     |
|------------------------------|-------|---------------------|
| Personal Services and        |       |                     |
| Employee Benefits.....       | 00100 | \$ 382,137          |
| Current Expenses .....       | 13000 | 282,202             |
| Repairs and Alterations..... | 06400 | 53,000              |
| Equipment.....               | 07000 | 300,000             |
| Total.....                   |       | <u>\$ 1,017,339</u> |

*154 - Division of Forestry –**Timbering Operations Enforcement Fund*

(WV Code Chapter 19)

Fund 3082 FY 2023 Org 0305

|                              |       |                   |
|------------------------------|-------|-------------------|
| Personal Services and        |       |                   |
| Employee Benefits.....       | 00100 | \$ 248,321        |
| Current Expenses .....       | 13000 | 87,036            |
| Repairs and Alterations..... | 06400 | 11,250            |
| Total.....                   |       | <u>\$ 346,607</u> |

*155 - Division of Forestry –*

*Severance Tax Operations*

(WV Code Chapter 11)

Fund 3084 FY 2023 Org 0305

|                        |       |                   |
|------------------------|-------|-------------------|
| Personal Services and  |       |                   |
| Employee Benefits..... | 00100 | \$ 559,626        |
| Current Expenses ..... | 13000 | 117,466           |
| Total.....             |       | <u>\$ 677,092</u> |

*156 - Geological and Economic Survey –*

*Geological and Analytical Services Fund*

(WV Code Chapter 29)

Fund 3100 FY 2023 Org 0306

|                              |       |                   |
|------------------------------|-------|-------------------|
| Personal Services and        |       |                   |
| Employee Benefits.....       | 00100 | \$ 37,966         |
| Unclassified.....            | 09900 | 2,182             |
| Current Expenses .....       | 13000 | 141,631           |
| Repairs and Alterations..... | 06400 | 50,000            |
| Equipment.....               | 07000 | 20,000            |
| Other Assets.....            | 69000 | 10,000            |
| Total.....                   |       | <u>\$ 261,779</u> |

The above appropriations shall be used in accordance with W.Va. Code §29-2-4.

*157 - Division of Labor –*

*West Virginia Jobs Act Fund*

## (WV Code Chapter 21)

Fund 3176 FY 2023 Org 0308

|                        |       |               |
|------------------------|-------|---------------|
| Current Expenses ..... | 13000 | 75,000        |
| Equipment .....        | 07000 | <u>25,000</u> |
| Total .....            |       | \$ 100,000    |

*158 - Division of Labor –**HVAC Fund*

## (WV Code Chapter 21)

Fund 3186 FY 2023 Org 0308

|                               |       |              |
|-------------------------------|-------|--------------|
| Personal Services and         |       |              |
| Employee Benefits .....       | 00100 | \$ 367,925   |
| Unclassified .....            | 09900 | 4,000        |
| Current Expenses .....        | 13000 | 82,000       |
| Repairs and Alterations ..... | 06400 | 4,500        |
| Buildings .....               | 25800 | 1,000        |
| BRIM Premium .....            | 91300 | <u>8,500</u> |
| Total .....                   |       | \$ 467,925   |

*159 - Division of Labor –**Elevator Safety Fund*

## (WV Code Chapter 21)

Fund 3188 FY 2023 Org 0308

|                                  |       |              |
|----------------------------------|-------|--------------|
| Personal Services and            |       |              |
| Employee Benefits .....          | 00100 | \$ 304,756   |
| Salary and Benefits of Cabinet   |       |              |
| Secretary and Agency Heads ..... | 00201 | 104,180      |
| Unclassified .....               | 09900 | 2,261        |
| Current Expenses .....           | 13000 | 94,712       |
| Repairs and Alterations .....    | 06400 | 2,000        |
| Buildings .....                  | 25800 | 1,000        |
| BRIM Premium .....               | 91300 | <u>8,500</u> |

|            |    |         |
|------------|----|---------|
| Total..... | \$ | 517,409 |
|------------|----|---------|

*160 - Division of Labor –*

*Steam Boiler Fund*

(WV Code Chapter 21)

Fund 3189 FY 2023 Org 0308

|                                   |    |         |
|-----------------------------------|----|---------|
| Personal Services and             |    |         |
| Employee Benefits.....00100       | \$ | 80,742  |
| Unclassified.....09900            |    | 1,000   |
| Current Expenses .....13000       |    | 20,000  |
| Repairs and Alterations.....06400 |    | 2,000   |
| Buildings.....25800               |    | 1,000   |
| BRIM Premium.....91300            |    | 1,000   |
| Total.....                        | \$ | 105,742 |

*161 - Division of Labor –*

*Crane Operator Certification Fund*

(WV Code Chapter 21)

Fund 3191 FY 2023 Org 0308

|                                   |    |         |
|-----------------------------------|----|---------|
| Personal Services and             |    |         |
| Employee Benefits.....00100       | \$ | 196,226 |
| Unclassified.....09900            |    | 1,380   |
| Current Expenses .....13000       |    | 51,265  |
| Repairs and Alterations.....06400 |    | 1,500   |
| Buildings.....25800               |    | 1,000   |
| BRIM Premium.....91300            |    | 7,000   |
| Total.....                        | \$ | 258,371 |

*162 - Division of Labor –*

*Amusement Rides and Amusement Attraction Safety Fund*

(WV Code Chapter 21)

Fund 3192 FY 2023 Org 0308



## Personal Services and

|                              |       |    |         |
|------------------------------|-------|----|---------|
| Employee Benefits.....       | 00100 | \$ | 192,424 |
| Unclassified.....            | 09900 |    | 1,281   |
| Current Expenses .....       | 13000 |    | 44,520  |
| Repairs and Alterations..... | 06400 |    | 2,000   |
| Buildings .....              | 25800 |    | 1,000   |
| BRIM Premium.....            | 91300 |    | 8,500   |
| Total.....                   |       | \$ | 249,725 |

*163 - Division of Labor –**State Manufactured Housing Administration Fund*

(WV Code Chapter 21)

Fund 3195 FY 2023 Org 0308

## Personal Services and

|                              |       |    |         |
|------------------------------|-------|----|---------|
| Employee Benefits.....       | 00100 | \$ | 294,645 |
| Unclassified.....            | 09900 |    | 1,847   |
| Current Expenses .....       | 13000 |    | 43,700  |
| Repairs and Alterations..... | 06400 |    | 1,000   |
| Buildings .....              | 25800 |    | 1,000   |
| BRIM Premium.....            | 91300 |    | 3,404   |
| Total.....                   |       | \$ | 345,596 |

*164 - Division of Labor –**Weights and Measures Fund*

(WV Code Chapter 47)

Fund 3196 FY 2023 Org 0308

|                              |       |    |         |
|------------------------------|-------|----|---------|
| Unclassified.....            | 09900 | \$ | 1,200   |
| Current Expenses .....       | 13000 |    | 93,000  |
| Repairs and Alterations..... | 06400 |    | 10,000  |
| Equipment .....              | 07000 |    | 10,000  |
| BRIM Premium.....            | 91300 |    | 7,000   |
| Total.....                   |       | \$ | 121,200 |

*165 - Division of Labor –**Bedding and Upholstery Fund*

(WV Code Chapter 21)

Fund 3198 FY 2023 Org 0308

|                              |       |                   |
|------------------------------|-------|-------------------|
| Personal Services and        |       |                   |
| Employee Benefits.....       | 00100 | \$ 152,270        |
| Unclassified.....            | 09900 | 2,000             |
| Current Expenses .....       | 13000 | 145,400           |
| Repairs and Alterations..... | 06400 | 2,000             |
| Buildings.....               | 25800 | 1,000             |
| BRIM Premium.....            | 91300 | 8,700             |
| Total.....                   |       | <u>\$ 311,370</u> |

*166 - Division of Labor –**Psychophysiological Examiners Fund*

(WV Code Chapter 21)

Fund 3199 FY 2023 Org 0308

|                        |       |          |
|------------------------|-------|----------|
| Current Expenses ..... | 13000 | \$ 4,000 |
|------------------------|-------|----------|

*167 - Division of Natural Resources –**License Fund – Wildlife Resources*

(WV Code Chapter 20)

Fund 3200 FY 2023 Org 0310

|                          |       |                      |
|--------------------------|-------|----------------------|
| Wildlife Resources.....  | 02300 | \$ 9,759,535         |
| Administration .....     | 15500 | 2,405,642            |
| Capital Improvements and |       |                      |
| Land Purchase (R) .....  | 24800 | 2,410,936            |
| Law Enforcement.....     | 80600 | 9,787,279            |
| Total.....               |       | <u>\$ 24,363,392</u> |

The total amount of these appropriations shall be paid from a special revenue fund out of fees collected by the Division of Natural Resources.

Any unexpended balance remaining in the appropriation for Capital Improvements and Land Purchase (fund 3200, appropriation 24800) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

*168 - Division of Natural Resources –*

*Natural Resources Game Fish and Aquatic Life Fund*

(WV Code Chapter 22)

Fund 3202 FY 2023 Org 0310

|                        |       |    |         |
|------------------------|-------|----|---------|
| Current Expenses ..... | 13000 | \$ | 125,000 |
|------------------------|-------|----|---------|

*169 - Division of Natural Resources –*

*Nongame Fund*

(WV Code Chapter 20)

Fund 3203 FY 2023 Org 0310

|                        |       |    |           |
|------------------------|-------|----|-----------|
| Personal Services and  |       |    |           |
| Employee Benefits..... | 00100 | \$ | 694,154   |
| Current Expenses ..... | 13000 |    | 201,810   |
| Equipment.....         | 07000 |    | 106,615   |
| Total.....             |       | \$ | 1,002,579 |

*170 - Division of Natural Resources –*

*Planning and Development Division*

(WV Code Chapter 20)

Fund 3205 FY 2023 Org 0310

|                        |       |    |         |
|------------------------|-------|----|---------|
| Personal Services and  |       |    |         |
| Employee Benefits..... | 00100 | \$ | 467,117 |

|                               |       |              |
|-------------------------------|-------|--------------|
| Current Expenses .....        | 13000 | 1,056,876    |
| Repairs and Alterations ..... | 06400 | 15,016       |
| Equipment .....               | 07000 | 8,300        |
| Buildings .....               | 25800 | 8,300        |
| Other Assets .....            | 69000 | 1,900,000    |
| Land .....                    | 73000 | 31,700       |
| Total .....                   |       | \$ 3,487,309 |

*171 - Division of Natural Resources –*

*State Parks and Recreation Endowment Fund*

(WV Code Chapter 20)

Fund 3211 FY 2023 Org 0310

|                               |       |           |
|-------------------------------|-------|-----------|
| Current Expenses .....        | 13000 | \$ 6,000  |
| Repairs and Alterations ..... | 06400 | 3,000     |
| Equipment .....               | 07000 | 2,000     |
| Buildings .....               | 25800 | 3,000     |
| Other Assets .....            | 69000 | 4,000     |
| Land .....                    | 73000 | 2,000     |
| Total .....                   |       | \$ 20,000 |

*172 - Division of Natural Resources –*

*Whitewater Study and Improvement Fund*

(WV Code Chapter 20)

Fund 3253 FY 2023 Org 0310

|                         |       |            |
|-------------------------|-------|------------|
| Personal Services and   |       |            |
| Employee Benefits ..... | 00100 | \$ 70,667  |
| Current Expenses .....  | 13000 | 64,778     |
| Equipment .....         | 07000 | 1,297      |
| Buildings .....         | 25800 | 6,969      |
| Total .....             |       | \$ 143,711 |

*173 - Division of Natural Resources –*

*Whitewater Advertising and Promotion Fund*

## (WV Code Chapter 20)

Fund 3256 FY 2023 Org 0310

|                        |       |    |        |
|------------------------|-------|----|--------|
| Unclassified.....      | 09900 | \$ | 200    |
| Current Expenses ..... | 13000 |    | 19,800 |
| Total.....             |       | \$ | 20,000 |

*174 - Division of Miners' Health, Safety and Training –**Special Health, Safety and Training Fund*

## (WV Code Chapter 22A)

Fund 3355 FY 2023 Org 0314

|                                   |       |    |           |
|-----------------------------------|-------|----|-----------|
| Personal Services and             |       |    |           |
| Employee Benefits.....            | 00100 | \$ | 516,356   |
| Unclassified.....                 | 09900 |    | 40,985    |
| Current Expenses .....            | 13000 |    | 1,954,557 |
| WV Mining Extension Service ..... | 02600 |    | 150,000   |
| Buildings .....                   | 25800 |    | 2,481,358 |
| Land .....                        | 73000 |    | 1,000,000 |
| Total.....                        |       | \$ | 6,143,256 |

*175 - Department of Commerce –**Office of the Secretary –**Marketing and Communications Operating Fund*

## (WV Code Chapter 5B)

Fund 3002 FY 2023 Org 0327

|                        |       |    |           |
|------------------------|-------|----|-----------|
| Personal Services and  |       |    |           |
| Employee Benefits..... | 00100 | \$ | 2,148,018 |
| Unclassified.....      | 09900 |    | 30,000    |
| Current Expenses ..... | 13000 |    | 1,315,078 |
| Equipment .....        | 07000 |    | 36,000    |
| Total.....             |       | \$ | 3,529,096 |

*176 - State Board of Rehabilitation –**Division of Rehabilitation Services –**West Virginia Rehabilitation Center Special Account*

(WV Code Chapter 18)

Fund 8664 FY 2023 Org 0932

## Personal Services and

|                              |       |    |                |
|------------------------------|-------|----|----------------|
| Employee Benefits.....       | 00100 | \$ | 119,738        |
| Current Expenses .....       | 13000 |    | 1,180,122      |
| Repairs and Alterations..... | 06400 |    | 85,500         |
| Equipment.....               | 07000 |    | 220,000        |
| Buildings.....               | 25800 |    | 150,000        |
| Other Assets.....            | 69000 |    | <u>150,000</u> |
| Total.....                   |       | \$ | 1,905,360      |

**DEPARTMENT OF ECONOMIC DEVELOPMENT***177 - Department of Economic Development –**Office of Energy –Energy Assistance*

(WV Code Chapter 5B)

Fund 3010 FY 2023 Org 0307

|                                 |       |    |       |
|---------------------------------|-------|----|-------|
| Energy Assistance - Total ..... | 64700 | \$ | 7,211 |
|---------------------------------|-------|----|-------|

*178 - Department of Economic Development –**Office of the Secretary –**Entrepreneurship and Innovation Investment Fund*

(WV Code Chapter 5B)

Fund 3014 FY 2023 Org 0307

## Entrepreneurship and

|                                 |       |    |           |
|---------------------------------|-------|----|-----------|
| Innovation Investment Fund..... | 70301 | \$ | 1,500,000 |
|---------------------------------|-------|----|-----------|

*179 - Department of Economic Development –**Office of the Secretary – Broadband Development Fund*

(WV Code Chapter 31G)

Fund 3034 FY 2023 Org 0307

|                        |       |                    |
|------------------------|-------|--------------------|
| Personal Services and  |       |                    |
| Employee Benefits..... | 00100 | \$ 647,075         |
| Unclassified.....      | 09900 | 2,000,000          |
| Current Expenses ..... | 13000 | <u>235,302,925</u> |
| Total.....             |       | \$ 237,950,000     |

*180 - Department of Economic Development –**Office of the Secretary –**Office of Coalfield Community Development*

(WV Code Chapter 5B)

Fund 3162 FY 2023 Org 0307

|                        |       |                |
|------------------------|-------|----------------|
| Personal Services and  |       |                |
| Employee Benefits..... | 00100 | \$ 438,687     |
| Unclassified.....      | 09900 | 8,300          |
| Current Expenses ..... | 13000 | <u>399,191</u> |
| Total.....             |       | \$ 846,178     |

*181 - Department of Economic Development –**Office of the Secretary –**Broadband Enhancement Fund*

(WV Code Chapter 31G)

Fund 3013 FY 2023 Org 0307

|                        |       |                  |
|------------------------|-------|------------------|
| Personal Services and  |       |                  |
| Employee Benefits..... | 00100 | \$ 131,682       |
| Current Expenses ..... | 13000 | <u>1,648,318</u> |

|            |    |           |
|------------|----|-----------|
| Total..... | \$ | 1,780,000 |
|------------|----|-----------|

### DEPARTMENT OF EDUCATION

*182 - State Board of Education –*

*Strategic Staff Development*

(WV Code Chapter 18)

Fund 3937 FY 2023 Org 0402

|                             |    |                  |
|-----------------------------|----|------------------|
| Personal Services and       |    |                  |
| Employee Benefits.....00100 | \$ | 35,000           |
| Unclassified.....09900      |    | 26,000           |
| Current Expenses .....13000 |    | <u>2,539,000</u> |
| Total.....                  | \$ | 2,600,000        |

*183 - School Building Authority –*

*School Construction Fund*

(WV Code Chapters 18 and 18A)

Fund 3952 FY 2023 Org 0404

|                                    |    |                  |
|------------------------------------|----|------------------|
| SBA Construction Grants .....24000 | \$ | 59,845,818       |
| Directed Transfer .....70000       |    | <u>1,371,182</u> |
| Total.....                         | \$ | 61,217,000       |

The above appropriation for Directed Transfer (fund 3952, appropriation 70000) shall be transferred to the School Building Authority Fund (fund 3959) for the administrative expenses of the School Building Authority.

*184 - School Building Authority*

(WV Code Chapter 18)

Fund 3959 FY 2023 Org 0404

|                             |    |           |
|-----------------------------|----|-----------|
| Personal Services and       |    |           |
| Employee Benefits.....00100 | \$ | 1,171,429 |



|                               |       |              |
|-------------------------------|-------|--------------|
| Current Expenses .....        | 13000 | 244,195      |
| Repairs and Alterations ..... | 06400 | 13,150       |
| Equipment .....               | 07000 | 26,000       |
| Total .....                   |       | \$ 1,454,774 |

## DEPARTMENT OF ARTS, CULTURE, AND HISTORY

*185 - Division of Culture and History –*

*Public Records and Preservation Revenue Account*

(WV Code Chapter 5A)

Fund 3542 FY 2023 Org 0432

|                         |       |              |
|-------------------------|-------|--------------|
| Personal Services and   |       |              |
| Employee Benefits ..... | 00100 | \$ 235,943   |
| Current Expenses .....  | 13000 | 862,241      |
| Equipment .....         | 07000 | 75,000       |
| Buildings .....         | 25800 | 1,000        |
| Other Assets .....      | 69000 | 52,328       |
| Land .....              | 73000 | 1,000        |
| Total .....             |       | \$ 1,227,512 |

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

*186 - Solid Waste Management Board*

(WV Code Chapter 22C)

Fund 3288 FY 2023 Org 0312

|                               |       |              |
|-------------------------------|-------|--------------|
| Personal Services and         |       |              |
| Employee Benefits .....       | 00100 | \$ 869,535   |
| Current Expenses .....        | 13000 | 2,060,457    |
| Repairs and Alterations ..... | 06400 | 1,000        |
| Equipment .....               | 07000 | 5,000        |
| Other Assets .....            | 69000 | 4,403        |
| Total .....                   |       | \$ 2,940,395 |

*187 - Division of Environmental Protection –**Hazardous Waste Management Fund*

(WV Code Chapter 22)

Fund 3023 FY 2023 Org 0313

|                              |       |              |
|------------------------------|-------|--------------|
| Personal Services and        |       |              |
| Employee Benefits.....       | 00100 | \$ 805,575   |
| Unclassified.....            | 09900 | 8,072        |
| Current Expenses .....       | 13000 | 155,969      |
| Repairs and Alterations..... | 06400 | 500          |
| Equipment.....               | 07000 | 1,505        |
| Other Assets.....            | 69000 | <u>2,000</u> |
| Total.....                   |       | \$ 973,621   |

*188 - Division of Environmental Protection –**Air Pollution Education and Environment Fund*

(WV Code Chapter 22)

Fund 3024 FY 2023 Org 0313

|                              |       |               |
|------------------------------|-------|---------------|
| Personal Services and        |       |               |
| Employee Benefits.....       | 00100 | \$ 806,186    |
| Unclassified.....            | 09900 | 14,647        |
| Current Expenses .....       | 13000 | 876,863       |
| Repairs and Alterations..... | 06400 | 13,000        |
| Equipment.....               | 07000 | 53,105        |
| Other Assets.....            | 69000 | <u>20,000</u> |
| Total.....                   |       | \$ 1,783,801  |

*189 - Division of Environmental Protection –**Special Reclamation Fund*

(WV Code Chapter 22)

Fund 3321 FY 2023 Org 0313

|                              |       |               |
|------------------------------|-------|---------------|
| Personal Services and        |       |               |
| Employee Benefits.....       | 00100 | \$ 1,678,252  |
| Current Expenses .....       | 13000 | 16,185,006    |
| Repairs and Alterations..... | 06400 | 79,950        |
| Equipment .....              | 07000 | 130,192       |
| Other Assets.....            | 69000 | <u>32,000</u> |
| Total.....                   |       | \$ 18,105,400 |

*190 - Division of Environmental Protection –*

*Oil and Gas Reclamation Fund*

(WV Code Chapter 22)

Fund 3322 FY 2023 Org 0313

|                        |       |                  |
|------------------------|-------|------------------|
| Personal Services and  |       |                  |
| Employee Benefits..... | 00100 | \$ 549,957       |
| Current Expenses ..... | 13000 | <u>1,956,094</u> |
| Total.....             |       | \$ 2,506,051     |

*191 - Division of Environmental Protection –*

*Oil and Gas Operating Permit and Processing Fund*

(WV Code Chapter 22)

Fund 3323 FY 2023 Org 0313

|                              |       |              |
|------------------------------|-------|--------------|
| Personal Services and        |       |              |
| Employee Benefits.....       | 00100 | \$ 2,187,791 |
| Unclassified.....            | 09900 | 15,700       |
| Current Expenses .....       | 13000 | 932,300      |
| Repairs and Alterations..... | 06400 | 9,500        |
| Equipment.....               | 07000 | 500          |
| Other Assets.....            | 69000 | <u>500</u>   |
| Total.....                   |       | \$ 3,146,291 |

*192 - Division of Environmental Protection –*

*Mining and Reclamation Operations Fund*

## (WV Code Chapter 22)

Fund 3324 FY 2023 Org 0313

|                              |       |                     |
|------------------------------|-------|---------------------|
| Personal Services and        |       |                     |
| Employee Benefits.....       | 00100 | \$ 3,635,868        |
| Unclassified.....            | 09900 | 920                 |
| Current Expenses .....       | 13000 | 2,202,231           |
| Repairs and Alterations..... | 06400 | 60,260              |
| Equipment.....               | 07000 | 83,000              |
| Other Assets.....            | 69000 | 57,500              |
| Total.....                   |       | <u>\$ 6,039,779</u> |

*193 - Division of Environmental Protection –**Underground Storage Tank Administrative Fund*

## (WV Code Chapter 22)

Fund 3325 FY 2023 Org 0313

|                              |       |                   |
|------------------------------|-------|-------------------|
| Personal Services and        |       |                   |
| Employee Benefits.....       | 00100 | \$ 486,251        |
| Unclassified.....            | 09900 | 7,520             |
| Current Expenses .....       | 13000 | 318,420           |
| Repairs and Alterations..... | 06400 | 5,350             |
| Equipment.....               | 07000 | 3,610             |
| Other Assets.....            | 69000 | 3,500             |
| Total.....                   |       | <u>\$ 824,651</u> |

*194 - Division of Environmental Protection –**Hazardous Waste Emergency Response Fund*

## (WV Code Chapter 22)

Fund 3331 FY 2023 Org 0313

|                        |       |            |
|------------------------|-------|------------|
| Personal Services and  |       |            |
| Employee Benefits..... | 00100 | \$ 614,039 |
| Unclassified.....      | 09900 | 10,616     |
| Current Expenses ..... | 13000 | 767,905    |

2022]

## HOUSE OF DELEGATES

2767

|                              |       |              |
|------------------------------|-------|--------------|
| Repairs and Alterations..... | 06400 | 7,014        |
| Equipment.....               | 07000 | 9,000        |
| Other Assets.....            | 69000 | <u>3,500</u> |
| Total.....                   |       | \$ 1,412,074 |

*195 - Division of Environmental Protection –**Solid Waste Reclamation and Environmental Response Fund*

(WV Code Chapter 22)

Fund 3332 FY 2023 Org 0313

|                              |       |              |
|------------------------------|-------|--------------|
| Personal Services and        |       |              |
| Employee Benefits.....       | 00100 | \$ 849,562   |
| Unclassified.....            | 09900 | 22,900       |
| Current Expenses .....       | 13000 | 3,604,737    |
| Repairs and Alterations..... | 06400 | 25,000       |
| Equipment.....               | 07000 | 31,500       |
| Buildings.....               | 25800 | 500          |
| Other Assets.....            | 69000 | <u>1,000</u> |
| Total.....                   |       | \$ 4,535,199 |

*196 - Division of Environmental Protection –**Solid Waste Enforcement Fund*

(WV Code Chapter 22)

Fund 3333 FY 2023 Org 0313

|                              |       |               |
|------------------------------|-------|---------------|
| Personal Services and        |       |               |
| Employee Benefits.....       | 00100 | \$ 3,362,824  |
| Unclassified.....            | 09900 | 31,145        |
| Current Expenses .....       | 13000 | 940,229       |
| Repairs and Alterations..... | 06400 | 30,930        |
| Equipment.....               | 07000 | 23,356        |
| Other Assets.....            | 69000 | <u>25,554</u> |
| Total.....                   |       | \$ 4,414,038  |

*197 - Division of Environmental Protection –**Air Pollution Control Fund*

(WV Code Chapter 22)

Fund 3336 FY 2023 Org 0313

|                              |       |               |
|------------------------------|-------|---------------|
| Personal Services and        |       |               |
| Employee Benefits.....       | 00100 | \$ 6,112,158  |
| Unclassified.....            | 09900 | 70,572        |
| Current Expenses .....       | 13000 | 1,469,467     |
| Repairs and Alterations..... | 06400 | 84,045        |
| Equipment.....               | 07000 | 103,601       |
| Other Assets.....            | 69000 | <u>52,951</u> |
| Total.....                   |       | \$ 7,892,794  |

*198 - Division of Environmental Protection –**Environmental Laboratory Certification Fund*

(WV Code Chapter 22)

Fund 3340 FY 2023 Org 0313

|                              |       |                |
|------------------------------|-------|----------------|
| Personal Services and        |       |                |
| Employee Benefits.....       | 00100 | \$ 364,936     |
| Unclassified.....            | 09900 | 1,120          |
| Current Expenses .....       | 13000 | 201,146        |
| Repairs and Alterations..... | 06400 | 1,000          |
| Other Assets.....            | 69000 | <u>163,000</u> |
| Total.....                   |       | \$ 731,202     |

*199 - Division of Environmental Protection –**Stream Restoration Fund*

(WV Code Chapter 22)

Fund 3349 FY 2023 Org 0313

|                        |       |              |
|------------------------|-------|--------------|
| Current Expenses ..... | 13000 | \$ 5,182,076 |
|------------------------|-------|--------------|

*200 - Division of Environmental Protection –**Litter Control Fund*

(WV Code Chapter 22)

Fund 3486 FY 2023 Org 0313

|                        |       |    |        |
|------------------------|-------|----|--------|
| Current Expenses ..... | 13000 | \$ | 60,000 |
|------------------------|-------|----|--------|

*201 - Division of Environmental Protection –**Recycling Assistance Fund*

(WV Code Chapter 22)

Fund 3487 FY 2023 Org 0313

|                              |       |    |           |
|------------------------------|-------|----|-----------|
| Personal Services and        |       |    |           |
| Employee Benefits.....       | 00100 | \$ | 680,241   |
| Unclassified.....            | 09900 |    | 400       |
| Current Expenses .....       | 13000 |    | 2,754,258 |
| Repairs and Alterations..... | 06400 |    | 800       |
| Equipment .....              | 07000 |    | 500       |
| Other Assets .....           | 69000 |    | 2,500     |
| Total.....                   |       | \$ | 3,438,699 |

*202 - Division of Environmental Protection –**Mountaintop Removal Fund*

(WV Code Chapter 22)

Fund 3490 FY 2023 Org 0313

|                              |       |    |           |
|------------------------------|-------|----|-----------|
| Personal Services and        |       |    |           |
| Employee Benefits.....       | 00100 | \$ | 1,120,989 |
| Unclassified.....            | 09900 |    | 1,180     |
| Current Expenses .....       | 13000 |    | 589,834   |
| Repairs and Alterations..... | 06400 |    | 27,612    |
| Equipment .....              | 07000 |    | 23,500    |
| Other Assets .....           | 69000 |    | 11,520    |

Total..... \$ 1,774,635

*203 - Oil and Gas Conservation Commission –*

*Special Oil and Gas Conservation Fund*

(WV Code Chapter 22C)

Fund 3371 FY 2023 Org 0315

|                              |       |              |
|------------------------------|-------|--------------|
| Personal Services and        |       |              |
| Employee Benefits.....       | 00100 | \$ 165,187   |
| Current Expenses .....       | 13000 | 161,225      |
| Repairs and Alterations..... | 06400 | 1,000        |
| Equipment .....              | 07000 | 9,481        |
| Other Assets .....           | 69000 | <u>1,500</u> |
| Total.....                   |       | \$ 338,393   |

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

*204 - Division of Health –*

*Ryan Brown Addiction Prevention and Recovery Fund*

(WV Code Chapter 19)

Fund 5111 FY 2023 Org 0506

|                        |       |               |
|------------------------|-------|---------------|
| Current Expenses ..... | 13000 | \$ 10,667,392 |
|------------------------|-------|---------------|

*205 - Division of Health –*

*The Vital Statistics Account*

(WV Code Chapter 16)

Fund 5144 FY 2023 Org 0506

|                        |       |                  |
|------------------------|-------|------------------|
| Personal Services and  |       |                  |
| Employee Benefits..... | 00100 | \$ 1,097,919     |
| Unclassified.....      | 09900 | 15,500           |
| Current Expenses ..... | 13000 | <u>3,557,788</u> |
| Total.....             |       | \$ 4,671,207     |



*206 - Division of Health –**Hospital Services Revenue Account Special Fund**Capital Improvement, Renovation and Operations*

(WV Code Chapter 16)

Fund 5156 FY 2023 Org 0506

|                                           |       |    |                   |
|-------------------------------------------|-------|----|-------------------|
| Institutional Facilities Operations ..... | 33500 | \$ | 44,555,221        |
| Medical Services Trust                    |       |    |                   |
| Fund – Transfer.....                      | 51200 |    | <u>27,800,000</u> |
| Total.....                                |       | \$ | <u>72,355,221</u> |

The total amount of these appropriations shall be paid from the Hospital Services Revenue Account Special Fund created by W.Va. Code §16-1-13, and shall be used for operating expenses and for improvements in connection with existing facilities.

Additional funds have been appropriated in fund 0525, fiscal year 2023, organization 0506, for the operation of the institutional facilities. The Secretary of the Department of Health and Human Resources is authorized to utilize up to ten percent of the funds from the appropriation for Institutional Facilities Operations to facilitate cost effective and cost saving services at the community level.

Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this fund or in connection with the appropriation designated Institutional Facilities Operations in the Consolidated Medical Service Fund (fund 0525, organization 0506).

*207 - Division of Health –**Laboratory Services Fund*

(WV Code Chapter 16)

Fund 5163 FY 2023 Org 0506

|                        |       |                  |
|------------------------|-------|------------------|
| Personal Services and  |       |                  |
| Employee Benefits..... | 00100 | \$ 985,121       |
| Unclassified.....      | 09900 | 18,114           |
| Current Expenses ..... | 13000 | <u>2,209,105</u> |
| Total.....             |       | \$ 3,212,340     |

*208 - Division of Health –*

*The Health Facility Licensing Account*

(WV Code Chapter 16)

Fund 5172 FY 2023 Org 0506

|                        |       |               |
|------------------------|-------|---------------|
| Personal Services and  |       |               |
| Employee Benefits..... | 00100 | \$ 669,651    |
| Unclassified.....      | 09900 | 7,113         |
| Current Expenses ..... | 13000 | <u>98,247</u> |
| Total.....             |       | \$ 775,011    |

*209 - Division of Health –*

*Hepatitis B Vaccine*

(WV Code Chapter 16)

Fund 5183 FY 2023 Org 0506

|                        |       |          |
|------------------------|-------|----------|
| Current Expenses ..... | 13000 | \$ 9,740 |
|------------------------|-------|----------|

*210 - Division of Health –*

*Lead Abatement Account*

(WV Code Chapter 16)

Fund 5204 FY 2023 Org 0506

|                        |       |               |
|------------------------|-------|---------------|
| Personal Services and  |       |               |
| Employee Benefits..... | 00100 | \$ 19,100     |
| Unclassified.....      | 09900 | 373           |
| Current Expenses ..... | 13000 | <u>17,875</u> |
| Total.....             |       | \$ 37,348     |

*211 - Division of Health –**West Virginia Birth-to-Three Fund*

(WV Code Chapter 16)

Fund 5214 FY 2023 Org 0506

|                        |       |                   |
|------------------------|-------|-------------------|
| Personal Services and  |       |                   |
| Employee Benefits..... | 00100 | \$ 719,208        |
| Unclassified.....      | 09900 | 223,999           |
| Current Expenses ..... | 13000 | <u>30,134,400</u> |
| Total.....             |       | \$ 31,077,607     |

*212 - Division of Health –**Tobacco Control Special Fund*

(WV Code Chapter 16)

Fund 5218 FY 2023 Org 0506

|                        |       |          |
|------------------------|-------|----------|
| Current Expenses ..... | 13000 | \$ 7,579 |
|------------------------|-------|----------|

*213 - Division of Health –**Medical Cannabis Program Fund*

(WV Code Chapter 16A)

Fund 5420 FY 2023 Org 0506

|                        |       |                  |
|------------------------|-------|------------------|
| Personal Services and  |       |                  |
| Employee Benefits..... | 00100 | \$ 509,658       |
| Current Expenses ..... | 13000 | <u>2,046,040</u> |
| Total.....             |       | \$ 2,555,698     |

*214 - West Virginia Health Care Authority –**Health Care Cost Review Fund*

(WV Code Chapter 16)

Fund 5375 FY 2023 Org 0507

## Personal Services and

|                        |       |    |                |
|------------------------|-------|----|----------------|
| Employee Benefits..... | 00100 | \$ | 1,348,406      |
| Unclassified.....      | 09900 |    | 20,100         |
| Current Expenses ..... | 13000 |    | <u>785,445</u> |
| Total.....             |       | \$ | 2,153,951      |

The above appropriation is to be expended in accordance with and pursuant to the provisions of W.Va. Code §16-29B and from the special revolving fund designated Health Care Cost Review Fund.

*215 - West Virginia Health Care Authority –**Certificate of Need Program Fund*

(WV Code Chapter 16)

Fund 5377 FY 2023 Org 0507

## Personal Services and

|                        |       |    |                |
|------------------------|-------|----|----------------|
| Employee Benefits..... | 00100 | \$ | 844,926        |
| Current Expenses ..... | 13000 |    | <u>474,967</u> |
| Total.....             |       | \$ | 1,319,893      |

*216 - Division of Human Services –**Health Care Provider Tax –**Medicaid State Share Fund*

(WV Code Chapter 11)

Fund 5090 FY 2023 Org 0511

|                            |       |    |                |
|----------------------------|-------|----|----------------|
| Medical Services.....      | 18900 | \$ | 393,594,315    |
| Medical Services           |       |    |                |
| Administrative Costs ..... | 78900 |    | <u>251,273</u> |
| Total.....                 |       | \$ | 393,845,588    |

The above appropriation for Medical Services Administrative Costs (fund 5090, appropriation 78900) shall be transferred to a special revenue account in the treasury for use by the Department

of Health and Human Resources for administrative purposes. The remainder of all moneys deposited in the fund shall be transferred to the Medical Services Program Fund (fund 5084).

*217 - Division of Human Services –*

*Child Support Enforcement Fund*

(WV Code Chapter 48A)

Fund 5094 FY 2023 Org 0511

|                        |       |                   |
|------------------------|-------|-------------------|
| Personal Services and  |       |                   |
| Employee Benefits..... | 00100 | \$ 24,809,509     |
| Unclassified.....      | 09900 | 380,000           |
| Current Expenses ..... | 13000 | <u>12,810,491</u> |
| Total.....             |       | \$ 38,000,000     |

*218 - Division of Human Services –*

*Medical Services Trust Fund*

(WV Code Chapter 9)

Fund 5185 FY 2023 Org 0511

|                            |       |                |
|----------------------------|-------|----------------|
| Medical Services.....      | 18900 | \$ 82,500,000  |
| Medical Services           |       |                |
| Administrative Costs ..... | 78900 | <u>646,750</u> |
| Total.....                 |       | \$ 83,146,750  |

The above appropriation to Medical Services shall be used to provide state match of Medicaid expenditures as defined and authorized in subsection (c) of W.Va. Code §9-4A-2a. Expenditures from the fund are limited to the following: payment of backlogged billings, funding for services to future federally mandated population groups and payment of the required state match for Medicaid disproportionate share payments. The remainder of all moneys deposited in the fund shall be transferred to the Division of Human Services accounts.

*219 - Division of Human Services –  
James “Tiger” Morton Catastrophic Illness Fund*

(WV Code Chapter 16)

Fund 5454 FY 2023 Org 0511

|                        |       |    |                |
|------------------------|-------|----|----------------|
| Unclassified.....      | 09900 | \$ | 7,000          |
| Current Expenses ..... | 13000 |    | <u>393,000</u> |
| Total.....             |       | \$ | 400,000        |

*220 - Division of Human Services –  
Domestic Violence Legal Services Fund*

(WV Code Chapter 48)

Fund 5455 FY 2023 Org 0511

|                        |       |    |         |
|------------------------|-------|----|---------|
| Current Expenses ..... | 13000 | \$ | 900,000 |
|------------------------|-------|----|---------|

*221 - Division of Human Services –  
West Virginia Works Separate State College Program Fund*

(WV Code Chapter 9)

Fund 5467 FY 2023 Org 0511

|                        |       |    |         |
|------------------------|-------|----|---------|
| Current Expenses ..... | 13000 | \$ | 500,000 |
|------------------------|-------|----|---------|

*222 - Division of Human Services –  
West Virginia Works Separate State Two-Parent Program Fund*

(WV Code Chapter 9)

Fund 5468 FY 2023 Org 0511

|                        |       |    |           |
|------------------------|-------|----|-----------|
| Current Expenses ..... | 13000 | \$ | 1,500,000 |
|------------------------|-------|----|-----------|

*223 - Division of Human Services –**Marriage Education Fund*

(WV Code Chapter 9)

Fund 5490 FY 2023 Org 0511

|                        |       |               |
|------------------------|-------|---------------|
| Personal Services and  |       |               |
| Employee Benefits..... | 00100 | \$ 10,000     |
| Current Expenses ..... | 13000 | <u>25,000</u> |
| Total.....             |       | \$ 35,000     |

**DEPARTMENT OF HOMELAND SECURITY***224 - Department of Homeland Security –**Office of the Secretary –**Law-Enforcement, Safety and Emergency Worker**Funeral Expense Payment Fund*

(WV Code Chapter 15)

Fund 6003 FY 2023 Org 0601

|                        |       |           |
|------------------------|-------|-----------|
| Current Expenses ..... | 13000 | \$ 32,000 |
|------------------------|-------|-----------|

*225 - Division of Emergency Management –**Statewide Interoperable Radio Network Account*

(WV Code Chapter 15)

Fund 6208 FY 2023 Org 0606

|                        |       |           |
|------------------------|-------|-----------|
| Current Expenses ..... | 13000 | \$ 80,000 |
|------------------------|-------|-----------|

*226 - Division of Emergency Management –**West Virginia Interoperable Radio Project*

(WV Code Chapter 24)

Fund 6295 FY 2023 Org 0606

|                               |       |    |                |
|-------------------------------|-------|----|----------------|
| Unclassified.....             | 09900 | \$ | 20,000         |
| Current Expenses .....        | 13000 |    | 3,980,000      |
| Repairs and Alterations ..... | 06400 |    | 250,000        |
| Equipment .....               | 07000 |    | <u>250,000</u> |
| Total .....                   |       | \$ | 4,500,000      |

*227 - Division of Corrections and Rehabilitation –*

*Parolee Supervision Fees*

(WV Code Chapter 15A)

Fund 6362 FY 2023 Org 0608

|                        |       |    |               |
|------------------------|-------|----|---------------|
| Personal Services and  |       |    |               |
| Employee Benefits..... | 00100 | \$ | 1,164,081     |
| Unclassified.....      | 09900 |    | 9,804         |
| Current Expenses ..... | 13000 |    | 758,480       |
| Equipment .....        | 07000 |    | 30,000        |
| Other Assets .....     | 69000 |    | <u>40,129</u> |
| Total .....            |       | \$ | 2,002,494     |

*228 - Division of Corrections and Rehabilitation –*

*Regional Jail and Correctional Facility Authority*

(WV Code Chapter 15A)

Fund 6675 FY 2023 Org 0608

|                        |       |    |                |
|------------------------|-------|----|----------------|
| Personal Services and  |       |    |                |
| Employee Benefits..... | 00100 | \$ | 1,974,532      |
| Debt Service.....      | 04000 |    | 9,000,000      |
| Current Expenses ..... | 13000 |    | <u>245,472</u> |
| Total .....            |       | \$ | 11,220,004     |

*229 - West Virginia State Police –*

*Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Fund 6501 FY 2023 Org 0612



## Personal Services and

|                              |       |    |                |
|------------------------------|-------|----|----------------|
| Employee Benefits.....       | 00100 | \$ | 1,965,212      |
| Current Expenses .....       | 13000 |    | 1,488,211      |
| Repairs and Alterations..... | 06400 |    | 204,500        |
| Equipment .....              | 07000 |    | 3,770,751      |
| Buildings.....               | 25800 |    | 534,000        |
| Other Assets.....            | 69000 |    | 5,000          |
| BRIM Premium.....            | 91300 |    | <u>302,432</u> |
| Total.....                   |       | \$ | 8,270,106      |

The total amount of these appropriations shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.

*230 - West Virginia State Police –**Forensic Laboratory Fund*

(WV Code Chapter 15)

Fund 6511 FY 2023 Org 0612

## Personal Services and

|                              |       |    |                |
|------------------------------|-------|----|----------------|
| Employee Benefits.....       | 00100 | \$ | 1,615,128      |
| Current Expenses .....       | 13000 |    | 90,000         |
| Repairs and Alterations..... | 06400 |    | 5,000          |
| Equipment.....               | 07000 |    | <u>545,000</u> |
| Total.....                   |       | \$ | 2,255,128      |

*231 - West Virginia State Police –**Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Fund 6513 FY 2023 Org 0612

|                        |       |    |                |
|------------------------|-------|----|----------------|
| Current Expenses ..... | 13000 | \$ | 1,327,000      |
| Equipment .....        | 07000 |    | 3,491,895      |
| BRIM Premium.....      | 91300 |    | <u>154,452</u> |
| Total.....             |       | \$ | 4,973,347      |

The total amount of these appropriations shall be paid from the special revenue fund out of receipts collected pursuant to W.Va. Code §11-15-9a and 16 and paid into a revolving fund account in the State Treasury.

*232 - West Virginia State Police –*

*Surplus Real Property Proceeds Fund*

(WV Code Chapter 15)

Fund 6516 FY 2023 Org 0612

|                   |       |    |               |
|-------------------|-------|----|---------------|
| Buildings .....   | 25800 | \$ | 1,022,778     |
| Land .....        | 73000 |    | 1,000         |
| BRIM Premium..... | 91300 |    | <u>77,222</u> |
| Total.....        |       | \$ | 1,101,000     |

*233 - West Virginia State Police –*

*Surplus Transfer Account*

(WV Code Chapter 15)

Fund 6519 FY 2023 Org 0612

|                              |       |    |              |
|------------------------------|-------|----|--------------|
| Current Expenses .....       | 13000 | \$ | 225,000      |
| Repairs and Alterations..... | 06400 |    | 20,000       |
| Equipment.....               | 07000 |    | 250,000      |
| Buildings.....               | 25800 |    | 40,000       |
| Other Assets.....            | 69000 |    | 45,000       |
| BRIM Premium.....            | 91300 |    | <u>5,000</u> |
| Total.....                   |       | \$ | 585,000      |

*234 - West Virginia State Police –*

*Central Abuse Registry Fund*

(WV Code Chapter 15)

Fund 6527 FY 2023 Org 0612

2022]

## HOUSE OF DELEGATES

2781

## Personal Services and

|                              |       |    |           |
|------------------------------|-------|----|-----------|
| Employee Benefits.....       | 00100 | \$ | 268,731   |
| Current Expenses .....       | 13000 |    | 376,443   |
| Repairs and Alterations..... | 06400 |    | 500       |
| Equipment .....              | 07000 |    | 300,500   |
| Other Assets.....            | 69000 |    | 300,500   |
| BRIM Premium.....            | 91300 |    | 18,524    |
| Total.....                   |       | \$ | 1,265,198 |

*235 - West Virginia State Police –**Bail Bond Enforcer Account*

(WV Code Chapter 15)

Fund 6532 FY 2023 Org 0612

|                        |       |    |       |
|------------------------|-------|----|-------|
| Current Expenses ..... | 13000 | \$ | 8,300 |
|------------------------|-------|----|-------|

*236 - West Virginia State Police –**State Police Academy Post Exchange*

(WV Code Chapter 15)

Fund 6544 FY 2023 Org 0612

|                              |       |    |         |
|------------------------------|-------|----|---------|
| Current Expenses .....       | 13000 | \$ | 160,000 |
| Repairs and Alterations..... | 06400 |    | 40,000  |
| Total.....                   |       | \$ | 200,000 |

*237 - Fire Commission –**Fire Marshal Fees*

(WV Code Chapter 29)

Fund 6152 FY 2023 Org 0619

## Personal Services and

|                        |       |    |           |
|------------------------|-------|----|-----------|
| Employee Benefits..... | 00100 | \$ | 3,616,684 |
| Unclassified.....      | 09900 |    | 3,800     |
| Current Expenses ..... | 13000 |    | 1,646,550 |

|                              |       |               |
|------------------------------|-------|---------------|
| Repairs and Alterations..... | 06400 | 58,500        |
| Equipment.....               | 07000 | 140,800       |
| BRIM Premium.....            | 91300 | <u>65,000</u> |
| Total.....                   |       | \$ 5,531,334  |

*238 - Division of Administrative Services –*

*WV Community Corrections Fund*

(WV Code Chapter 62)

Fund 6386 FY 2023 Org 0623

|                              |       |              |
|------------------------------|-------|--------------|
| Personal Services and        |       |              |
| Employee Benefits.....       | 00100 | \$ 166,250   |
| Unclassified.....            | 09900 | 750          |
| Current Expenses .....       | 13000 | 1,846,250    |
| Repairs and Alterations..... | 06400 | <u>1,000</u> |
| Total.....                   |       | \$ 2,014,250 |

*239 - Division of Administrative Services –*

*Court Security Fund*

(WV Code Chapter 51)

Fund 6804 FY 2023 Org 0623

|                        |       |                  |
|------------------------|-------|------------------|
| Personal Services and  |       |                  |
| Employee Benefits..... | 00100 | \$ 24,748        |
| Current Expenses ..... | 13000 | <u>1,478,135</u> |
| Total.....             |       | \$ 1,502,883     |

*240 - Division of Administrative Services –*

*Second Chance Driver's License Program Account*

(WV Code Chapter 17B)

Fund 6810 FY 2023 Org 0623

|                        |       |            |
|------------------------|-------|------------|
| Current Expenses ..... | 13000 | \$ 125,000 |
|------------------------|-------|------------|

**DEPARTMENT OF REVENUE***241 - Division of Financial Institutions*

(WV Code Chapter 31A)

Fund 3041 FY 2023 Org 0303

|                                  |       |                     |
|----------------------------------|-------|---------------------|
| Personal Services and            |       |                     |
| Employee Benefits.....           | 00100 | \$ 2,653,645        |
| Salary and Benefits of Cabinet   |       |                     |
| Secretary and Agency Heads ..... | 00201 | 119,000             |
| Current Expenses .....           | 13000 | 650,475             |
| Equipment.....                   | 07000 | 8,500               |
| Total.....                       |       | <u>\$ 3,431,620</u> |

*242 - Office of the Secretary –**State Debt Reduction Fund*

(WV Code Chapter 29)

Fund 7007 FY 2023 Org 0701

|                         |       |               |
|-------------------------|-------|---------------|
| Retirement Systems –    |       |               |
| Unfunded Liability..... | 77500 | \$ 20,000,000 |

The above appropriation for Retirement System – Unfunded Liability shall be transferred to the Consolidated Public Retirement Board – West Virginia Teachers Retirement System Employers School Aid Formula Funds Holding Account Fund (fund 2606).

*243 - Home Rule Board Operations*

(WV Code Chapter 8)

Fund 7010 FY 2023 Org 0701

|                        |       |           |
|------------------------|-------|-----------|
| Personal Services and  |       |           |
| Employee Benefits..... | 00100 | \$ 25,000 |
| Unclassified.....      | 09900 | 680       |
| Current Expenses ..... | 13000 | 42,000    |

|                              |       |    |        |
|------------------------------|-------|----|--------|
| Repairs and Alterations..... | 06400 |    | 120    |
| Equipment.....               | 07000 |    | 200    |
| Total.....                   |       | \$ | 68,000 |

*244 - Tax Division –*

*Cemetery Company Account*

(WV Code Chapter 35)

Fund 7071 FY 2023 Org 0702

|                        |       |    |        |
|------------------------|-------|----|--------|
| Personal Services and  |       |    |        |
| Employee Benefits..... | 00100 | \$ | 27,441 |
| Current Expenses ..... | 13000 |    | 7,717  |
| Total.....             |       | \$ | 35,158 |

*245 - Tax Division –*

*Special Audit and Investigative Unit*

(WV Code Chapter 11)

Fund 7073 FY 2023 Org 0702

|                              |       |    |           |
|------------------------------|-------|----|-----------|
| Personal Services and        |       |    |           |
| Employee Benefits.....       | 00100 | \$ | 724,718   |
| Unclassified.....            | 09900 |    | 8,500     |
| Current Expenses .....       | 13000 |    | 273,297   |
| Repairs and Alterations..... | 06400 |    | 7,000     |
| Equipment.....               | 07000 |    | 5,000     |
| Total.....                   |       | \$ | 1,018,515 |

*246 - Tax Division –*

*Wine Tax Administration Fund*

(WV Code Chapter 60)

Fund 7087 FY 2023 Org 0702

|                        |       |    |         |
|------------------------|-------|----|---------|
| Personal Services and  |       |    |         |
| Employee Benefits..... | 00100 | \$ | 275,024 |

|                        |       |              |
|------------------------|-------|--------------|
| Current Expenses ..... | 13000 | <u>5,406</u> |
| Total.....             |       | \$ 280,430   |

## 247 - Tax Division -

### *Reduced Cigarette Ignition Propensity*

## Standard and Fire Prevention Act Fund

(WV Code Chapter 47)

Fund 7092 FY 2023 Org 0702

|                        |       |    |               |
|------------------------|-------|----|---------------|
| Current Expenses ..... | 13000 | \$ | 35,000        |
| Equipment.....         | 07000 |    | <u>15,000</u> |
| Total.....             |       | \$ | 50,000        |

## 248 - Tax Division -

*Local Sales Tax and Excise Tax Administration Fund*

(WV Code Chapter 11)

Fund 7099 FY 2023 Org 0702

|                               |       |                     |
|-------------------------------|-------|---------------------|
| Personal Services and         |       |                     |
| Employee Benefits.....        | 00100 | \$ 1,567,732        |
| Unclassified.....             | 09900 | 10,000              |
| Current Expenses .....        | 13000 | 784,563             |
| Repairs and Alterations ..... | 06400 | 1,000               |
| Equipment .....               | 07000 | 5,000               |
| Total.....                    |       | <u>\$ 2,368,295</u> |

## 249 - State Budget Office -

## Public Employees Insurance Reserve Fund

(WV Code Chapter 11B)

## Fund 7400 FY 2023 Org 0703

|                              |       |              |
|------------------------------|-------|--------------|
| Public Employees Insurance   |       |              |
| Reserve Fund – Transfer..... | 90300 | \$ 6,800,000 |

The above appropriation for Public Employees Insurance Reserve Fund – Transfer shall be transferred to the Medical Services Trust Fund (fund 5185, org 0511) for expenditure.

*250 - Insurance Commissioner –*

*Examination Revolving Fund*

(WV Code Chapter 33)

Fund 7150 FY 2023 Org 0704

|                              |       |                     |
|------------------------------|-------|---------------------|
| Personal Services and        |       |                     |
| Employee Benefits.....       | 00100 | \$ 760,866          |
| Current Expenses .....       | 13000 | 1,357,201           |
| Repairs and Alterations..... | 06400 | 3,000               |
| Equipment.....               | 07000 | 81,374              |
| Buildings .....              | 25800 | 8,289               |
| Other Assets.....            | 69000 | 11,426              |
| Total.....                   |       | <u>\$ 2,222,156</u> |

*251 - Insurance Commissioner –*

*Consumer Advocate*

(WV Code Chapter 33)

Fund 7151 FY 2023 Org 0704

|                              |       |                   |
|------------------------------|-------|-------------------|
| Personal Services and        |       |                   |
| Employee Benefits.....       | 00100 | \$ 584,078        |
| Current Expenses .....       | 13000 | 202,152           |
| Repairs and Alterations..... | 06400 | 5,000             |
| Equipment.....               | 07000 | 34,225            |
| Buildings .....              | 25800 | 4,865             |
| Other Assets.....            | 69000 | 19,460            |
| Total.....                   |       | <u>\$ 849,780</u> |

*252 - Insurance Commissioner –*

*Insurance Commission Fund*



## (WV Code Chapter 33)

Fund 7152 FY 2023 Org 0704

|                                  |       |                      |
|----------------------------------|-------|----------------------|
| Personal Services and            |       |                      |
| Employee Benefits.....           | 00100 | \$ 24,627,046        |
| Salary and Benefits of Cabinet   |       |                      |
| Secretary and Agency Heads ..... | 00201 | 136,500              |
| Current Expenses .....           | 13000 | 8,797,758            |
| Repairs and Alterations.....     | 06400 | 68,614               |
| Equipment.....                   | 07000 | 1,728,240            |
| Buildings .....                  | 25800 | 25,000               |
| Other Assets.....                | 69000 | 340,661              |
| Total.....                       |       | <u>\$ 35,723,819</u> |

*253 - Insurance Commissioner –**Insurance Fraud Prevention Fund*

## (WV Code Chapter 33)

Fund 7153 FY 2023 Org 0704

|                        |       |           |
|------------------------|-------|-----------|
| Current Expenses ..... | 13000 | \$ 15,000 |
|------------------------|-------|-----------|

*254 - Insurance Commissioner –**Workers' Compensation Old Fund*

## (WV Code Chapter 23)

Fund 7162 FY 2023 Org 0704

|                         |       |                       |
|-------------------------|-------|-----------------------|
| Employee Benefits ..... | 01000 | \$ 50,000             |
| Current Expenses .....  | 13000 | <u>250,500,000</u>    |
| Total.....              |       | <u>\$ 250,550,000</u> |

*255 - Insurance Commissioner –**Workers' Compensation Uninsured Employers' Fund*

## (WV Code Chapter 23)

Fund 7163 FY 2023 Org 0704

|                        |       |    |            |
|------------------------|-------|----|------------|
| Current Expenses ..... | 13000 | \$ | 15,000,000 |
|------------------------|-------|----|------------|

*256 - Insurance Commissioner –*

*Self-Insured Employer Guaranty Risk Pool*

(WV Code Chapter 23)

Fund 7164 FY 2023 Org 0704

|                        |       |    |           |
|------------------------|-------|----|-----------|
| Current Expenses ..... | 13000 | \$ | 9,000,000 |
|------------------------|-------|----|-----------|

*257 - Insurance Commissioner –*

*Self-Insured Employer Security Risk Pool*

(WV Code Chapter 23)

Fund 7165 FY 2023 Org 0704

|                        |       |    |            |
|------------------------|-------|----|------------|
| Current Expenses ..... | 13000 | \$ | 14,000,000 |
|------------------------|-------|----|------------|

*258 - Municipal Bond Commission*

(WV Code Chapter 13)

Fund 7253 FY 2023 Org 0706

Personal Services and

|                        |       |    |         |
|------------------------|-------|----|---------|
| Employee Benefits..... | 00100 | \$ | 321,604 |
|------------------------|-------|----|---------|

|                        |       |  |         |
|------------------------|-------|--|---------|
| Current Expenses ..... | 13000 |  | 154,344 |
|------------------------|-------|--|---------|

|                 |       |  |     |
|-----------------|-------|--|-----|
| Equipment ..... | 07000 |  | 100 |
|-----------------|-------|--|-----|

|            |  |    |         |
|------------|--|----|---------|
| Total..... |  | \$ | 476,048 |
|------------|--|----|---------|

*259 - Racing Commission –*

*Relief Fund*

(WV Code Chapter 19)

Fund 7300 FY 2023 Org 0707

|                               |       |    |         |
|-------------------------------|-------|----|---------|
| Medical Expenses – Total..... | 24500 | \$ | 154,000 |
|-------------------------------|-------|----|---------|

The total amount of this appropriation shall be paid from the special revenue fund out of collections of license fees and fines as provided by law.

No expenditures shall be made from this fund except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

*260 - Racing Commission –*

*Administration and Promotion Account*

(WV Code Chapter 19)

Fund 7304 FY 2023 Org 0707

|                             |    |              |
|-----------------------------|----|--------------|
| Personal Services and       |    |              |
| Employee Benefits.....00100 | \$ | 272,430      |
| Current Expenses .....13000 |    | 85,433       |
| Other Assets .....69000     |    | <u>5,000</u> |
| Total.....                  | \$ | 362,863      |

*261 - Racing Commission –*

*General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2023 Org 0707

|                                       |    |               |
|---------------------------------------|----|---------------|
| Personal Services and                 |    |               |
| Employee Benefits.....00100           | \$ | 2,380,713     |
| Salary and Benefits of Cabinet        |    |               |
| Secretary and Agency Heads .....00201 |    | 48,443        |
| Current Expenses .....13000           |    | 497,284       |
| Repairs and Alterations .....06400    |    | 5,000         |
| Other Assets .....69000               |    | <u>40,000</u> |
| Total.....                            | \$ | 2,971,440     |

*262 - Racing Commission –*

*Administration, Promotion, Education, Capital Improvement*

*and Greyhound Adoption Programs  
to include Spaying and Neutering Account*

(WV Code Chapter 19)

Fund 7307 FY 2023 Org 0707

|                        |       |                     |
|------------------------|-------|---------------------|
| Personal Services and  |       |                     |
| Employee Benefits..... | 00100 | \$ 924,832          |
| Current Expenses ..... | 13000 | 160,099             |
| Other Assets.....      | 69000 | 200,000             |
| Total.....             |       | <u>\$ 1,284,931</u> |

*263 - Alcohol Beverage Control Administration –*

*Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2023 Org 0708

|                                         |       |                   |
|-----------------------------------------|-------|-------------------|
| Personal Services and                   |       |                   |
| Employee Benefits.....                  | 00100 | \$ 147,213        |
| Current Expenses .....                  | 13000 | 54,186            |
| Repairs and Alterations.....            | 06400 | 7,263             |
| Equipment.....                          | 07000 | 10,000            |
| Buildings.....                          | 25800 | 100,000           |
| Transfer Liquor Profits and Taxes ..... | 42500 | 30,750            |
| Other Assets.....                       | 69000 | 100               |
| Total.....                              |       | <u>\$ 349,512</u> |

To the extent permitted by law, four classified exempt positions shall be provided from Personal Services and Employee Benefits appropriation for field auditors.

*264 - Alcohol Beverage Control Administration*

(WV Code Chapter 60)

Fund 7352 FY 2023 Org 0708

|                                         |       |                       |
|-----------------------------------------|-------|-----------------------|
| Personal Services and                   |       |                       |
| Employee Benefits.....                  | 00100 | \$ 5,849,609          |
| Salary and Benefits of Cabinet          |       |                       |
| Secretary and Agency Heads .....        | 00201 | 122,500               |
| Current Expenses .....                  | 13000 | 2,890,577             |
| Repairs and Alterations.....            | 06400 | 91,000                |
| Equipment.....                          | 07000 | 108,000               |
| Buildings.....                          | 25800 | 375,100               |
| Purchase of Supplies for Resale.....    | 41900 | 76,500,000            |
| Transfer Liquor Profits and Taxes ..... | 42500 | 21,200,000            |
| Other Assets.....                       | 69000 | 125,100               |
| Land .....                              | 73000 | 100                   |
| Total.....                              |       | <u>\$ 107,261,986</u> |

The total amount of these appropriations shall be paid from a special revenue fund out of liquor revenues and any other revenues available.

The above appropriations include the salary of the commissioner and the salaries, expenses, and equipment of administrative offices, warehouses, and inspectors.

The above appropriations include funding for the Tobacco/Alcohol Education Program.

There is hereby appropriated from liquor revenues, in addition to the above appropriations as needed, the necessary amount for the purchase of liquor as provided by law and the remittance of profits and taxes to the General Revenue Fund.

*265 - State Athletic Commission Fund*

(WV Code Chapter 29)

Fund 7009 FY 2023 Org 0933

|                        |       |                  |
|------------------------|-------|------------------|
| Personal Services and  |       |                  |
| Employee Benefits..... | 00100 | \$ 17,500        |
| Current Expenses ..... | 13000 | <u>28,000</u>    |
| Total.....             |       | <u>\$ 45,500</u> |

**DEPARTMENT OF TRANSPORTATION***266 - Division of Motor Vehicles –**Dealer Recovery Fund*

(WV Code Chapter 17)

Fund 8220 FY 2023 Org 0802

|                        |       |    |         |
|------------------------|-------|----|---------|
| Current Expenses ..... | 13000 | \$ | 189,000 |
|------------------------|-------|----|---------|

*267 - Division of Motor Vehicles –**Motor Vehicle Fees Fund*

(WV Code Chapter 17B)

Fund 8223 FY 2023 Org 0802

|                              |       |    |           |
|------------------------------|-------|----|-----------|
| Personal Services and        |       |    |           |
| Employee Benefits.....       | 00100 | \$ | 3,929,736 |
| Current Expenses .....       | 13000 |    | 4,372,596 |
| Repairs and Alterations..... | 06400 |    | 16,000    |
| Equipment .....              | 07000 |    | 75,000    |
| Other Assets .....           | 69000 |    | 10,000    |
| BRIM Premium.....            | 91300 |    | 75,116    |
| Total.....                   |       | \$ | 8,478,448 |

*268 - Division of Highways –**A. James Manchin Fund*

(WV Code Chapter 22)

Fund 8319 FY 2023 Org 0803

|                        |       |    |           |
|------------------------|-------|----|-----------|
| Current Expenses ..... | 13000 | \$ | 2,500,000 |
|------------------------|-------|----|-----------|

*269 - State Rail Authority -**West Virginia Commuter Rail Access Fund*

(WV Code Chapter 29)

Fund 8402 FY 2023 Org 0804

|                        |       |    |         |
|------------------------|-------|----|---------|
| Current Expenses ..... | 13000 | \$ | 600,000 |
|------------------------|-------|----|---------|

**DEPARTMENT OF VETERANS' ASSISTANCE***270 - Veterans' Facilities Support Fund*

(WV Code Chapter 9A)

Fund 6703 FY 2023 Org 0613

|                        |       |    |               |
|------------------------|-------|----|---------------|
| Current Expenses ..... | 13000 | \$ | 1,654,234     |
| Other Assets .....     | 69000 |    | <u>10,000</u> |
| Total .....            |       | \$ | 1,664,234     |

*271 - Department of Veterans' Assistance –**WV Veterans' Home –**Special Revenue Operating Fund*

(WV Code Chapter 9A)

Fund 6754 FY 2023 Org 0618

|                               |       |    |               |
|-------------------------------|-------|----|---------------|
| Current Expenses .....        | 13000 | \$ | 289,400       |
| Repairs and Alterations ..... | 06400 |    | <u>10,600</u> |
| Total .....                   |       | \$ | 300,000       |

**BUREAU OF SENIOR SERVICES***272 - Bureau of Senior Services –**Community Based Service Fund*

(WV Code Chapter 29)

Fund 5409 FY 2023 Org 0508

|                         |       |    |         |
|-------------------------|-------|----|---------|
| Personal Services and   |       |    |         |
| Employee Benefits ..... | 00100 | \$ | 140,202 |

## Salary and Benefits of Cabinet

|                                  |       |                   |
|----------------------------------|-------|-------------------|
| Secretary and Agency Heads ..... | 00201 | 25,795            |
| Current Expenses .....           | 13000 | <u>10,348,710</u> |
| Total .....                      |       | \$ 10,514,707     |

The total amount of these appropriations are funded from annual table game license fees to enable the aged and disabled citizens of West Virginia to stay in their homes through the provision of home and community-based services.

**HIGHER EDUCATION POLICY COMMISSION**

*273 - Higher Education Policy Commission –*

*System – Tuition Fee Capital Improvement Fund*

*(Capital Improvement and Bond Retirement Fund)*

*Control Account*

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2023 Org 0442

|                                    |       |                |
|------------------------------------|-------|----------------|
| Debt Service.....                  | 04000 | \$ 27,402,035  |
| General Capital Expenditures ..... | 30600 | 5,000,000      |
| Facilities Planning and            |       |                |
| Administration .....               | 38600 | <u>456,239</u> |
| Total.....                         |       | \$ 32,858,274  |

The total amount of these appropriations shall be paid from the Special Capital Improvement Fund created in W.Va. Code §18B-10-8. Projects are to be paid on a cash basis and made available on July 1.

The above appropriations, except for Debt Service, may be transferred to special revenue funds for capital improvement projects at the institutions.

*274 - Tuition Fee Revenue Bond Construction Fund*

(WV Code Chapters 18 and 18B)



Fund 4906 FY 2023 Org 0442

Any unexpended balance remaining in the appropriation for Capital Outlay (fund 4906, appropriation 51100) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

The appropriation shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Higher Education Policy Commission and the funds may be allocated to any institution within the system.

The total amount of this appropriation shall be paid from the unexpended proceeds of revenue bonds previously issued pursuant to W.Va. Code §18-12B-8, which have since been refunded.

*275 - Community and Technical College –**Capital Improvement Fund*

(WV Code Chapter 18B)

Fund 4908 FY 2023 Org 0442

Any unexpended balance remaining in the appropriation for Capital Improvements – Total (fund 4908, appropriation 95800) at the close of fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

The total amount of this appropriation shall be paid from the sale of the Series 2017 Community and Technical College Capital Improvement Refunding Revenue Bonds and anticipated interest earnings.

*276 - West Virginia University –**West Virginia University Health Sciences Center*

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2023 Org 0463

## Personal Services and

|                              |       |    |               |
|------------------------------|-------|----|---------------|
| Employee Benefits.....       | 00100 | \$ | 11,118,758    |
| Current Expenses .....       | 13000 |    | 4,524,300     |
| Repairs and Alterations..... | 06400 |    | 425,000       |
| Equipment .....              | 07000 |    | 512,000       |
| Buildings.....               | 25800 |    | 150,000       |
| Other Assets.....            | 69000 |    | <u>50,000</u> |
| Total.....                   |       | \$ | 16,780,058    |

*277 - Marshall University –*

*School of Medicine*

(WV Code Chapter 18B)

Fund xxxx FY 2023 Org 0471

|                               |       |    |           |
|-------------------------------|-------|----|-----------|
| Marshall Medical School ..... | 17300 | \$ | 5,500,000 |
|-------------------------------|-------|----|-----------|

*278 - West Virginia School of Osteopathic Medicine*

(WV Code Chapter 18B)

Fund xxxx FY 2023 Org 0476

## West Virginia School of

|                            |       |    |           |
|----------------------------|-------|----|-----------|
| Osteopathic Medicine ..... | 17200 | \$ | 3,900,000 |
|----------------------------|-------|----|-----------|

**MISCELLANEOUS BOARDS AND COMMISSIONS**

*279 - Board of Barbers and Cosmetologists –*

*Barbers and Beauticians Special Fund*

(WV Code Chapters 16 and 30)

Fund 5425 FY 2023 Org 0505

## Personal Services and

|                              |       |    |              |
|------------------------------|-------|----|--------------|
| Employee Benefits.....       | 00100 | \$ | 568,198      |
| Current Expenses .....       | 13000 |    | 234,969      |
| Repairs and Alterations..... | 06400 |    | <u>5,000</u> |
| Total.....                   |       | \$ | 808,167      |

The total amount of these appropriations shall be paid from a special revenue fund out of collections made by the Board of Barbers and Cosmetologists as provided by law.

*280 - Hospital Finance Authority –*

*Hospital Finance Authority Fund*

(WV Code Chapter 16)

Fund 5475 FY 2023 Org 0509

|                                  |       |               |
|----------------------------------|-------|---------------|
| Personal Services and            |       |               |
| Employee Benefits.....           | 00100 | \$ 10,000     |
| Salary and Benefits of Cabinet   |       |               |
| Secretary and Agency Heads ..... | 00201 | 93,339        |
| Unclassified.....                | 09900 | 1,501         |
| Current Expenses .....           | 13000 | <u>55,268</u> |
| Total.....                       |       | \$ 160,108    |

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by Article 29A, Chapter 16 of the Code.

*281 - State Armory Board –*

*General Armory Fund*

(WV Code Chapter 15)

Fund 6057 FY 2023 Org 0603

|                               |       |                |
|-------------------------------|-------|----------------|
| Personal Services and         |       |                |
| Employee Benefits.....        | 00100 | \$ 1,687,298   |
| Current Expenses .....        | 13000 | 650,000        |
| Repairs and Alterations ..... | 06400 | 385,652        |
| Equipment .....               | 07000 | 250,000        |
| Buildings .....               | 25800 | 520,820        |
| Other Assets .....            | 69000 | 350,000        |
| Land .....                    | 73000 | <u>200,000</u> |
| Total.....                    |       | \$ 4,043,770   |

From the above appropriations, the Adjutant General may receive and expend funds to conduct operations and activities to include functions of the Military Authority. The Adjutant General may transfer funds between appropriations, except no funds may be transferred to Personal Services and Employee Benefits (fund 6057, appropriation 00100).

*282 - WV State Board of Examiners for Licensed Practical Nurses –*

*Licensed Practical Nurses*

(WV Code Chapter 30)

Fund 8517 FY 2023 Org 0906

|                        |       |                |
|------------------------|-------|----------------|
| Personal Services and  |       |                |
| Employee Benefits..... | 00100 | \$ 507,607     |
| Current Expenses ..... | 13000 | <u>107,700</u> |
| Total.....             |       | \$ 615,307     |

*283 - WV Board of Examiners for Registered Professional Nurses –*

*Registered Professional Nurses*

(WV Code Chapter 30)

Fund 8520 FY 2023 Org 0907

|                              |       |              |
|------------------------------|-------|--------------|
| Personal Services and        |       |              |
| Employee Benefits.....       | 00100 | \$ 1,342,970 |
| Current Expenses .....       | 13000 | 312,655      |
| Repairs and Alterations..... | 06400 | 3,000        |
| Equipment.....               | 07000 | 25,000       |
| Other Assets.....            | 69000 | <u>4,500</u> |
| Total.....                   |       | \$ 1,688,125 |

*284 - Public Service Commission*

(WV Code Chapter 24)

Fund 8623 FY 2023 Org 0926

|                                   |       |                      |
|-----------------------------------|-------|----------------------|
| Personal Services and             |       |                      |
| Employee Benefits.....            | 00100 | \$ 12,543,164        |
| Salary and Benefits of Cabinet    |       |                      |
| Secretary and Agency Heads .....  | 00201 | 318,640              |
| Unclassified.....                 | 09900 | 147,643              |
| Current Expenses .....            | 13000 | 2,507,202            |
| Repairs and Alterations .....     | 06400 | 120,000              |
| Equipment .....                   | 07000 | 160,000              |
| Buildings .....                   | 25800 | 10                   |
| PSC Weight Enforcement.....       | 34500 | 4,742,560            |
| Debt Payment/Capital Outlay ..... | 52000 | 350,000              |
| Land .....                        | 73000 | 10                   |
| BRIM Premium.....                 | 91300 | 172,216              |
| Total.....                        |       | <u>\$ 21,061,445</u> |

The total amount of these appropriations shall be paid from a special revenue fund out of collections for special license fees from public service corporations as provided by law.

The Public Service Commission is authorized to transfer up to \$500,000 from this fund to meet the expected deficiencies in the Motor Carrier Division (fund 8625, org 0926) due to the amendment and reenactment of W.Va. Code §24A-3-1 by Enrolled House Bill Number 2715, Regular Session, 1997.

*285 - Public Service Commission –*

*Gas Pipeline Division –*

*Public Service Commission Pipeline Safety Fund*

(WV Code Chapter 24B)

Fund 8624 FY 2023 Org 0926

|                                  |       |            |
|----------------------------------|-------|------------|
| Personal Services and            |       |            |
| Employee Benefits.....           | 00100 | \$ 288,700 |
| Salary and Benefits of Cabinet   |       |            |
| Secretary and Agency Heads ..... | 00201 | 11,949     |
| Unclassified.....                | 09900 | 3,851      |
| Current Expenses .....           | 13000 | 93,115     |

|                              |       |              |
|------------------------------|-------|--------------|
| Repairs and Alterations..... | 06400 | <u>4,000</u> |
| Total.....                   |       | \$ 401,615   |

The total amount of these appropriations shall be paid from a special revenue fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over pipeline companies as provided by law.

*286 - Public Service Commission –*

*Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8625 FY 2023 Org 0926

|                                  |       |               |
|----------------------------------|-------|---------------|
| Personal Services and            |       |               |
| Employee Benefits.....           | 00100 | \$ 2,367,199  |
| Salary and Benefits of Cabinet   |       |               |
| Secretary and Agency Heads ..... | 00201 | 67,711        |
| Unclassified.....                | 09900 | 29,233        |
| Current Expenses .....           | 13000 | 577,557       |
| Repairs and Alterations.....     | 06400 | 23,000        |
| Equipment.....                   | 07000 | <u>50,000</u> |
| Total.....                       |       | \$ 3,114,700  |

The total amount of these appropriations shall be paid from a special revenue fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over motor carriers as provided by law.

*287 - Public Service Commission –*

*Consumer Advocate Fund*

(WV Code Chapter 24)

Fund 8627 FY 2023 Org 0926

|                        |       |            |
|------------------------|-------|------------|
| Personal Services and  |       |            |
| Employee Benefits..... | 00100 | \$ 889,096 |
| Current Expenses ..... | 13000 | 386,472    |

|                   |       |              |
|-------------------|-------|--------------|
| Equipment.....    | 07000 | 9,872        |
| BRIM Premium..... | 91300 | <u>4,660</u> |
| Total.....        |       | \$ 1,290,100 |

The total amount of these appropriations shall be supported by cash from a special revenue fund out of collections made by the Public Service Commission.

*288 - Real Estate Commission –*

*Real Estate License Fund*

(WV Code Chapter 30)

Fund 8635 FY 2023 Org 0927

|                              |       |              |
|------------------------------|-------|--------------|
| Personal Services and        |       |              |
| Employee Benefits.....       | 00100 | \$ 628,277   |
| Current Expenses .....       | 13000 | 293,122      |
| Repairs and Alterations..... | 06400 | 2,500        |
| Equipment .....              | 07000 | <u>5,000</u> |
| Total.....                   |       | \$ 928,899   |

The total amount of these appropriations shall be paid out of collections of license fees as provided by law.

*289 - WV Board of Examiners for Speech-Language*

*Pathology and Audiology –*

*Speech-Language Pathology and Audiology Operating Fund*

(WV Code Chapter 30)

Fund 8646 FY 2023 Org 0930

|                        |       |               |
|------------------------|-------|---------------|
| Personal Services and  |       |               |
| Employee Benefits..... | 00100 | \$ 97,564     |
| Current Expenses ..... | 13000 | <u>63,499</u> |
| Total.....             |       | \$ 161,063    |

*290 - WV Board of Respiratory Care –**Board of Respiratory Care Fund*

(WV Code Chapter 30)

Fund 8676 FY 2023 Org 0935

|                        |       |               |
|------------------------|-------|---------------|
| Personal Services and  |       |               |
| Employee Benefits..... | 00100 | \$ 88,904     |
| Current Expenses ..... | 13000 | <u>62,709</u> |
| Total.....             |       | \$ 151,613    |

*291 - WV Board of Licensed Dietitians –**Dietitians Licensure Board Fund*

(WV Code Chapter 30)

Fund 8680 FY 2023 Org 0936

|                        |       |               |
|------------------------|-------|---------------|
| Personal Services and  |       |               |
| Employee Benefits..... | 00100 | \$ 20,219     |
| Current Expenses ..... | 13000 | <u>20,250</u> |
| Total.....             |       | \$ 40,469     |

*292 - Massage Therapy Licensure Board –**Massage Therapist Board Fund*

(WV Code Chapter 30)

Fund 8671 FY 2023 Org 0938

|                        |       |               |
|------------------------|-------|---------------|
| Personal Services and  |       |               |
| Employee Benefits..... | 00100 | \$ 112,641    |
| Current Expenses ..... | 13000 | <u>42,388</u> |
| Total.....             |       | \$ 155,029    |

*293 - Board of Medicine –**Medical Licensing Board Fund*



## (WV Code Chapter 30)

Fund 9070 FY 2023 Org 0945

|                              |       |                     |
|------------------------------|-------|---------------------|
| Personal Services and        |       |                     |
| Employee Benefits.....       | 00100 | \$ 1,577,216        |
| Current Expenses .....       | 13000 | 1,108,789           |
| Repairs and Alterations..... | 06400 | 8,000               |
| Total.....                   |       | <u>\$ 2,694,005</u> |

*294 - West Virginia Enterprise Resource Planning Board –**Enterprise Resource Planning System Fund*

## (WV Code Chapter 12)

Fund 9080 FY 2023 Org 0947

|                              |       |                      |
|------------------------------|-------|----------------------|
| Personal Services and        |       |                      |
| Employee Benefits.....       | 00100 | \$ 5,494,051         |
| Unclassified.....            | 09900 | 132,000              |
| Current Expenses .....       | 13000 | 17,214,993           |
| Repairs and Alterations..... | 06400 | 300                  |
| Equipment .....              | 07000 | 502,000              |
| Buildings .....              | 25800 | 2,000                |
| Other Assets .....           | 69000 | 2,004,500            |
| Total.....                   |       | <u>\$ 25,349,844</u> |

*295 - Board of Treasury Investments –**Board of Treasury Investments Fee Fund*

## (WV Code Chapter 12)

Fund 9152 FY 2023 Org 0950

|                          |       |            |
|--------------------------|-------|------------|
| Personal Services and    |       |            |
| Employee Benefits.....   | 00100 | \$ 857,714 |
| Unclassified.....        | 09900 | 14,850     |
| Current Expenses .....   | 13000 | 580,889    |
| BRIM Premium.....        | 91300 | 31,547     |
| Fees of Custodians, Fund |       |            |

|                                  |       |                  |
|----------------------------------|-------|------------------|
| Advisors and Fund Managers ..... | 93800 | <u>3,500,000</u> |
| Total.....                       |       | \$ 4,985,000     |

There is hereby appropriated from this fund, in addition to the above appropriation if needed, an amount of funds necessary for the Board of Treasury Investments to pay the fees and expenses of custodians, fund advisors and fund managers for the consolidated fund of the State as provided in Article 6C, Chapter 12 of the Code.

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by law.

*296 - Contractor Licensing Board Fund*

(WV Code Chapter 21)

Fund 3187 FY 2023 Org 0951

|                              |       |              |
|------------------------------|-------|--------------|
| Personal Services and        |       |              |
| Employee Benefits.....       | 00100 | \$ 2,559,000 |
| Repairs and Alterations..... | 06400 | 10,000       |
| Unclassified.....            | 09900 | 21,000       |
| Current Expenses .....       | 13000 | 500,000      |
| BRIM Premium.....            | 91300 | <u>8,500</u> |
| Total.....                   |       | \$ 3,098,500 |

Total TITLE II, Section 3 –

|                                                           |                         |
|-----------------------------------------------------------|-------------------------|
| Other Funds (Including claims<br>against the state) ..... | <u>\$ 2,001,383,914</u> |
|-----------------------------------------------------------|-------------------------|

**Sec. 4. Appropriations from lottery net profits.** — Net profits of the lottery are to be deposited by the Director of the Lottery to the following accounts in the amounts indicated. The Director of the Lottery shall prorate each deposit of net profits in the proportion the appropriation for each account bears to the total of the appropriations for all accounts.

After first satisfying the requirements for Fund 2252, Fund 3963, and Fund 4908 pursuant to W.Va. Code §29-22-18, the Director of the Lottery shall make available from the remaining net profits of the lottery any amounts needed to pay debt service for

which an appropriation is made for Fund 9065, Fund 4297, Fund 3390, Fund 3514, Fund 9067, and Fund 9068 and is authorized to transfer any such amounts to Fund 9065, Fund 4297, Fund 3390, Fund 3514, Fund 9067, and Fund 9068 for that purpose. Upon receipt of reimbursement of amounts so transferred, the Director of the Lottery shall deposit the reimbursement amounts to the following accounts as required by this section.

*297 - Education, Arts, Sciences and Tourism –*

*Debt Service Fund*

(WV Code Chapter 5)

Fund 2252 FY 2023 Org 0211

|                            | <b>Appropriation</b> | <b>Lottery Funds</b> |
|----------------------------|----------------------|----------------------|
| Debt Service – Total ..... | 31000                | \$ 10,000,000        |

*298 - Department of Tourism –*

*Office of the Secretary*

(WV Code Chapter 5B)

Fund 3067 FY 2023 Org 0304

|                                      |       |                  |
|--------------------------------------|-------|------------------|
| Tourism – Telemarketing Center ..... | 46300 | \$ 82,080        |
| Tourism – Advertising (R).....       | 61800 | 2,422,407        |
| Tourism – Operations (R).....        | 66200 | <u>4,339,884</u> |
| Total.....                           |       | \$ 6,844,371     |

Any unexpended balances remaining in the appropriations for Tourism – Advertising (fund 3067, appropriation 61800) and Tourism – Operations (fund 3067, appropriation 66200) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*299 - Division of Natural Resources*

(WV Code Chapter 20)

Fund 3267 FY 2023 Org 0310

## Personal Services and

|                                |       |    |           |
|--------------------------------|-------|----|-----------|
| Employee Benefits.....         | 00100 | \$ | 2,558,278 |
| Current Expenses .....         | 13000 |    | 26,900    |
| Pricketts Fort State Park..... | 32400 |    | 106,560   |
| Non-Game Wildlife (R) .....    | 52700 |    | 405,088   |
| State Parks and Recreation     |       |    |           |
| Advertising (R) .....          | 61900 |    | 494,578   |
| Total.....                     |       | \$ | 3,591,404 |

Any unexpended balances remaining in the appropriations for Capital Outlay – Parks (fund 3267, appropriation 28800), Non-Game Wildlife (fund 3267, appropriation 52700), and State Parks and Recreation Advertising (fund 3267, appropriation 61900) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*300 - State Board of Education*

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2023 Org 0402

|                                     |       |    |            |
|-------------------------------------|-------|----|------------|
| FBI Checks.....                     | 37200 | \$ | 119,574    |
| Vocational Education                |       |    |            |
| Equipment Replacement.....          | 39300 |    | 800,000    |
| Assessment Program (R).....         | 39600 |    | 490,439    |
| Literacy Project.....               | 89900 |    | 350,000    |
| 21 <sup>st</sup> Century Technology |       |    |            |
| Infrastructure Network Tools        |       |    |            |
| and Support (R).....                | 93300 |    | 12,611,880 |
| Total.....                          |       | \$ | 14,371,893 |

Any unexpended balances remaining in the appropriations for Assessment Program (fund 3951, appropriation 39600), and 21<sup>st</sup> Century Technology Infrastructure Network Tools and Support

(fund 3951, appropriation 93300) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*301 - State Department of Education –*

*School Building Authority –*

*Debt Service Fund*

(WV Code Chapter 18)

Fund 3963 FY 2023 Org 0404

|                            |       |    |                  |
|----------------------------|-------|----|------------------|
| Debt Service – Total ..... | 31000 | \$ | 15,320,363       |
| Directed Transfer .....    | 70000 |    | <u>2,679,637</u> |
| Total.....                 |       | \$ | 18,000,000       |

The School Building Authority shall have the authority to transfer between the above appropriations in accordance with W.Va. Code §29-22-18.

The above appropriation for Directed Transfer (fund 3963, appropriation 70000) may be transferred to the Department of Education, State Board of Education, School Building Authority, School Construction Fund, fund 3952, organization 0404 to be used for school construction and maintenance projects.

*302 - Division of Culture and History –*

*Lottery Education Fund*

(WV Code Chapter 29)

Fund 3534 FY 2023 Org 0432

|                                                           |       |    |           |
|-----------------------------------------------------------|-------|----|-----------|
| Huntington Symphony .....                                 | 02700 | \$ | 59,058    |
| Preservation West Virginia (R).....                       | 09200 |    | 491,921   |
| Fairs and Festivals (R) .....                             | 12200 |    | 1,346,814 |
| Commission for National and<br>Community Service (R)..... | 19300 |    | 380,275   |

## Archeological Curation/

|                                       |       |              |
|---------------------------------------|-------|--------------|
| Capital Improvements (R) .....        | 24600 | 38,546       |
| Historic Preservation Grants (R)..... | 31100 | 417,933      |
| West Virginia Public Theater.....     | 31200 | 120,019      |
| Greenbrier Valley Theater .....       | 42300 | 115,000      |
| Theater Arts of West Virginia.....    | 46400 | 90,000       |
| Marshall Artists Series.....          | 51800 | 36,005       |
| Grants for Competitive Arts           |       |              |
| Program (R) .....                     | 62400 | 811,500      |
| West Virginia State Fair.....         | 65700 | 31,241       |
| Save the Music.....                   | 68000 | 40,000       |
| Contemporary American                 |       |              |
| Theater Festival .....                | 81100 | 57,281       |
| Independence Hall .....               | 81200 | 27,277       |
| Mountain State Forest Festival .....  | 86400 | 38,187       |
| WV Symphony.....                      | 90700 | 59,058       |
| Wheeling Symphony.....                | 90800 | 59,058       |
| Appalachian Children's Chorus .....   | 91600 | 54,554       |
| Total.....                            |       | \$ 4,273,727 |

From the above appropriation for Preservation West Virginia (fund 3534, appropriation 09200) funding shall be provided to the African-American Heritage Family Tree Museum (Fayette) \$2,673, Arts Monongahela (Monongalia) \$11,881, Barbour County Arts and Humanities Council \$891, Beckley Main Street (Raleigh) \$2,970, Buffalo Creek Memorial (Logan) \$2,970, Carnegie Hall (Greenbrier) \$46,899, Ceredo Historical Society (Wayne) \$1,188, Ceredo Kenova Railroad Museum (Wayne) \$1,188, Ceredo Museum (Wayne) \$720, Children's Theatre of Charleston (Kanawha) \$3,127, Chuck Mathena Center (Mercer) \$62,532, Collis P. Huntington Railroad Historical Society (Cabell) \$5,941, Country Music Hall of Fame and Museum (Marion) \$4,159, First Stage Children's Theater Company \$1,188, Flannigan Murrell House (Summers) \$3,781, Fort Ashby Fort (Mineral) \$891, Fort New Salem (Harrison) \$2,198, Fort Randolph (Mason) \$2,970, General Adam Stephen Memorial Foundation (Berkeley) \$11,006, Grafton Mother's Day Shrine Committee (Taylor) \$9,029, Hardy County Tour and Crafts Association \$11,881, Heartwood in the Hills (Calhoun) \$5,040,

Heritage Farm Museum & Village (Cabell) \$29,703, Historic Fayette Theater (Fayette) \$3,267, Historic Middleway Conservancy (Jefferson) \$594, Jefferson County Black History Preservation Society \$2,970, Jefferson County Historical Landmark Commission \$4,753, Maddie Carroll House (Cabell) \$4,455, Marshall County Historical Society \$5,049, McCoy Theater (Hardy) \$11,881, Memorial Day Patriotic Exercise (Taylor) \$20,000, Morgantown Theater Company (Monongalia) \$11,881, Mountaineer Boys' State (Lewis) \$5,941, Nicholas Old Main Foundation (Nicholas) \$1,188, Norman Dillon Farm Museum (Berkeley) \$5,941, Old Opera House Theater Company (Jefferson) \$8,911, Parkersburg Arts Center (Wood) \$11,881, Pocahontas Historic Opera House \$3,564, Raleigh County All Wars Museum \$5,941, Rhododendron Girl's State (Ohio) \$5,941, Roane County 4-H and FFA Youth Livestock Program \$2,970, Society for the Preservation of McGrew House (Preston) \$2,079, Southern West Virginia Veterans' Museum (Raleigh) \$3,393, Summers County Historic Landmark Commission \$2,970, Those Who Served War Museum (Mercer) \$2,376, Three Rivers Avian Center (Summers) \$5,311, Veterans Committee for Civic Improvement of Huntington (Wayne) \$2,970, West Virginia Museum of Glass (Lewis) \$2,970, West Virginia Music Hall of Fame (Kanawha) \$20,792, YMCA Camp Horseshoe (Tucker) \$59,406, Youth Museum of Southern West Virginia (Raleigh) \$7,129, Z.D. Ramsdell House (Wayne) \$720

From the above appropriation for Fairs and Festivals (fund 3534, appropriation 12200) funding shall be provided to A Princeton 4th (Mercer) \$1,800, African-American Cultural Heritage Festival (Jefferson) \$2,970, Alderson 4th of July Celebration (Greenbrier) \$2,970, Allegheny Echo (Pocahontas) \$4,456, Alpine Festival/Leaf Peepers Festival (Tucker) \$6,683, American Civil War (Grant) \$3,127, American Legion Post 8 Veterans Day Parade (McDowell) \$1,250, Angus Beef and Cattle Show (Lewis) \$891, Annual Don Redman Heritage Concert & Awards (Jefferson) \$938, Annual Ruddle Park Jamboree (Pendleton) \$4,690, Antique Market Fair (Lewis) \$1,188, Apple Butter Festival (Morgan) \$3,564, Arkansaw Homemaker's Heritage Weekend (Hardy) \$2,079, Armed Forces Day-South

Charleston (Kanawha) \$1,782, Arthurdale Heritage New Deal Festival (Preston) \$2,970, Athens Town Fair (Mercer) \$1,188, Augusta Fair (Randolph) \$2,970, Autumn Harvest Fest (Monroe) \$2,448, Back Home Festival (Wetzel) \$5,000, Barbour County Fair (Barbour) \$14,851, Barboursville Octoberfest (Cabell) \$2,970, Battelle District Fair (Monongalia) \$3,340, Battle of Dry Creek (Greenbrier) \$891, Battle of Point Pleasant Memorial Committee (Mason) \$2,970, Belle Town Fair (Kanawha) \$2,673, Belleville Homecoming (Wood) \$11,881, Bergoo Down Home Days (Webster) \$1,485, Berkeley County Youth Fair (Berkeley) \$10,990, Black Bear 4K Mountain Bike Race (Kanawha) \$684, Black Heritage Festival (Harrison) \$3,564, Black Walnut Festival (Roane) \$5,940, Blacksville VFD Memorial Day Celebration (Monongalia) \$1,000, Blast from the Past (Upshur) \$1,440, Blue-Gray Reunion (Barbour) \$2,079, Blue Ridge Arts and Crafts Festival (Jefferson) \$5,000, Boone County Fair (Boone) \$5,940, Boone County Labor Day Celebration (Boone) \$2,376, Bradshaw Fall Festival (McDowell) \$1,188, Bramwell Labor Day (Mercer) \$5,000, Brandonville Heritage Day (Preston) \$1,048, Braxton County Fair (Braxton) \$6,832, Braxton County Monster Fest / West Virginia Autumn Festival (Braxton) \$1,485, Brooke County Fair (Brooke) \$2,079, Bruceton Mills Good Neighbor Days (Preston) \$1,188, Buckwheat Festival (Preston) \$5,050, Buffalo 4th of July Celebration (Putnam) \$400, Buffalo October Fest (Putnam) \$3,240, Burlington Apple Harvest Auxiliary (Mineral) \$13,821, Burlington Pumpkin Harvest Festival (Raleigh) \$2,970, Burlington Volunteer Fire and Rescue Carnival (Mineral) \$4,000, Burnsville Freedom Festival (Braxton) \$1,407, Cabell County Fair (Cabell) \$5,940, Calhoun County Wood Festival (Calhoun) \$1,188, Campbell's Creek Community Fair (Kanawha) \$1,485, Cape Coalwood Festival Association (McDowell) \$1,485, Cacapon River Fest (Hampshire) \$2,500, Capon Bridge Founders Day Festival (Hampshire) \$1,188, Capon Springs Ruritan 4th of July (Hampshire) \$684, Cass Homecoming (Pocahontas) \$1,188, Cedarville Town Festival (Gilmer) \$684, Celebration of America (Monongalia) \$3,564, Chapmanville Apple Butter Festival (Logan) \$684, Chapmanville Fire Department 4th of July (Logan) \$1,782, Charles Town Christmas Festival (Jefferson) \$2,970, Charles Town Heritage Festival (Jefferson) \$2,970, Cherry River



Festival (Nicholas) \$3,861, Chester Fireworks (Hancock) \$891, Chester 4th of July Festivities (Hancock) \$2,970, Chilifest West Virginia State Chili Championship (Cabell) \$1,563, Christmas In Our Town (Marion) \$3,127, Christmas in Shepherdstown (Jefferson) \$2,376, Christmas in the Park (Brooke) \$2,970, Christmas in the Park (Logan) \$14,851, Christmas on Main Street (Hancock) \$11,881, City of Dunbar Critter Dinner (Kanawha) \$5,940, City of New Martinsville Festival of Memories (Wetzel) \$6,534, Clay County Golden Delicious Apple Festival (Clay) \$4,158, Clay District Fair (Monongalia) \$3,341, Clendenin Homecoming Festival (Kanawha) \$1,000, Coal Field Jamboree (Logan) \$20,792, Coalton Days Fair (Randolph) \$4,158, Covered Bridge Festival (Marion) \$3,000, Craigsville Fall Festival (Nicholas) \$2,079, Cruise into Princeton (Mercer) \$2,160, Culturefest World Music & Arts Festival (Mercer) \$4,690, Delbarton Homecoming (Mingo) \$2,079, Doddridge County Fair (Doddridge) \$4,158, Dorcas Ice Cream Social (Grant) \$3,564, Durbin Days (Pocahontas) \$2,970, Elbert/Filbert Reunion Festival (McDowell) \$891, Fairview 4th of July Celebration (Marion) \$684, Farm Safety Day (Preston) \$1,188, Farmer's Day Festival (Monroe) \$2,330, Fenwick Mountain Old Time Community Festival (Nicholas) \$2,880, FestivALL Charleston (Kanawha) \$11,881, Flemington Days Fair and Festival (Taylor) \$2,379, Fly in Festival (Cabell) \$5,000, Follansbee Community Days (Brooke) \$4,900, Fort Gay Mountain Heritage Days (Wayne) \$2,970, Fort Henry Days (Ohio) \$3,148, Fort Henry Living History (Ohio) \$1,563, Fort New Salem Spirit of Christmas Festival (Harrison) \$2,432, Frankford Autumnfest (Greenbrier) \$2,970, Franklin Fishing Derby (Pendleton) \$10,709, Freshwater Folk Festival (Greenbrier) \$2,970, Friends Auxiliary of W.R. Sharpe Hospital (Lewis) \$2,970, Frontier Days (Harrison) \$1,782, Fund for the Arts-Wine & All that Jazz Festival (Kanawha) \$1,485, Gassaway Days Celebration (Braxton) \$2,970, Gilbert Elementary Fall Blast (Mingo) \$2,188, Gilbert Spring Fling (Mingo) \$3,595, Gilmer County Farm Show (Gilmer) \$2,376, Grant County Arts Council (Grant) \$1,188, Great Greenbrier River Race (Pocahontas) \$5,940, Greater Quinwood Days (Greenbrier) \$781, Guyandotte Civil War Days (Cabell) \$5,941, Hamlin 4th of July Celebration (Lincoln) \$2,970,

Hampshire Civil War Celebration Days (Hampshire) \$684, Hampshire County 4th of July Celebration (Hampshire) \$11,881, Hampshire County Fair (Hampshire) \$5,002, Hampshire Highlands Art & Music Festival (Hampshire) \$4,252, Hancock County Oldtime Fair (Hancock) \$2,970, Hardy County Commission - 4th of July (Hardy) \$5,940, Hatfield McCoy Matewan Reunion Festival (Mingo) \$12,330, Hatfield McCoy Trail National ATV and Dirt Bike Weekend (Wyoming) \$2,970, Heat'n the Hills Chilifest (Lincoln) \$2,970, Heritage Craft Festival (Monroe) \$1,044, Heritage Days Festival (Roane) \$891, Hilltop Festival (Cabell) \$684, Hilltop Festival of Lights (McDowell) \$1,188, Hinton Railroad Days (Summers) \$4,347, Holly River Festival (Webster) \$891, Hometown Mountain Heritage Festival (Fayette) \$2,432, Hundred 4th of July (Wetzel) \$4,307, Huntersville Traditions Day (Pocahontas) \$4,000, Hurricane 4th of July Celebration (Putnam) \$2,970, Jaeger Town Fair (McDowell) \$891, Irish Heritage Festival of West Virginia (Raleigh) \$2,970, Irish Spring Festival (Lewis) \$684, Italian Heritage Festival-Clarksburg (Harrison) \$17,821, Jackson County Fair (Jackson) \$2,970, Jamboree (Pocahontas) \$2,970, Jane Lew Arts and Crafts Fair (Lewis) \$684, Jefferson County Fair Association (Jefferson) \$14,851, Jersey Mountain Ruritan Pioneer Days (Hampshire) \$684, John Henry Days Festival (Monroe) \$4,698, Johnnie Johnson Blues and Jazz Festival (Marion) \$2,970, Johnstown Community Fair (Harrison) \$1,485, Junior Heifer Preview Show (Lewis) \$1,188, Kanawha Coal Riverfest-St. Albans 4th of July Festival (Kanawha) \$2,970, Keeper of the Mountains-Kayford (Kanawha) \$1,485, Kenova Autumn Festival (Wayne) \$4,377, Kermit Fall Festival (Mingo) \$1,782, Keystone Reunion Gala (McDowell) \$1,563, King Coal Festival (Mingo) \$2,970, Kingwood Downtown Street Fair and Heritage Days (Preston) \$1,188, Knights of Columbus Irish Road Bowling (Marshall County) \$3,000, L.Z. Rainelle West Virginia Veterans Reunion (Greenbrier) \$2,970, Lady of Agriculture (Preston) \$684, Larry Joe Harless Center Octoberfest Hatfield McCoy Trail (Mingo) \$5,940, Larry Joe Harless Community Center Spring Middle School Event (Mingo) \$2,970, Last Blast of Summer (McDowell) \$2,970, Lewisburg Shanghai (Greenbrier) \$1,188, Lincoln County Fall Festival (Lincoln) \$4,752, Lincoln County

Winterfest (Lincoln) \$2,970, Lindsides Veterans' Day Parade (Monroe) \$720, Little Levels Heritage Festival (Pocahontas) \$1,188, Lost Creek Community Festival (Harrison) \$4,158, Main Street Arts Festival (Upshur) \$3,127, Main Street Martinsburg Chocolate Fest and Book Fair (Berkeley) \$2,813, Malden Salt Fest (Kanawha) \$2,000, Mannington District Fair (Marion) \$3,564, Maple Syrup Festival (Randolph) \$684, Marion County FFA Farm Fest (Marion) \$1,485, Marmet Labor Day Celebration (Kanawha) \$3,078, Marshall County Antique Power Show (Marshall) \$1,485, Marshall County Fair (Marshall) \$5,000, Mason County Fair (Mason) \$2,970, Matewan Massacre Reenactment (Mingo) \$5,004, Matewan-Magnolia Fair (Mingo) \$15,932, McARTS-McDowell County (McDowell) \$11,881, McGrew House History Day (Preston) \$1,188, McNeill's Rangers (Mineral) \$4,752, Meadow Bridge Hometown Festival (Fayette) \$743, Meadow River Days Festival (Greenbrier) \$1,782, Mercer County Fair (Mercer) \$1,188, Mercer County Heritage Festival (Mercer) \$3,474, Milton Christmas in the Park (Cabell) \$1,485, Milton Old Timey Days (Cabell) \$1,485, Mineral County Fair (Mineral) \$1,040, Mineral County Veterans Day Parade (Mineral) \$891, Molasses Festival (Calhoun) \$1,188, Monongahfest (Marion) \$3,752, Monongalia County Fair (Monongalia) \$7,250, Moon Over Mountwood Fishing Festival (Wood) \$1,782, Morgan County Fair-History Wagon (Morgan) \$891, Moundsville Bass Festival (Marshall) \$2,376, Moundsville July 4th Celebration (Marshall) \$2,970, Mount Liberty Fall Festival (Barbour) \$1,485, Mountain Festival (Mercer) \$2,747, Mountain Heritage Arts and Crafts Festival (Jefferson) \$2,970, Mountain Music Festival (McDowell) \$1,485, Mountain State Apple Harvest Festival (Berkeley) \$4,456, Mountain State Arts & Crafts Fair Cedar Lakes (Jackson) \$26,732, Mullens Dogwood Festival (Wyoming) \$4,158, Multi-Cultural Festival of West Virginia (Kanawha) \$11,881, Music and Barbecue - Banks District VFD (Upshur) \$1,278, New Cumberland Christmas Parade (Hancock) \$1,782, New Cumberland 4th of July (Hancock) \$2,970, New Martinsville Regatta (Wetzel) \$9,000, New River Bridge Day Festival (Fayette) \$23,762, Nicholas County Fair (Nicholas) \$2,970, Nicholas County Potato Festival (Nicholas) \$2,079, Oak Leaf Festival (Fayette) \$6,253, Oceana Heritage Festival (Wyoming)

\$4,000, Oglebay City Park - Festival of Lights (Ohio) \$47,524, Oglebay Festival (Ohio) \$5,940, Ohio County Country Fair (Ohio) \$5,346, Ohio River Fest (Jackson) \$4,320, Ohio Valley Black Heritage Festival (Ohio) \$3,267, Old Brick Playhouse (Randolph) \$7,000, Old Central City Fair (Cabell) \$2,970, Old Tyme Christmas (Jefferson) \$1,425, Osage Street Fair (Monongalia) \$1,000, Paden City Labor Day Festival (Wetzel) \$3,861, Parkersburg Homecoming (Wood) \$8,754, Patty Fest (Monongalia) \$1,188, Paw Paw District Fair (Marion) \$2,079, Pax Reunion Committee (Fayette) \$2,970, Pendleton County 4-H Weekend (Pendleton) \$1,188, Pendleton County Committee for Arts (Pendleton) \$8,910, Pennsboro Country Road Festival (Ritchie) \$1,188, Petersburg 4th of July Celebration (Grant) \$11,881, Petersburg HS Celebration (Grant) \$5,940, Piedmont-Annual Back Street Festival (Mineral) \$2,376, Pinch Reunion (Kanawha) \$1,500, Pine Bluff Fall Festival (Harrison) \$2,376, Pine Grove 4th of July Festival (Wetzel) \$4,158, Pineville Festival (Wyoming) \$3,564, Pleasants County Agriculture Youth Fair (Pleasants) \$2,970, Poca Heritage Days (Putnam) \$1,782, Pocahontas County Pioneer Days (Pocahontas) \$4,159, Point Pleasant Stern Wheel Regatta (Mason) \$2,970, Pratt Fall Festival (Kanawha) \$1,485, Princeton Autumnfest (Mercer) \$1,563, Princeton Street Fair (Mercer) \$2,970, Putnam County Fair (Putnam) \$2,970, Quartets on Parade (Hardy) \$2,376, Rainelle Fall Festival (Greenbrier) \$3,127, Rand Community Center Festival (Kanawha) \$1,485, Randolph County Community Arts Council (Randolph) \$1,782, Randolph County Fair (Randolph) \$4,158, Randolph County Ramps and Rails (Randolph) \$2,188, Ranson Christmas Festival (Jefferson) \$2,970, Ranson Festival (Jefferson) \$2,970, Renick Liberty Festival (Greenbrier) \$684, Ripley 4th of July (Jackson) \$8,910, Ritchie County Fair and Exposition (Ritchie) \$2,970, Ritchie County Pioneer Days (Ritchie) \$684, River City Festival (Preston) \$684, Roane County Agriculture Field Day (Roane) \$1,782, Rock the Park (Kanawha) \$3,240, Rocket Boys Festival (Raleigh) \$1,710, Romney Heritage Days (Hampshire) \$1,876, Ronceverte River Festival (Greenbrier) \$2,970, Rowlesburg Labor Day Festival (Preston) \$684, Rupert Country Fling (Greenbrier) \$1,876, Saint Spyridon Greek Festival (Harrison) \$1,485, Salem Apple Butter Festival

(Harrison) \$2,376, Sistersville 4th of July (Tyler) \$3,267, Skirmish on the River (Mingo) \$1,250, Smoke on the Water (Wetzel) \$1,782, South Charleston Summerfest (Kanawha) \$5,940, Southern Wayne County Fall Festival (Wayne) \$684, Spirit of Grafton Celebration (Taylor) \$6,240, Spring Mountain Festival (Grant) \$2,500, St. Albans City of Lights - December (Kanawha) \$2,970, Sternwheel Festival (Wood) \$1,782, Stoco Reunion (Raleigh) \$1,485, Stonewall Jackson Heritage Arts & Crafts Jubilee (Lewis) \$6,534, Stonewall Jackson's Roundhouse Raid (Berkeley) \$7,200, Strawberry Festival (Upshur) \$17,821, Sylvester Big Coal River Festival (Boone) \$1,944, Tacy Fair (Barbour) \$684, Taste of Parkersburg (Wood) \$2,970, Taylor County Fair (Taylor) \$3,567, The Gathering at Sweet Creek (Wood) \$1,782, Three Rivers Coal Festival (Marion) \$4,604, Thunder on the Tygart - Mothers' Day Celebration (Taylor) \$7,300, Town of Delbarton 4th of July Celebration (Mingo) \$1,782, Town of Fayetteville Heritage Festival (Fayette) \$4,456, Town of Rivesville 4th of July Festival (Marion) \$3,127, Town of Winfield - Putnam County Homecoming (Putnam) \$3,240, St. Albans Train Fest (Kanawha) \$6,120, Treasure Mountain Festival (Pendleton) \$16,851, Tri-County Fair (Grant) \$22,548, Tucker County Arts Festival and Celebration (Tucker) \$10,692, Tucker County Fair (Tucker) \$2,821, Tucker County Health Fair (Tucker) \$1,188, Turkey Festival (Hardy) \$1,782, Tyler County Fair (Tyler) \$3,088, Tyler County Fireworks Celebration (Tyler) \$2,000, Union Community Irish Festival (Barbour) \$648, Upper Kanawha Valley Oktoberfest (Kanawha) \$1,485, Upper Ohio Valley Italian Festival (Ohio) \$7,128, Valley District Fair (Preston) \$2,079, Veterans Welcome Home Celebration (Cabell) \$938, Vietnam Veterans of America # 949 Christmas Party (Cabell) \$684, Volcano Days at Mountwood Park (Wood) \$2,970, War Homecoming Fall Festival (McDowell) \$891, Wardensville Fall Festival (Hardy) \$2,970, Wayne County Fair (Wayne) \$2,970, Wayne County Fall Festival (Wayne) \$2,970, Webster County Fair (Webster) \$3,600, Webster County Wood Chopping Festival (Webster) \$8,910, Webster Wild Water Weekend (Webster) \$1,188, Welcome Home Family Day (Wayne) \$1,900, Wellsburg 4th of July Celebration (Brooke) \$4,456, Wellsburg Apple Festival of Brooke County (Brooke) \$2,970, West Virginia

Blackberry Festival (Harrison) \$2,970, West Virginia Chestnut Festival (Preston) \$684, West Virginia Coal Festival (Boone) \$5,940, West Virginia Coal Show (Mercer) \$1,563, West Virginia Dairy Cattle Show (Lewis) \$5,940, West Virginia Dandelion Festival (Greenbrier) \$2,970, West Virginia Day at the Railroad Museum (Mercer) \$1,800, West Virginia Fair and Exposition (Wood) \$4,812, West Virginia Freedom Festival (Logan) \$4,456, West Virginia Fireman's Rodeo (Fayette) \$1,485, West Virginia Oil and Gas Festival (Tyler) \$6,534, West Virginia Peach Festival (Hampshire) \$3,240, West Virginia Polled Hereford Association (Braxton) \$891, West Virginia Pumpkin Festival (Cabell) \$5,940, West Virginia Rivers and Rails Festival (Pleasants) \$1,099, West Virginia State Folk Festival (Gilmer) \$2,970, West Virginia Water Festival - City of Hinton (Summers) \$9,144, Weston VFD 4th of July Firemen Festival (Lewis) \$1,188, Wetzel County Autumnfest (Wetzel) \$3,267, Wetzel County Town and Country Days (Wetzel) \$10,098, Wheeling Celtic Festival (Ohio) \$1,166, Wheeling City of Lights (Ohio) \$4,752, Wheeling Sternwheel Regatta (Ohio) \$5,940, Wheeling Vintage Raceboat Regatta (Ohio) \$11,881, Whipple Community Action (Fayette) \$1,485, Wine Festival and Mountain Music Event (Harrison) \$2,970, Winfield Watersports Weekend (Putnam) \$3,240, Wirt County Fair (Wirt) \$1,485, Wirt County Pioneer Days (Wirt) \$1,188, Wyoming County Civil War Days (Wyoming) \$1,296, Youth Stockman Beef Expo (Lewis) \$1,188.

Any unexpended balances remaining in the appropriations for Preservation West Virginia (fund 3534, appropriation 09200), Fairs and Festivals (fund 3534, appropriation 12200), Commission for National and Community Service (fund 3534, appropriation 19300), Archeological Curation/Capital Improvements (fund 3534, appropriation 24600), Historic Preservation Grants (fund 3534, appropriation 31100), and Grants for Competitive Arts Program (fund 3534, appropriation 62400) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

Any Fairs & Festivals awards shall be funded in addition to, and not in lieu of, individual grant allocations derived from the Arts Council and Cultural Grant Program allocations.

*303 - Library Commission –*

*Lottery Education Fund*

(WV Code Chapter 10)

Fund 3559 FY 2023 Org 0433

|                                  |       |    |                |
|----------------------------------|-------|----|----------------|
| Books and Films .....            | 17900 | \$ | 360,784        |
| Services to Libraries .....      | 18000 |    | 550,000        |
| Grants to Public Libraries ..... | 18200 |    | 9,439,571      |
| Digital Resources .....          | 30900 |    | 219,992        |
| Infomine Network .....           | 88400 |    | <u>943,353</u> |
| Total .....                      |       | \$ | 11,513,700     |

*304 - Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 3587 FY 2023 Org 0439

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 3587, appropriation 75500) at the close of fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

*305 - Higher Education Policy Commission –*

*Lottery Education –*

*Higher Education Policy Commission – Control Account*

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2023 Org 0441

|                                        |       |    |           |
|----------------------------------------|-------|----|-----------|
| RHI Program and Site Support (R) ..... | 03600 | \$ | 1,915,854 |
| RHI Program and Site Support –         |       |    |           |
| RHEP Program Administration .....      | 03700 |    | 146,653   |

## RHI Program and Site Support –

|                                        |       |              |
|----------------------------------------|-------|--------------|
| Grad Med Ed and                        |       |              |
| Fiscal Oversight (R).....              | 03800 | 89,586       |
| Minority Doctoral Fellowship (R) ..... | 16600 | 129,604      |
| Health Sciences Scholarship (R).....   | 17600 | 225,908      |
| Vice Chancellor for Health             |       |              |
| Sciences – Rural Health                |       |              |
| Residency Program (R).....             | 60100 | 62,725       |
| WV Engineering, Science,               |       |              |
| and Technology                         |       |              |
| Scholarship Program.....               | 86800 | 452,831      |
| Total.....                             |       | \$ 3,023,161 |

Any unexpended balances remaining in the appropriations for RHI Program and Site Support (fund 4925, appropriation 03600), RHI Program and Site Support – Grad Med Ed and Fiscal Oversight (fund 4925, appropriation 03800), Minority Doctoral Fellowship (fund 4925, appropriation 16600), Health Sciences Scholarship (fund 4925, appropriation 17600), and Vice Chancellor for Health Sciences – Rural Health Residency Program (fund 4925, appropriation 60100) at the close of fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The above appropriation for WV Engineering, Science, and Technology Scholarship Program (fund 4925, appropriation 86800) shall be transferred to the West Virginia Engineering, Science and Technology Scholarship Fund (fund 4928, org 0441) established by W.Va. Code §18C-6-1.

*306 - Community and Technical College –*

*Capital Improvement Fund*

(WV Code Chapter 18B)

Fund 4908 FY 2023 Org 0442

|                            |       |              |
|----------------------------|-------|--------------|
| Debt Service – Total ..... | 31000 | \$ 5,000,000 |
|----------------------------|-------|--------------|



Any unexpended balance remaining in the appropriation for Capital Outlay and Improvements – Total (fund 4908, appropriation 84700) at the close of fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

*307 - Higher Education Policy Commission –*

*Lottery Education –*

*West Virginia University – School of Medicine*

(WV Code Chapter 18B)

Fund 4185 FY 2023 Org 0463

WVU Health Sciences –

|                                                                    |       |    |                |
|--------------------------------------------------------------------|-------|----|----------------|
| RHI Program and<br>Site Support (R) .....                          | 03500 | \$ | 1,208,106      |
| MA Public Health Program and<br>Health Science Technology (R)..... | 62300 |    | 52,445         |
| Health Sciences Career<br>Opportunities Program (R) .....          | 86900 |    | 336,987        |
| HSTA Program (R) .....                                             | 87000 |    | 1,802,118      |
| Center for Excellence in<br>Disabilities (R).....                  | 96700 |    | <u>318,711</u> |
| Total.....                                                         |       | \$ | 3,718,367      |

Any unexpended balances remaining in the appropriations for WVU Health Sciences – RHI Program and Site Support (fund 4185, appropriation 03500), MA Public Health Program and Health Science Technology (fund 4185, appropriation 62300), Health Sciences Career Opportunities Program (fund 4185, appropriation 86900), HSTA Program (fund 4185, appropriation 87000), and Center for Excellence in Disabilities (fund 4185, appropriation 96700) at the close of fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*308 - Higher Education Policy Commission –*

*Lottery Education –*

*Marshall University – School of Medicine*

(WV Code Chapter 18B)

Fund 4896 FY 2023 Org 0471

## Marshall Medical School –

RHI Program and

Site Support (R) ..... 03300      \$      434,910

## Vice Chancellor for Health

Sciences – Rural Health

Residency Program (R)..... 60100      174,109

Total.....      \$      609,019

Any unexpended balances remaining in the appropriations for Marshall Medical School – RHI Program and Site Support (fund 4896, appropriation 03300) and Vice Chancellor for Health Sciences – Rural Health Residency Program (fund 4896, appropriation 60100) at the close of fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*309 - Bureau of Senior Services –**Lottery Senior Citizens Fund*

(WV Code Chapter 29)

Fund 5405 FY 2023 Org 0508

## Personal Services and

Employee Benefits..... 00100      \$      142,503

## Salary and Benefits of Cabinet

Secretary and Agency Heads ..... 00201      70,720

Current Expenses ..... 13000      332,284

Repairs and Alterations..... 06400      1,000

## Local Programs Service

Delivery Costs ..... 20000      2,435,250

Silver Haired Legislature ..... 20200      18,500

## Transfer to Division of Human

Services for Health Care

and Title XIX Waiver

for Senior Citizens ..... 53900      14,203,501

|                                            |       |                      |
|--------------------------------------------|-------|----------------------|
| Roger Tompkins Alzheimer's                 |       |                      |
| Respite Care.....                          | 64300 | 2,304,286            |
| WV Alzheimer's Hotline .....               | 72400 | 45,000               |
| Regional Aged and Disabled                 |       |                      |
| Resource Center.....                       | 76700 | 425,000              |
| Senior Services Medicaid Transfer .....    | 87100 | 16,400,070           |
| Legislative Initiatives for the Elderly... | 90400 | 9,671,239            |
| Long Term Care Ombudsman .....             | 90500 | 297,226              |
| BRIM Premium.....                          | 91300 | 7,718                |
| In-Home Services and Nutrition             |       |                      |
| for Senior Citizens .....                  | 91700 | 6,845,941            |
| Total.....                                 |       | <u>\$ 53,200,238</u> |

Any unexpended balance remaining in the appropriation for Senior Citizen Centers and Programs (fund 5405, appropriation 46200) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

Included in the above appropriation for Current Expenses (fund 5405, appropriation 13000), is funding to support an in-home direct care workforce registry.

The above appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens (appropriation 53900) along with the federal moneys generated thereby shall be used for reimbursement for services provided under the program.

Total TITLE II, Section 4 –

    Lottery Revenue..... \$ 134,145,880

**Sec. 5. Appropriations from state excess lottery revenue fund.** — In accordance with W.Va. Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the following appropriations shall be deposited and disbursed by the Director of the Lottery to the following accounts in this section in the amounts indicated.

After first funding the appropriations required by W.Va. Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-

25-22b, the Director of the Lottery shall provide funding from the State Excess Lottery Revenue Fund for the remaining appropriations in this section to the extent that funds are available. In the event that revenues to the State Excess Lottery Revenue Fund are sufficient to meet all the appropriations required made pursuant to this section, then the Director of the Lottery shall then provide the funds available for fund 5365, appropriation 18900.

*310 - Governor's Office*

(WV Code Chapter 5)

Fund 1046 FY 2023 Org 0100

|                      |                                     |
|----------------------|-------------------------------------|
|                      | <b>Excess<br/>Lottery<br/>Funds</b> |
| <b>Appropriation</b> |                                     |

Any unexpended balance remaining in the appropriation for Publication of Papers and Transition Expenses – Lottery Surplus (fund 1046, appropriation 06600) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

*311 - Office of Technology*

(WV Code Chapter 5A)

Fund 2532 FY 2023 Org 0231

Any unexpended balances remaining in the appropriations for Cyber Security (fund 2532, appropriation 99001), Enterprise Data Center (fund 2532, appropriation 99002), and Enterprise Telephony Modernization (fund 2532, appropriation 99003) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*312 - Department of Economic Development –*

*Office of the Secretary –*

*West Virginia Development Office*

## (WV Code Chapter 5B)

Fund 3170 FY 2023 Org 0307

Any unexpended balance remaining in the appropriation for Recreational Grants or Economic Development Loans (fund 3170, appropriation 25300) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

*313 - Division of Natural Resources –**State Park Improvement Fund*Fund 3277 FY 2023 Org 0310

|                                   |       |    |                  |
|-----------------------------------|-------|----|------------------|
| Current Expenses (R) .....        | 13000 | \$ | 23,300           |
| Repairs and Alterations (R) ..... | 06400 |    | 161,200          |
| Equipment (R).....                | 07000 |    | 200,000          |
| Buildings (R).....                | 25800 |    | 100,000          |
| Other Assets (R).....             | 69000 |    | <u>1,020,500</u> |
| Total.....                        |       | \$ | 1,505,000        |

Any unexpended balances remaining in the appropriations for Repairs and Alterations (fund 3277, appropriation 06400), Equipment (fund 3277, appropriation 07000), Unclassified – Total (fund 3277, appropriation 09600), Current Expenses (fund 3277, appropriation 13000), Buildings (fund 3277, appropriation 25800), and Other Assets (fund 3277, appropriation 69000) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*314 - West Virginia Infrastructure Council –**West Virginia Infrastructure Transfer Fund*Fund 3390 FY 2023 Org 0316

|                         |       |    |            |
|-------------------------|-------|----|------------|
| Directed Transfer ..... | 70000 | \$ | 46,000,000 |
|-------------------------|-------|----|------------|

The above appropriation shall be allocated pursuant to W.Va. Code §29-22-18d and §31-15-9.

*315 - Department of Education –**School Building Authority*Fund 3514 FY 2023 Org 0404

|                            |       |               |
|----------------------------|-------|---------------|
| Debt Service - Total ..... | 31000 | \$ 18,999,900 |
| Directed Transfer .....    | 70000 | <u>100</u>    |
| Total.....                 |       | \$ 19,000,000 |

The School Building Authority shall have the authority to transfer between the above appropriations in accordance with W.Va. Code §29-22-18a.

The above appropriation for Directed Transfer (fund 3514, appropriation 70000) may be transferred to the Department of Education, State Board of Education, School Building Authority, School Construction Fund (fund 3952, organization 0404) to be used for school construction and maintenance projects.

*316 - Higher Education Policy Commission –**Education Improvement Fund*Fund 4295 FY 2023 Org 0441

## PROMISE Scholarship –

|               |       |               |
|---------------|-------|---------------|
| Transfer..... | 80000 | \$ 29,000,000 |
|---------------|-------|---------------|

The above appropriation shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by W.Va. Code §18C-7-7.

The Legislature has explicitly set a finite amount of available appropriations and directed the administrators of the Program to provide for the award of scholarships within the limits of available appropriations.

*317 - Higher Education Policy Commission –**Higher Education Improvement Fund*Fund 4297 FY 2023 Org 0441

Directed Transfer ..... 70000      \$    15,000,000

The above appropriation for Directed Transfer shall be transferred to Higher Education Policy Commission – System – Tuition Fee Capital Improvement Fund (fund 4903, org 0442) as authorized by Senate Concurrent Resolution No. 41.

*318 - Higher Education Policy Commission –*

*Administration –Control Account*

Fund 4932 FY 2023 Org 0441

Any unexpended balance remaining in the appropriation for Advanced Technology Centers (fund 4932, appropriation 02800) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

*319 - Division of Human Services*

(WV Code Chapters 9, 48, and 49)

Fund 5365 FY 2023 Org 0511

Medical Services ..... 18900      \$    26,697,960

*320 - Division of Corrections and Rehabilitation –*

*Correctional Units*

(WV Code Chapter 15A)

Fund 6283 FY 2023 Org 0608

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 6283, appropriation 75500) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

*321 - Lottery Commission –*

*General Purpose Account*

Fund 7206 FY 2023 Org 0705

General Revenue Fund – Transfer ..... 70011      \$    65,000,000

The above appropriation shall be transferred to the General Revenue Fund as determined by the Director of the Lottery in accordance with W.Va. Code §29-22-18a.

*322 - Lottery Commission –*

*Refundable Credit*

Fund 7207 FY 2023 Org 0705

Directed Transfer ..... 70000      \$    10,000,000

The above appropriation shall be transferred to the General Revenue Fund to provide reimbursement for the refundable credit allowable under W.Va. Code §11-21-21. The amount of the required transfer shall be determined solely by the State Tax Commissioner and shall be completed by the Director of the Lottery upon the commissioner's request.

*323 - Lottery Commission –*

*Distributions to Statutory Funds and Purposes*

Fund 7213 FY 2023 Org 0705

Parking Garage Fund – Transfer ..... 70001      \$      500,000

2004 Capitol Complex Parking

Garage Fund – Transfer ..... 70002      216,478

Capitol Dome and Improvements

Fund – Transfer ..... 70003      1,796,256

Capitol Renovation and

Improvement Fund – Transfer ..... 70004      2,381,252

Development Office Promotion

Fund – Transfer ..... 70005      1,298,864

Research Challenge Fund –

Transfer ..... 70006      1,731,820

Tourism Promotion Fund –

Transfer ..... 70007      4,808,142



|                                                                                             |       |               |
|---------------------------------------------------------------------------------------------|-------|---------------|
| Cultural Facilities and Capitol<br>Resources Matching Grant<br>Program Fund – Transfer..... | 70008 | 1,250,535     |
| State Debt Reduction Fund –<br>Transfer.....                                                | 70010 | 20,000,000    |
| General Revenue Fund – Transfer .....                                                       | 70011 | 1,167,799     |
| West Virginia Racing Commission<br>Racetrack Video<br>Lottery Account .....                 | 70012 | 3,463,637     |
| Historic Resort Hotel Fund .....                                                            | 70013 | 24,010        |
| Licensed Racetrack Regular<br>Purse Fund .....                                              | 70014 | 22,383,247    |
| Total.....                                                                                  |       | \$ 61,022,040 |

*324 - Racing Commission*

Fund 7308 FY 2023 Org 0707

|                                                                            |       |              |
|----------------------------------------------------------------------------|-------|--------------|
| Special Breeders Compensation<br>(WVC §29-22-18a,<br>subsection (I)) ..... | 21800 | \$ 2,000,000 |
|----------------------------------------------------------------------------|-------|--------------|

*325 - Economic Development Authority –*

*Economic Development Project Fund*

Fund 9065 FY 2023 Org 0944

|                            |       |               |
|----------------------------|-------|---------------|
| Debt Service – Total ..... | 31000 | \$ 19,000,000 |
|----------------------------|-------|---------------|

Pursuant to W.Va. Code §29-22-18a, subsection (f), excess lottery revenues are authorized to be transferred to the lottery fund as reimbursement of amounts transferred to the economic development project fund pursuant to section four of this title and W.Va. Code §29-22-18, subsection (f).

*326 - Economic Development Authority –*

*Cacapon and Beech Fork State Parks –*

*Lottery Revenue Debt Service*

Fund 9067 FY 2023 Org 0944

Debt Service..... 04000 \$ 2,032,000

*327 - Economic Development Authority –*

*State Parks Lottery Revenue Debt Service Fund*

Fund 9068 FY 2023 Org 0944

Debt Service..... 04000 \$ 4,395,000

Total TITLE II, Section 5 –

Excess Lottery Funds..... \$ 300,652,000

**Sec. 6. Appropriations of federal funds.** — In accordance with Article 11, Chapter 4 of the Code from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2023.

**LEGISLATIVE**

*328 - Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 8738 FY 2023 Org 2300

|                     | <b>Appropriation</b> | <b>Federal Funds</b> |
|---------------------|----------------------|----------------------|
| Economic Loss Claim |                      |                      |
| Payment Fund .....  | 33400                | \$ 1,100,000         |

**JUDICIAL**

*329 - Supreme Court*

Fund 8867 FY 2023 Org 2400

|                        |       |              |
|------------------------|-------|--------------|
| Personal Services and  |       |              |
| Employee Benefits..... | 00100 | \$ 1,813,000 |
| Current Expenses ..... | 13000 | 1,557,000    |

|                              |       |                |
|------------------------------|-------|----------------|
| Repairs and Alterations..... | 06400 | 100,000        |
| Equipment.....               | 07000 | 250,000        |
| Other Assets.....            | 69000 | <u>280,000</u> |
| Total.....                   |       | \$ 4,000,000   |

**EXECUTIVE***330 - Governor's Office –**Coronavirus State Fiscal Recovery Fund*

(WV Code Chapter 4)

Fund 8823 FY 2023 Org 0100

|                              |       |                  |
|------------------------------|-------|------------------|
| Personal Services and        |       |                  |
| Employee Benefits.....       | 00100 | \$ 941,932,089   |
| Unclassified.....            | 09900 | 13,554,899       |
| Current Expenses .....       | 13000 | 400,000,000      |
| Repairs and Alterations..... | 06400 | 1,000            |
| Equipment .....              | 07000 | 1,000            |
| Other Assets.....            | 69000 | <u>1,000</u>     |
| Total.....                   |       | \$ 1,355,489,988 |

*331 - Department of Agriculture*

(WV Code Chapter 19)

Fund 8736 FY 2023 Org 1400

|                                    |       |                  |
|------------------------------------|-------|------------------|
| Personal Services and              |       |                  |
| Employee Benefits.....             | 00100 | \$ 2,708,867     |
| Unclassified.....                  | 09900 | 50,534           |
| Current Expenses .....             | 13000 | 6,828,661        |
| Repairs and Alterations.....       | 06400 | 650,000          |
| Equipment .....                    | 07000 | 910,500          |
| Buildings.....                     | 25800 | 1,000,000        |
| Other Assets.....                  | 69000 | 550,000          |
| Land .....                         | 73000 | 500,000          |
| Federal Coronavirus Pandemic ..... | 89101 | <u>1,098,839</u> |
| Total.....                         |       | \$ 14,297,401    |

332 - *Department of Agriculture –**Meat Inspection Fund*

(WV Code Chapter 19)

Fund 8737 FY 2023 Org 1400

|                              |       |                   |
|------------------------------|-------|-------------------|
| Personal Services and        |       |                   |
| Employee Benefits.....       | 00100 | \$ 685,045        |
| Unclassified.....            | 09900 | 8,755             |
| Current Expenses .....       | 13000 | 136,012           |
| Repairs and Alterations..... | 06400 | 5,500             |
| Equipment.....               | 07000 | 114,478           |
| Total.....                   |       | <u>\$ 949,790</u> |

333 - *Department of Agriculture –**State Conservation Committee*

(WV Code Chapter 19)

Fund 8783 FY 2023 Org 1400

|                        |       |                      |
|------------------------|-------|----------------------|
| Personal Services and  |       |                      |
| Employee Benefits..... | 00100 | \$ 97,250            |
| Current Expenses ..... | 13000 | <u>15,599,974</u>    |
| Total.....             |       | <u>\$ 15,697,224</u> |

334 - *Department of Agriculture –**Land Protection Authority*Fund 8896 FY 2023 Org 1400

|                        |       |                   |
|------------------------|-------|-------------------|
| Personal Services and  |       |                   |
| Employee Benefits..... | 00100 | \$ 46,526         |
| Unclassified.....      | 09900 | 5,004             |
| Current Expenses ..... | 13000 | <u>448,920</u>    |
| Total.....             |       | <u>\$ 500,450</u> |

*335 - Attorney General –**Medicaid Fraud Unit*Fund 8882 FY 2023 Org 1500

|                              |       |               |
|------------------------------|-------|---------------|
| Personal Services and        |       |               |
| Employee Benefits.....       | 00100 | \$ 1,434,886  |
| Unclassified.....            | 09900 | 15,336        |
| Current Expenses .....       | 13000 | 599,513       |
| Repairs and Alterations..... | 06400 | 4,313         |
| Equipment.....               | 07000 | 7,500         |
| Other Assets.....            | 69000 | <u>11,336</u> |
| Total.....                   |       | \$ 2,072,884  |

*336 - Secretary of State –**State Election Fund*

(WV Code Chapter 3)

Fund 8854 FY 2023 Org 1600

|                              |       |                |
|------------------------------|-------|----------------|
| Personal Services and        |       |                |
| Employee Benefits.....       | 00100 | \$ 210,240     |
| Unclassified.....            | 09900 | 7,484          |
| Current Expenses .....       | 13000 | 415,727        |
| Repairs and Alterations..... | 06400 | 15,000         |
| Other Assets.....            | 69000 | <u>100,000</u> |
| Total.....                   |       | \$ 748,451     |

**DEPARTMENT OF COMMERCE***337 - Division of Forestry*

(WV Code Chapter 19)

Fund 8703 FY 2023 Org 0305

|                        |       |            |
|------------------------|-------|------------|
| Personal Services and  |       |            |
| Employee Benefits..... | 00100 | \$ 610,888 |
| Unclassified.....      | 09900 | 51,050     |

|                               |       |                  |
|-------------------------------|-------|------------------|
| Current Expenses .....        | 13000 | 5,232,560        |
| Repairs and Alterations ..... | 06400 | 155,795          |
| Equipment .....               | 07000 | 100,000          |
| Other Assets .....            | 69000 | <u>1,808,300</u> |
| Total .....                   |       | \$ 7,958,593     |

*338 - Geological and Economic Survey*

(WV Code Chapter 29)

Fund 8704 FY 2023 Org 0306

|                               |       |               |
|-------------------------------|-------|---------------|
| Personal Services and         |       |               |
| Employee Benefits .....       | 00100 | \$ 54,432     |
| Unclassified .....            | 09900 | 2,803         |
| Current Expenses .....        | 13000 | 195,639       |
| Repairs and Alterations ..... | 06400 | 5,000         |
| Equipment .....               | 07000 | 7,500         |
| Other Assets .....            | 69000 | <u>15,000</u> |
| Total .....                   |       | \$ 280,374    |

*339 - Division of Labor*

(WV Code Chapters 21 and 47)

Fund 8706 FY 2023 Org 0308

|                               |       |            |
|-------------------------------|-------|------------|
| Personal Services and         |       |            |
| Employee Benefits .....       | 00100 | \$ 427,254 |
| Unclassified .....            | 09900 | 5,572      |
| Current Expenses .....        | 13000 | 167,098    |
| Repairs and Alterations ..... | 06400 | <u>500</u> |
| Total .....                   |       | \$ 600,424 |

*340 - Division of Natural Resources*

(WV Code Chapter 20)

Fund 8707 FY 2023 Org 0310

|                         |       |               |
|-------------------------|-------|---------------|
| Personal Services and   |       |               |
| Employee Benefits ..... | 00100 | \$ 10,318,396 |

|                              |       |               |
|------------------------------|-------|---------------|
| Unclassified.....            | 09900 | 107,693       |
| Current Expenses .....       | 13000 | 7,887,660     |
| Repairs and Alterations..... | 06400 | 566,250       |
| Equipment.....               | 07000 | 2,126,141     |
| Administration .....         | 15500 | 50,325        |
| Buildings.....               | 25800 | 951,000       |
| Other Assets.....            | 69000 | 4,768,670     |
| Land .....                   | 73000 | 2,893,920     |
| Total.....                   |       | \$ 29,670,055 |

*341 - Division of Miners' Health,  
Safety and Training*

(WV Code Chapter 22)

Fund 8709 FY 2023 Org 0314

|                        |       |                |
|------------------------|-------|----------------|
| Personal Services and  |       |                |
| Employee Benefits..... | 00100 | \$ 670,029     |
| Current Expenses ..... | 13000 | <u>150,000</u> |
| Total.....             |       | \$ 820,029     |

*342 - WorkForce West Virginia*

(WV Code Chapter 23)

Fund 8835 FY 2023 Org 0323

|                              |       |                  |
|------------------------------|-------|------------------|
| Unclassified.....            | 09900 | \$ 5,127         |
| Current Expenses .....       | 13000 | 667,530          |
| Reed Act 2002 – Unemployment |       |                  |
| Compensation .....           | 62200 | 4,446,737        |
| Reed Act 2002 – Employment   |       |                  |
| Services.....                | 63000 | <u>3,246,737</u> |
| Total.....                   |       | \$ 8,366,131     |

Pursuant to the requirements of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, and the provisions of W.Va. Code §21A-9-9, the above appropriation to Unclassified and Current Expenses shall be used by WorkForce West Virginia for

the specific purpose of administration of the state's unemployment insurance program or job service activities, subject to each and every restriction, limitation or obligation imposed on the use of the funds by those federal and state statutes.

*343 - State Board of Rehabilitation –*

*Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 8734 FY 2023 Org 0932

|                                  |       |                  |
|----------------------------------|-------|------------------|
| Personal Services and            |       |                  |
| Employee Benefits.....           | 00100 | \$ 12,042,929    |
| Salary and Benefits of Cabinet   |       |                  |
| Secretary and Agency Heads ..... | 00201 | 138,000          |
| Current Expenses .....           | 13000 | 34,440,940       |
| Repairs and Alterations.....     | 06400 | 350,400          |
| Equipment.....                   | 07000 | <u>1,275,870</u> |
| Total.....                       |       | \$ 48,248,139    |

*344 - State Board of Rehabilitation –*

*Division of Rehabilitation Services –*

*Disability Determination Services*

(WV Code Chapter 18)

Fund 8890 FY 2023 Org 0932

|                              |       |               |
|------------------------------|-------|---------------|
| Personal Services and        |       |               |
| Employee Benefits.....       | 00100 | \$ 12,945,086 |
| Current Expenses .....       | 13000 | 13,383,206    |
| Repairs and Alterations..... | 06400 | 1,100         |
| Equipment.....               | 07000 | <u>83,350</u> |
| Total.....                   |       | \$ 26,412,742 |

**DEPARTMENT OF TOURISM**

*345 - Department of Tourism –*



*Tourism Workforce Development Fund*

(WV Code Chapter 5B)

Fund 8903 FY 2023 Org 0304

|                                    |       |              |
|------------------------------------|-------|--------------|
| Federal Coronavirus Pandemic ..... | 89101 | 5,148,017    |
| Total.....                         |       | \$ 5,148,017 |

**DEPARTMENT OF ECONOMIC DEVELOPMENT***346 - Department of Economic Development –**Office of the Secretary*

(WV Code Chapter 5B)

Fund 8705 FY 2023 Org 0307

|                        |       |                   |
|------------------------|-------|-------------------|
| Personal Services and  |       |                   |
| Employee Benefits..... | 00100 | \$ 1,521,231      |
| Unclassified.....      | 09900 | 50,000            |
| Current Expenses ..... | 13000 | <u>21,304,019</u> |
| Total.....             |       | \$ 22,875,250     |

*347 - Department of Economic Development –**Office of Energy*

(WV Code Chapter 5B)

Fund 8892 FY 2023 Org 0307

|                        |       |                  |
|------------------------|-------|------------------|
| Personal Services and  |       |                  |
| Employee Benefits..... | 00100 | \$ 985,462       |
| Unclassified.....      | 09900 | 7,350            |
| Current Expenses ..... | 13000 | <u>8,266,076</u> |
| Total.....             |       | \$ 9,258,888     |

*348 - Department of Economic Development –**Office of the Secretary –*

*Office of Economic Opportunity*

(WV Code Chapter 5)

Fund 8901 FY 2023 Org 0307

|                              |       |                   |
|------------------------------|-------|-------------------|
| Personal Services and        |       |                   |
| Employee Benefits.....       | 00100 | \$ 854,189        |
| Repairs and Alterations..... | 06400 | 250               |
| Equipment.....               | 07000 | 6,000             |
| Unclassified.....            | 09900 | 106,795           |
| Current Expenses .....       | 13000 | <u>20,303,081</u> |
| Total.....                   |       | \$ 21,270,315     |

**DEPARTMENT OF EDUCATION***349 - State Board of Education –**State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2023 Org 0402

|                                    |       |                  |
|------------------------------------|-------|------------------|
| Personal Services and              |       |                  |
| Employee Benefits.....             | 00100 | \$ 5,890,196     |
| Unclassified.....                  | 09900 | 2,000,000        |
| Current Expenses .....             | 13000 | 1,434,146,008    |
| Repairs and Alterations.....       | 06400 | 10,000           |
| Equipment.....                     | 07000 | 10,000           |
| Other Assets.....                  | 69000 | 10,000           |
| Federal Coronavirus Pandemic ..... | 89101 | <u>4,990,123</u> |
| Total.....                         |       | \$ 1,447,056,327 |

*350 - State Board of Education –**School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2023 Org 0402

## Personal Services and

|                              |       |    |             |
|------------------------------|-------|----|-------------|
| Employee Benefits.....       | 00100 | \$ | 1,924,124   |
| Unclassified.....            | 09900 |    | 1,150,500   |
| Current Expenses .....       | 13000 |    | 258,781,265 |
| Repairs and Alterations..... | 06400 |    | 20,000      |
| Equipment.....               | 07000 |    | 100,000     |
| Other Assets.....            | 69000 |    | 25,000      |
| Total.....                   |       | \$ | 262,000,889 |

*351 - State Board of Education –**Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2023 Org 0402

## Personal Services and

|                              |       |    |            |
|------------------------------|-------|----|------------|
| Employee Benefits.....       | 00100 | \$ | 1,938,607  |
| Unclassified.....            | 09900 |    | 155,000    |
| Current Expenses .....       | 13000 |    | 17,820,081 |
| Repairs and Alterations..... | 06400 |    | 10,000     |
| Equipment.....               | 07000 |    | 10,000     |
| Other Assets.....            | 69000 |    | 10,000     |
| Total.....                   |       | \$ | 19,943,688 |

*352 - State Board of Education –**Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2023 Org 0402

## Personal Services and

|                              |       |    |             |
|------------------------------|-------|----|-------------|
| Employee Benefits.....       | 00100 | \$ | 3,540,241   |
| Unclassified.....            | 09900 |    | 1,000,000   |
| Current Expenses .....       | 13000 |    | 133,346,390 |
| Repairs and Alterations..... | 06400 |    | 10,000      |
| Equipment.....               | 07000 |    | 10,000      |
| Other Assets.....            | 69000 |    | 10,000      |

|                                    |       |                   |
|------------------------------------|-------|-------------------|
| Federal Coronavirus Pandemic ..... | 89101 | <u>17,336,635</u> |
| Total.....                         |       | \$ 155,253,266    |

***DEPARTMENT OF ARTS, CULTURE, AND HISTORY***

*353 - Division of Culture and History*

(WV Code Chapter 29)

Fund 8718 FY 2023 Org 0432

|                                    |       |                |
|------------------------------------|-------|----------------|
| Personal Services and              |       |                |
| Employee Benefits.....             | 00100 | \$ 851,130     |
| Current Expenses .....             | 13000 | 1,947,372      |
| Repairs and Alterations.....       | 06400 | 1,000          |
| Equipment.....                     | 07000 | 1,000          |
| Buildings.....                     | 25800 | 1,000          |
| Other Assets.....                  | 69000 | 1,000          |
| Land .....                         | 73000 | 360            |
| Federal Coronavirus Pandemic ..... | 89101 | <u>765,400</u> |
| Total.....                         |       | \$ 2,802,862   |

*354 - Commission for National and Community Service*

(WV Code Chapter 5F)

Fund 8841 FY 2023 Org 0432

|                                    |       |                  |
|------------------------------------|-------|------------------|
| Personal Services and              |       |                  |
| Employee Benefits.....             | 00100 | \$ 446,874       |
| Current Expenses .....             | 13000 | 5,587,325        |
| Repairs and Alterations.....       | 06400 | 1,000            |
| Federal Coronavirus Pandemic ..... | 89101 | <u>1,960,558</u> |
| Total.....                         |       | \$ 7,995,757     |

*355 - Library Commission*

(WV Code Chapter 10)

Fund 8720 FY 2023 Org 0433

Personal Services and

|                                    |       |    |                  |
|------------------------------------|-------|----|------------------|
| Employee Benefits.....             | 00100 | \$ | 368,524          |
| Current Expenses .....             | 13000 |    | 1,076,162        |
| Equipment.....                     | 07000 |    | 543,406          |
| Federal Coronavirus Pandemic ..... | 89101 |    | <u>2,388,880</u> |
| Total.....                         |       | \$ | 4,376,972        |

*356 - Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 8721 FY 2023 Org 0439

|                                    |       |    |                |
|------------------------------------|-------|----|----------------|
| Equipment.....                     | 07000 | \$ | 1,000          |
| Federal Coronavirus Pandemic ..... | 89101 |    | <u>710,176</u> |
| Total.....                         |       | \$ | 711,176        |

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*357 - Division of Environmental Protection*

(WV Code Chapter 22)

Fund 8708 FY 2023 Org 0313

|                              |       |    |               |
|------------------------------|-------|----|---------------|
| Personal Services and        |       |    |               |
| Employee Benefits.....       | 00100 | \$ | 32,273,598    |
| Unclassified.....            | 09900 |    | 1,923,580     |
| Current Expenses .....       | 13000 |    | 153,850,118   |
| Repairs and Alterations..... | 06400 |    | 739,783       |
| Equipment.....               | 07000 |    | 1,712,238     |
| Other Assets.....            | 69000 |    | 2,177,261     |
| Land .....                   | 73000 |    | <u>80,000</u> |
| Total.....                   |       | \$ | 192,756,578   |

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

*358 - Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 8723 FY 2023 Org 0506

|                                    |       |                  |
|------------------------------------|-------|------------------|
| Personal Services and              |       |                  |
| Employee Benefits.....             | 00100 | \$ 1,660,962     |
| Unclassified.....                  | 09900 | 73,307           |
| Current Expenses .....             | 13000 | 92,583,302       |
| Federal Coronavirus Pandemic ..... | 89101 | <u>4,886,344</u> |
| Total.....                         |       | \$ 99,203,915    |

*359 - Division of Health –*

*Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2023 Org 0506

|                                    |       |                    |
|------------------------------------|-------|--------------------|
| Personal Services and              |       |                    |
| Employee Benefits.....             | 00100 | \$ 16,607,893      |
| Unclassified.....                  | 09900 | 856,614            |
| Current Expenses .....             | 13000 | 102,758,622        |
| Equipment.....                     | 07000 | 456,972            |
| Buildings.....                     | 25800 | 155,000            |
| Other Assets.....                  | 69000 | 380,000            |
| Federal Coronavirus Pandemic ..... | 89101 | <u>248,935,941</u> |
| Total.....                         |       | \$ 370,151,042     |

*360 - Division of Health –*

*West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2023 Org 0506

|                                |       |               |
|--------------------------------|-------|---------------|
| West Virginia Drinking         |       |               |
| Water Treatment                |       |               |
| Revolving Fund – Transfer..... | 68900 | \$ 16,000,000 |

*361 - Human Rights Commission*

(WV Code Chapter 5)

Fund 8725 FY 2023 Org 0510

## Personal Services and

|                        |       |    |         |
|------------------------|-------|----|---------|
| Employee Benefits..... | 00100 | \$ | 455,925 |
| Unclassified.....      | 09900 |    | 5,050   |
| Current Expenses ..... | 13000 |    | 64,950  |
| Total.....             |       | \$ | 525,925 |

*362 - Division of Human Services*

(WV Code Chapters 9, 48, and 49)

Fund 8722 FY 2023 Org 0511

## Personal Services and

|                                    |       |    |               |
|------------------------------------|-------|----|---------------|
| Employee Benefits.....             | 00100 | \$ | 80,538,993    |
| Unclassified.....                  | 09900 |    | 22,855,833    |
| Current Expenses .....             | 13000 |    | 112,181,984   |
| Medical Services .....             | 18900 |    | 3,935,000,000 |
| Medical Services                   |       |    |               |
| Administrative Costs .....         | 78900 |    | 132,380,661   |
| CHIP Administrative Costs.....     | 85601 |    | 4,549,783     |
| CHIP Services .....                | 85602 |    | 49,752,412    |
| Federal Economic Stimulus .....    | 89100 |    | 5,002,723     |
| Federal Coronavirus Pandemic ..... | 89101 |    | 151,642,105   |
| Total.....                         |       | \$ | 4,493,904,494 |

**DEPARTMENT OF HOMELAND SECURITY***363 - Office of the Secretary*

(WV Code Chapter 5F)

Fund 8876 FY 2023 Org 0601

|                        |       |    |         |
|------------------------|-------|----|---------|
| Unclassified.....      | 09900 | \$ | 5,000   |
| Current Expenses ..... | 13000 |    | 495,000 |
| Total.....             |       | \$ | 500,000 |

*364 - Division of Emergency Management*

(WV Code Chapter 15)

Fund 8727 FY 2023 Org 0606

|                                  |       |               |
|----------------------------------|-------|---------------|
| Personal Services and            |       |               |
| Employee Benefits.....           | 00100 | \$ 1,418,043  |
| Salary and Benefits of Cabinet   |       |               |
| Secretary and Agency Heads ..... | 00201 | 61,250        |
| Current Expenses .....           | 13000 | 20,429,281    |
| Repairs and Alterations.....     | 06400 | 5,000         |
| Equipment.....                   | 07000 | 100,000       |
| Total.....                       |       | \$ 22,013,574 |

*365 - Division of Corrections and Rehabilitation*

(WV Code Chapters 15A)

Fund 8836 FY 2023 Org 0608

|                        |       |          |
|------------------------|-------|----------|
| Unclassified.....      | 09900 | \$ 1,100 |
| Current Expenses ..... | 13000 | 108,900  |
| Total.....             | \$    | 110,000  |

*366 - West Virginia State Police*

(WV Code Chapter 15)

Fund 8741 FY 2023 Org 0612

|                              |       |              |
|------------------------------|-------|--------------|
| Personal Services and        |       |              |
| Employee Benefits.....       | 00100 | \$ 2,502,056 |
| Current Expenses .....       | 13000 | 2,125,971    |
| Repairs and Alterations..... | 06400 | 42,000       |
| Equipment.....               | 07000 | 2,502,285    |
| Buildings .....              | 25800 | 750,500      |
| Other Assets.....            | 69000 | 144,500      |
| Land .....                   | 73000 | 500          |
| Total.....                   |       | \$ 8,067,812 |

*367 - Fire Commission*

(WV Code Chapter 29)

Fund 8819 FY 2023 Org 0619

|                        |       |           |
|------------------------|-------|-----------|
| Current Expenses ..... | 13000 | \$ 80,000 |
|------------------------|-------|-----------|



*368 - Division of Administrative Services*

(WV Code Chapter 15)

Fund 8803 FY 2023 Org 0623

|                              |       |               |
|------------------------------|-------|---------------|
| Personal Services and        |       |               |
| Employee Benefits.....       | 00100 | \$ 1,270,062  |
| Unclassified.....            | 09900 | 25,185        |
| Current Expenses .....       | 13000 | 75,381,973    |
| Repairs and Alterations..... | 06400 | <u>1,750</u>  |
| Total.....                   |       | \$ 76,678,970 |

**DEPARTMENT OF REVENUE***369 - Insurance Commissioner*

(WV Code Chapter 33)

Fund 8883 FY 2023 Org 0704

|                        |       |               |
|------------------------|-------|---------------|
| Personal Services and  |       |               |
| Employee Benefits..... | 00100 | \$ 145,000    |
| Current Expenses ..... | 13000 | 2,825,000     |
| Equipment.....         | 07000 | <u>30,000</u> |
| Total.....             |       | \$ 3,000,000  |

**DEPARTMENT OF TRANSPORTATION***370 - Division of Motor Vehicles*

(WV Code Chapter 17B)

Fund 8787 FY 2023 Org 0802

|                              |       |              |
|------------------------------|-------|--------------|
| Personal Services and        |       |              |
| Employee Benefits.....       | 00100 | \$ 551,394   |
| Current Expenses .....       | 13000 | 5,448,106    |
| Repairs and Alterations..... | 06400 | <u>500</u>   |
| Total.....                   |       | \$ 6,000,000 |

*371 - Division of Public Transit*

(WV Code Chapter 17)

Fund 8745 FY 2023 Org 0805

|                               |       |                |
|-------------------------------|-------|----------------|
| Personal Services and         |       |                |
| Employee Benefits.....        | 00100 | \$ 1,040,576   |
| Current Expenses .....        | 13000 | 18,863,149     |
| Repairs and Alterations ..... | 06400 | 2,500          |
| Equipment .....               | 07000 | 3,501,714      |
| Buildings .....               | 25800 | 2,450,000      |
| Other Assets .....            | 69000 | <u>250,000</u> |
| Total.....                    |       | \$ 26,107,939  |

*372 - Aeronautics Commission*

(WV Code Chapter 29)

Fund 8831 FY 2023 Org 0807

|                        |       |            |
|------------------------|-------|------------|
| Current Expenses ..... | 13000 | \$ 400,000 |
| Other Assets .....     | 69000 | <u>100</u> |
| Total.....             |       | \$ 400,100 |

**DEPARTMENT OF VETERANS' ASSISTANCE***373 - Department of Veterans' Assistance*

(WV Code Chapter 9A)

Fund 8858 FY 2023 Org 0613

|                                  |       |              |
|----------------------------------|-------|--------------|
| Personal Services and            |       |              |
| Employee Benefits.....           | 00100 | \$ 3,016,683 |
| Salary and Benefits of Cabinet   |       |              |
| Secretary and Agency Heads ..... | 00201 | 57,120       |
| Current Expenses .....           | 13000 | 2,840,300    |
| Repairs and Alterations .....    | 06400 | 20,000       |
| Equipment .....                  | 07000 | 25,000       |
| Buildings .....                  | 25800 | 250,000      |
| Land .....                       | 73000 | 500          |

|                                    |       |                  |
|------------------------------------|-------|------------------|
| Veterans' Cemetery .....           | 80800 | 175,000          |
| Federal Coronavirus Pandemic ..... | 89101 | <u>1,900,000</u> |
| Total.....                         |       | \$ 8,284,603     |

*374 - Department of Veterans' Assistance –*

*Veterans' Home*

(WV Code Chapter 9A)

Fund 8728 FY 2023 Org 0618

|                                    |       |                  |
|------------------------------------|-------|------------------|
| Personal Services and              |       |                  |
| Employee Benefits.....             | 00100 | \$ 951,931       |
| Current Expenses .....             | 13000 | 595,700          |
| Repairs and Alterations.....       | 06400 | 60,500           |
| Equipment.....                     | 07000 | 10,500           |
| Buildings .....                    | 25800 | 500              |
| Other Assets.....                  | 69000 | 6,500            |
| Land .....                         | 73000 | 100              |
| Federal Coronavirus Pandemic ..... | 89101 | <u>1,600,000</u> |
| Total.....                         |       | \$ 3,225,731     |

**BUREAU OF SENIOR SERVICES**

*375 - Bureau of Senior Services*

(WV Code Chapter 29)

Fund 8724 FY 2023 Org 0508

|                                    |       |                   |
|------------------------------------|-------|-------------------|
| Personal Services and              |       |                   |
| Employee Benefits.....             | 00100 | \$ 783,001        |
| Salary and Benefits of Cabinet     |       |                   |
| Secretary and Agency Heads .....   | 00201 | 8,840             |
| Current Expenses .....             | 13000 | 13,811,853        |
| Repairs and Alterations.....       | 06400 | 3,000             |
| Federal Coronavirus Pandemic ..... | 89101 | <u>16,400,000</u> |
| Total.....                         |       | \$ 31,006,694     |

**MISCELLANEOUS BOARDS AND COMMISSIONS***376 - Adjutant General –**State Militia*

(WV Code Chapter 15)

Fund 8726 FY 2023 Org 0603

|                                    |       |    |                   |
|------------------------------------|-------|----|-------------------|
| Unclassified.....                  | 09900 | \$ | 982,705           |
| Mountaineer ChalleNGe Academy..... | 70900 |    | 11,573,992        |
| Martinsburg Starbase .....         | 74200 |    | 547,801           |
| Charleston Starbase.....           | 74300 |    | 516,838           |
| Military Authority .....           | 74800 |    | <u>88,132,332</u> |
| Total.....                         |       | \$ | 101,753,668       |

The Adjutant General shall have the authority to transfer between appropriations.

*377 - Adjutant General –**West Virginia National Guard Counterdrug Forfeiture Fund*

(WV Code Chapter 15)

Fund 8785 FY 2023 Org 0603

|                              |       |    |               |
|------------------------------|-------|----|---------------|
| Personal Services and        |       |    |               |
| Employee Benefits.....       | 00100 | \$ | 1,350,000     |
| Current Expenses .....       | 13000 |    | 150,000       |
| Repairs and Alterations..... | 06400 |    | 50,000        |
| Equipment.....               | 07000 |    | 200,000       |
| Buildings .....              | 25800 |    | 100,000       |
| Other Assets.....            | 69000 |    | 100,000       |
| Land .....                   | 73000 |    | <u>50,000</u> |
| Total.....                   |       | \$ | 2,000,000     |

*378 - Public Service Commission –**Motor Carrier Division*

## (WV Code Chapter 24A)

Fund 8743 FY 2023 Org 0926

|                              |       |              |
|------------------------------|-------|--------------|
| Personal Services and        |       |              |
| Employee Benefits.....       | 00100 | \$ 1,410,819 |
| Current Expenses .....       | 13000 | 368,953      |
| Repairs and Alterations..... | 06400 | 39,000       |
| Equipment.....               | 07000 | <u>1,000</u> |
| Total.....                   |       | \$ 1,819,772 |

*379 - Public Service Commission –**Gas Pipeline Division*

## (WV Code Chapter 24B)

Fund 8744 FY 2023 Org 0926

|                        |       |              |
|------------------------|-------|--------------|
| Personal Services and  |       |              |
| Employee Benefits..... | 00100 | \$ 639,344   |
| Unclassified.....      | 09900 | 4,072        |
| Current Expenses ..... | 13000 | 124,628      |
| Equipment.....         | 07000 | <u>3,000</u> |
| Total.....             |       | \$ 771,044   |

*380 - National Coal Heritage Area Authority*

## (WV Code Chapter 29)

Fund 8869 FY 2023 Org 0941

|                              |       |              |
|------------------------------|-------|--------------|
| Personal Services and        |       |              |
| Employee Benefits.....       | 00100 | \$ 193,043   |
| Current Expenses .....       | 13000 | 328,008      |
| Repairs and Alterations..... | 06400 | 5,000        |
| Equipment.....               | 07000 | 3,000        |
| Other Assets.....            | 69000 | <u>2,000</u> |
| Total.....                   |       | \$ 531,051   |

## Total TITLE II, Section 6 –

|                    |                         |
|--------------------|-------------------------|
| Federal Funds..... | <u>\$ 8,941,564,394</u> |
|--------------------|-------------------------|

**Sec. 7. Appropriations from federal block grants.** — The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 2023.

*381 - Department of Economic Development –*

*Office of the Secretary –*

*Community Development*

Fund 8746 FY 2023 Org 0307

|                        |       |                    |
|------------------------|-------|--------------------|
| Personal Services and  |       |                    |
| Employee Benefits..... | 00100 | \$ 10,662,609      |
| Unclassified.....      | 09900 | 2,375,000          |
| Current Expenses ..... | 13000 | <u>224,476,883</u> |
| Total.....             |       | \$ 237,514,492     |

*382 - Department of Economic Development –*

*Office of the Secretary –*

*Office of Economic Opportunity –*

*Community Services*

Fund 8902 FY 2023 Org 0307

|                              |       |               |
|------------------------------|-------|---------------|
| Personal Services and        |       |               |
| Employee Benefits.....       | 00100 | \$ 771,289    |
| Unclassified.....            | 09900 | 125,000       |
| Current Expenses .....       | 13000 | 17,781,811    |
| Repairs and Alterations..... | 06400 | 1,500         |
| Equipment .....              | 07000 | <u>9,000</u>  |
| Total.....                   |       | \$ 18,688,600 |

*383 - WorkForce West Virginia –*

*Workforce Investment Act*

Fund 8749 FY 2023 Org 0323

|                                  |       |                      |
|----------------------------------|-------|----------------------|
| Personal Services and            |       |                      |
| Employee Benefits.....           | 00100 | \$ 2,941,437         |
| Salary and Benefits of Cabinet   |       |                      |
| Secretary and Agency Heads ..... | 00201 | 124,018              |
| Unclassified.....                | 09900 | 23,023               |
| Current Expenses .....           | 13000 | 63,381,511           |
| Repairs and Alterations .....    | 06400 | 1,600                |
| Equipment .....                  | 07000 | 500                  |
| Buildings .....                  | 25800 | 1,100                |
| Total.....                       |       | <u>\$ 66,473,189</u> |

*384 - Division of Health –*

*Maternal and Child Health*

Fund 8750 FY 2023 Org 0506

|                        |       |                     |
|------------------------|-------|---------------------|
| Personal Services and  |       |                     |
| Employee Benefits..... | 00100 | \$ 2,343,848        |
| Unclassified.....      | 09900 | 81,439              |
| Current Expenses ..... | 13000 | <u>5,794,267</u>    |
| Total.....             |       | <u>\$ 8,219,554</u> |

*385 - Division of Health –*

*Preventive Health*

Fund 8753 FY 2023 Org 0506

|                        |       |                     |
|------------------------|-------|---------------------|
| Personal Services and  |       |                     |
| Employee Benefits..... | 00100 | \$ 274,388          |
| Unclassified.....      | 09900 | 22,457              |
| Current Expenses ..... | 13000 | 1,895,366           |
| Equipment .....        | 07000 | <u>165,642</u>      |
| Total.....             |       | <u>\$ 2,357,853</u> |

*386 - Division of Health –*

*Substance Abuse Prevention and Treatment*

Fund 8793 FY 2023 Org 0506

## Personal Services and

|                                    |       |    |                   |
|------------------------------------|-------|----|-------------------|
| Employee Benefits.....             | 00100 | \$ | 683,799           |
| Unclassified.....                  | 09900 |    | 115,924           |
| Current Expenses .....             | 13000 |    | 10,853,740        |
| Federal Coronavirus Pandemic ..... | 89101 |    | <u>14,965,070</u> |
| Total.....                         |       | \$ | 26,618,533        |

*387 - Division of Health –**Community Mental Health Services*Fund 8794 FY 2023 Org 0506

## Personal Services and

|                                    |       |    |                   |
|------------------------------------|-------|----|-------------------|
| Employee Benefits.....             | 00100 | \$ | 571,034           |
| Unclassified.....                  | 09900 |    | 33,533            |
| Current Expenses .....             | 13000 |    | 4,883,307         |
| Federal Coronavirus Pandemic ..... | 89101 |    | <u>12,480,519</u> |
| Total.....                         |       | \$ | 17,968,393        |

*388 - Division of Human Services –**Energy Assistance*Fund 8755 FY 2023 Org 0511

## Personal Services and

|                                    |       |    |                   |
|------------------------------------|-------|----|-------------------|
| Employee Benefits.....             | 00100 | \$ | 1,959,926         |
| Unclassified.....                  | 09900 |    | 350,000           |
| Current Expenses .....             | 13000 |    | 38,182,151        |
| Federal Coronavirus Pandemic ..... | 89101 |    | <u>48,296,777</u> |
| Total.....                         |       | \$ | 88,788,854        |

*389 - Division of Human Services –**Social Services*Fund 8757 FY 2023 Org 0511

## Personal Services and

|                        |       |    |           |
|------------------------|-------|----|-----------|
| Employee Benefits..... | 00100 | \$ | 9,106,066 |
| Unclassified.....      | 09900 |    | 171,982   |



|                        |       |                  |
|------------------------|-------|------------------|
| Current Expenses ..... | 13000 | <u>8,870,508</u> |
| Total.....             |       | \$ 18,148,556    |

*390 - Division of Human Services –*

*Temporary Assistance for Needy Families*

Fund 8816 FY 2023 Org 0511

|                                    |       |                  |
|------------------------------------|-------|------------------|
| Personal Services and              |       |                  |
| Employee Benefits.....             | 00100 | \$ 21,331,693    |
| Unclassified.....                  | 09900 | 1,250,000        |
| Current Expenses .....             | 13000 | 105,871,588      |
| Federal Coronavirus Pandemic ..... | 89101 | <u>4,617,546</u> |
| Total.....                         |       | \$ 133,070,827   |

*391 - Division of Human Services –*

*Child Care and Development*

Fund 8817 FY 2023 Org 0511

|                                    |       |                    |
|------------------------------------|-------|--------------------|
| Personal Services and              |       |                    |
| Employee Benefits.....             | 00100 | \$ 2,867,623       |
| Unclassified.....                  | 09900 | 350,000            |
| Current Expenses .....             | 13000 | 47,000,307         |
| Federal Coronavirus Pandemic ..... | 89101 | <u>330,722,313</u> |
| Total.....                         |       | \$ 380,940,243     |

Total TITLE II, Section 7 –

Federal Block Grants ..... \$ 998,789,094

**Sec. 8. Awards for claims against the state.** — There are hereby appropriated for fiscal year 2023, from the fund as designated, in the amounts as specified, general revenue funds in the amount of \$17,924, special revenue funds in the amount of \$63,003 and state road funds in the amount of \$433,232 for payment of claims against the state.

**Sec. 9. Appropriations from general revenue fund surplus accrued.** — The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure

during the fiscal year 2023 out of surplus funds only, accrued from the fiscal year ending June 30, 2022, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus as of July 31, 2022 from the fiscal year ending June 30, 2022, only after first meeting requirements of W.Va. Code §11B-2-20(b).

In the event that surplus revenues available on July 31, 2022, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available as of the date mandated to meet the appropriation in this section and shall be allocated first to provide the necessary funds to meet the first appropriation of this section and each subsequent appropriation in the order listed in this section.

*392 - Division of Human Services*

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2023 Org 0511

|                                 |       |    |           |
|---------------------------------|-------|----|-----------|
| Medical Services – Surplus..... | 63300 | \$ | 8,800,000 |
|---------------------------------|-------|----|-----------|

*393 - Department of Tourism –*

*Office of the Secretary*

(WV Code Chapter 5B)

Fund 0246 FY 2023 Org 0304

Tourism – Brand Promotion –

|              |       |    |           |
|--------------|-------|----|-----------|
| Surplus..... | 61893 | \$ | 7,000,000 |
|--------------|-------|----|-----------|

*394 - Department of Veterans' Assistance*

(WV Code Chapter 9A)

Fund 0456 FY 2023 Org 0613

## Personal Services and

|                                             |    |                |
|---------------------------------------------|----|----------------|
| Employee Benefits – Surplus.....24301       | \$ | 293,474        |
| Veterans' Nursing Home – Surplus .....29100 |    | <u>652,530</u> |
| Total.....                                  | \$ | 946,004        |

*395 - Department of Veterans' Assistance –**Veterans' Home*

(WV Code Chapter 9A)

Fund 0460 FY 2023 Org 0618

## Personal Services and

|                                       |    |               |
|---------------------------------------|----|---------------|
| Employee Benefits – Surplus.....24301 | \$ | 69,783        |
| Current Expenses – Surplus .....13099 |    | <u>80,000</u> |
| Total.....                            | \$ | 149,783       |

*396 - Division of Environmental Protection -*

(WV Code Chapter 22)

Fund 0273 FY 2023 Org 0313

Directed Transfer – Surplus ..... 70099      \$    50,000,000

The above appropriation for Directed Transfer – Surplus (fund 0273, appropriation 70099) shall be transferred to the Mining Mutual Insurance Company Fund (fund xxxx).

*397 - Department of Commerce –**Office of the Secretary*

(WV Code Chapter 19)

Fund 0606 FY 2023 Org 0327

Directed Transfer – Surplus ..... 70099      \$    1,000,000

The above appropriation for Directed Transfer – Surplus (fund 0606, appropriation 70099) shall be transferred to the Marketing and Communications Operating Fund (fund 3002).

*398 - Division of Administrative Services*

(WV Code Chapter 15)

Fund 0546 FY 2023 Org 0623

|                                   |       |    |                |
|-----------------------------------|-------|----|----------------|
| Current Expenses – Surplus .....  | 13099 | \$ | 11,400,000     |
| Justice Reinvestment Initiative – |       |    |                |
| Surplus .....                     | 89599 |    | <u>750,000</u> |
| Total .....                       |       | \$ | 12,150,000     |

From the above appropriation for Current Expenses – Surplus (fund 0546, appropriation 13099) \$11,400,000 shall be used for the Victims of Crime Act (VOCA).

*399 - Division of General Services*

(WV Code Chapter 5A)

Fund 0230 FY 2023 Org 0211

|                             |       |    |           |
|-----------------------------|-------|----|-----------|
| Capital Outlay, Repairs and |       |    |           |
| Equipment – Surplus .....   | 67700 | \$ | 4,000,000 |

*400 - Department of Economic Development –**Office of the Secretary*

(WV Code Chapter 5B)

Fund 0256 FY 2023 Org 0307

|                                   |       |    |         |
|-----------------------------------|-------|----|---------|
| Directed Transfer – Surplus ..... | 70099 | \$ | 500,000 |
|-----------------------------------|-------|----|---------|

The above appropriation for Directed Transfer – Surplus (fund 0256, appropriation 70099) shall be transferred to the Broadband Enhancement Fund (fund 3013).

*401 - Division of Personnel*

(WV Code Chapter 29)

Fund 0206 FY 2023 Org 0222

Directed Transfer – Surplus ..... 70099      \$      1,500,000

The above appropriation for Directed Transfer – Surplus (fund 0206, appropriation 70099) shall be transferred to the Department of Administration, Division of Personnel (fund 2440).

*402 - Adjutant General –*

*State Militia*

(WV Code Chapter 15)

Fund 0433 FY 2023 Org 0603

Armory Board Transfer – Surplus ..... 70199      \$      1,525,000

*403 - Division of Corrections and Rehabilitation –*

*Correctional Units*

(WV Code Chapter 15A)

Fund 0450 FY 2023 Org 0608

Current Expenses – Surplus ..... 13099      \$      4,200,000

*404 - Division of Natural Resources*

(WV Code Chapter 20)

Fund 0265 FY 2023 Org 0310

Equine Enrichment – Surplus ..... xxxxxx      \$      1,000,000

*405 - Division of Culture and History*

(WV Code Chapter 29)

Fund 0293 FY 2023 Org 0432

National Youth Science Camp –

Surplus ..... xxxxxx      \$      100,000

*406 - Governor's Office –**Civil Contingent Fund*

(WV Code Chapter 5)

Fund 0105 FY 2023 Org 0100

Congressional Earmark Maintenance

of Effort - Surplus ..... xxxxx      \$ 100,000,000

*407 - Department of Revenue*

(WV Code Chapter 11)

Fund 0465 FY 2023 Org 0701

General Revenue Fund –

Transfer - Surplus ..... xxxxx      \$ 265,000,000

The above appropriation for General Revenue Fund – Transfer – Surplus (fund 0465, appropriation #####) shall be credited to Fiscal Year 2023 General Revenue collections.

*408 - Department of Economic Development -**Office of the Secretary*

(WV Code Chapter 5B)

Fund 0256 FY 2023 Org 0307

Directed Transfer – Surplus ..... 70099      \$ 600,000,000

The above appropriation for Directed Transfer – Surplus (fund 0256, appropriation 70099) shall be transferred to Industrial Development Loans (fund 9061).

*409 - Division of Culture and History*

(WV Code Chapter 29)

Fund 0293 FY 2023 Org 0432

## Educational Enhancements –

|               |       |    |         |
|---------------|-------|----|---------|
| Surplus ..... | 92700 | \$ | 500,000 |
|---------------|-------|----|---------|

From the above appropriation for Educational Enhancements – Surplus (fund 0293, appropriation 92700) \$500,000 shall be used for Save the Children.

## Total TITLE II, Section 9 –

General Revenue

|                      |  |    |                      |
|----------------------|--|----|----------------------|
| Surplus Accrued..... |  | \$ | <u>1,058,370,787</u> |
|----------------------|--|----|----------------------|

**Sec. 10. Appropriations from lottery net profits surplus accrued.** — The following item is hereby appropriated from the lottery net profits, and is to be available for expenditure during the fiscal year 2023 out of surplus funds only, as determined by the director of lottery, accrued from the fiscal year ending June 30, 2022, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus accrued from the fiscal year ending June 30, 2022.

In the event that surplus revenues available from the fiscal year ending June 30, 2022, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available.

*410 - Bureau of Senior Services –*

*Lottery Senior Citizens Fund*

*(WV Code Chapter 29)*

Fund 5405 FY 2023 Org 0508

## Senior Services Medicaid

|                                 |       |    |            |
|---------------------------------|-------|----|------------|
| Transfer – Lottery Surplus..... | 68199 | \$ | 14,750,000 |
|---------------------------------|-------|----|------------|

## In-Home Services and Nutrition

|                                     |       |  |                  |
|-------------------------------------|-------|--|------------------|
| for Senior Citizens – Surplus ..... | 76699 |  | <u>2,000,000</u> |
|-------------------------------------|-------|--|------------------|

|            |  |  |            |
|------------|--|--|------------|
| Total..... |  |  | 16,750,000 |
|------------|--|--|------------|

*411 - Department of Arts Culture and History –**Division of Culture and History**(WV Code Chapter 5A)*Fund 3534 FY 2023 Org 0432

|                                       |       |    |                  |
|---------------------------------------|-------|----|------------------|
| Save the Music– Lottery Surplus ..... | xxxxx | \$ | 100,000          |
| Capital Outlay and Maintenance –      |       |    |                  |
| Lottery Surplus .....                 | 76099 |    | <u>3,000,000</u> |
| Total .....                           |       |    | 3,100,000        |

Total TITLE II, Section 10 –

Surplus Accrued..... \$ 19,850,000

**Sec. 11. Appropriations from state excess lottery revenue surplus accrued.** — The following item is hereby appropriated from the state excess lottery revenue fund, and is to be available for expenditure during the fiscal year 2023 out of surplus funds only, as determined by the director of lottery, accrued from the fiscal year ending June 30, 2022, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus accrued from the fiscal year ending June 30, 2022.

In the event that surplus revenues available from the fiscal year ending June 30, 2022, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available.

*412 - Racing Commission –**General Administration**(WV Code Chapter 19)*Fund 7308 FY 2023 Org 0707

|                         |       |    |         |
|-------------------------|-------|----|---------|
| Directed Transfer ..... | 70000 | \$ | 800,000 |
|-------------------------|-------|----|---------|



From the above appropriation for Directed Transfer (fund 7308, appropriation 70000), \$800,000 shall be transferred to the Racing Commission – General Administration (Fund 7305).

*413 - Division of Human Services*

(WV Code Chapters 9, 48, and 49)

Fund 5365 FY 2023 Org 0511

Medical Services – Lottery Surplus.....68100      \$    16,200,000

Total TITLE II, Section 11 –

Surplus Accrued..... \$    17,000,000

**Sec. 12. Special revenue appropriations.** — There are hereby appropriated for expenditure during the fiscal year 2023 special revenues collected pursuant to general law enactment of the Legislature which are not paid into the state fund as general revenue under the provisions of W.Va. Code §12-2-2 and are not expressly appropriated under this act: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with the provisions of W.Va. Code §12-2-1 et seq., W.Va. Code §12-3-1 et seq., and W.Va. Code §11B-2-1 et seq., unless the spending unit has filed with the director of the budget and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund; and

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended: *Provided, however*, That federal funds received by the state may be expended only in accordance with Sections (6) or (7) of this Title and with W.Va. Code §4-11-1, *et seq.* *Provided further*, That federal funds that become available to a spending unit for expenditure while the Legislature is not in session and the availability of such funds could not reasonably have been anticipated and included in this act may be only be expended in the limited circumstances provided by W. Va. Code §4-11-5(d): *And provided further*, That no provision of this Act may be

construed to authorize the expenditure of federal funds except as provided in this section.

During Fiscal Year 2023, the following funds are hereby available and are to be transferred to the appropriate funds as specified from available balances per the following:

*414 - Treasurer's Office –*

*Unclaimed Property Trust Fund*

(WV Code Chapter 12)

Fund 1342 FY 2023 Org 1300

Directed Transfer ..... 70000      \$      5,000,000

From the above appropriation for Directed Transfer (Fund 1342, appropriation 70000), \$5,000,000 shall be transferred to the Department of Health and Human Resources, Division of Human Services – Medical Services Trust Fund (Fund 5185).

Total TITLE II, Section 12 –

Special Revenue..... \$      5,000,000

**Sec. 13. State improvement fund appropriations.** — Bequests or donations of nonpublic funds, received by the Governor on behalf of the state during the fiscal year 2023, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.

There are hereby appropriated all moneys so deposited during the fiscal year 2023 to be expended as authorized by the Governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

**Sec. 14. Specific funds and collection accounts.** — A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of Article 3, Chapter 12 of the Code.

**Sec. 15. Appropriations for refunding erroneous payment.** — Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he or she shall issue his or her requisition upon the Auditor for the refunding of the proper amount. The Auditor shall issue his or her warrant to the Treasurer and the Treasurer shall pay the warrant out of the fund into which the amount was originally paid.

**Sec. 16. Sinking fund deficiencies.** — There is hereby appropriated to the Governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by W.Va. Code §31-18-20b, or in the funds of the municipal bond commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The Governor is authorized to transfer from time to time such amounts to the municipal bond commission as may be necessary for these purposes.

The municipal bond commission shall reimburse the state of West Virginia through the Governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the Governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

**Sec. 17. Appropriations for local governments.** — There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts and municipal corporations and which have been paid into the treasury:

- (a) For redemption of lands;
- (b) By public service corporations;
- (c) For tax forfeitures.

**Sec. 18. Total appropriations.** — Where only a total sum is appropriated to a spending unit, the total sum shall include personal services and employee benefits, annual increment, current expenses, repairs and alterations, buildings, equipment, other assets, land, and capital outlay, where not otherwise specifically provided and except as otherwise provided in TITLE I – GENERAL PROVISIONS, Sec. 3.

**Sec. 19. General school fund.** — The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with W.Va. Code §18-9A-16.

### TITLE III – ADMINISTRATION

**Sec. 1. Appropriations conditional.** — The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of Article 2, Chapter 11B of the Code.

Where spending units or parts of spending units have been absorbed by or combined with other spending units, it is the intent of this act that appropriations and reappropriations shall be to the succeeding or later spending unit created, unless otherwise indicated.

**Sec. 2. Constitutionality.** — If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision

shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

During the debate, Delegate Pushkin asked unanimous consent that the remarks by Delegate Fluharty be printed in the Appendix to the Journal, which consent was not granted.

Delegate Pushkin then so moved, which question was put and did not prevail.

On the question of concurring in the Senate amendment, the same was put and prevailed.

**MR. SPEAKER, DELEGATE HANSHAW IN THE CHAIR**

The bill, as amended by the House, and further amended by the Senate, was put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 595**), and there were—yeas 90, nays 9, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Bates, Conley, Gearheart, J. Jeffries, Kimble, Kimes, McGeehan, Phillips and Pritt.

Absent and Not Voting: Walker.

So, a majority of the members elected having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 250) passed.

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

On this question, the yeas and nays were taken (**Roll No. 596**), and there were—yeas 94, nays 5, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Gearheart, J. Jeffries, Kimble, McGeehan and Pritt.

Absent and Not Voting: Walker.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 250) takes effect from its passage.

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

### **Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 2733**, Relating to the establishment of a Combat Action Badge and Combat Action Ribbon special registration plates.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.**

**§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.**

(a) The division, upon registering a vehicle, shall issue to the owner one registration plate for a motorcycle, trailer, semitrailer, or other motor vehicle.

(b) Registration plates issued by the division shall meet the following requirements:

(1) Every registration plate shall be of reflectorized material and have displayed upon it the registration number assigned to the vehicle for which it is issued; the name of this state, which may be abbreviated; and the year number for which it is issued or the date of expiration of the plate.

(2) Every registration plate and the required letters and numerals on the plate shall be of sufficient size to be plainly readable from a distance of 100 feet during daylight: *Provided*, That the requirements of this subdivision shall not apply to the year number for which the plate is issued or the date of expiration.

(3) Registration numbering for registration plates shall begin with the number two.

(c) The division may not issue, permit to be issued, or distribute any special registration plates except as follows:

(1) The Governor shall be issued two registration plates, on one of which shall be imprinted the numeral one and on the other the word one.

(2) State officials and judges may be issued special registration plates as follows:

(A) Upon appropriate application, the division shall issue to the Secretary of State, State Superintendent of Schools, Auditor, Treasurer, Commissioner of Agriculture, and the Attorney General, the members of both houses of the Legislature, including the elected officials of both houses of the Legislature, the justices of the Supreme Court of Appeals of West Virginia, the representatives and senators of the state in the Congress of the United States, the judges of the West Virginia circuit courts, active and retired on senior status, the judges of the United States district courts for the State of West Virginia and the judges of the United States Court of Appeals for the fourth circuit, if any of the judges are residents of West Virginia, a special registration plate for a Class A motor vehicle and a special registration plate for a Class G motorcycle owned by the official or his or her spouse: *Provided*, That the division may issue a Class A special registration plate for

each vehicle titled to the official and a Class G special registration plate for each motorcycle titled to the official.

(B) Each plate issued pursuant to this subdivision shall bear any combination of letters and numbers not to exceed an amount determined by the commissioner and a designation of the office. Each plate shall supersede the regular numbered plate assigned to the official or his or her spouse during the official's term of office and while the motor vehicle is owned by the official or his or her spouse.

(C) The division shall charge an annual fee of \$15 for every registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(3) The division may issue members of the National Guard forces special registration plates as follows:

(A) Upon receipt of an application on a form prescribed by the division and receipt of written evidence from the chief executive officer of the Army National Guard or Air National Guard, as appropriate, or the commanding officer of any United States armed forces reserve unit that the applicant is a member thereof, the division shall issue to any member of the National Guard of this state or a member of any reserve unit of the United States armed forces a special registration plate designed by the commissioner for any number of Class A motor vehicles owned by the member. Upon presentation of written evidence of retirement status, retired members of this state's Army or Air National Guard, or retired members of any reserve unit of the United States armed forces, are eligible to purchase the special registration plate issued pursuant to this subdivision.

(B) The division shall charge an initial application fee of \$10 for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter. Except as otherwise provided herein, effective July 1, 2007, all fees currently held in the special revolving fund used in the administration of this section and all fees collected by the division shall be deposited in the State Road Fund.



(C) A surviving spouse may continue to use his or her deceased spouse's National Guard forces license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(4) Specially arranged registration plates may be issued as follows:

(A) Upon appropriate application, any owner of a motor vehicle subject to Class A registration, or a motorcycle subject to Class G registration, as defined by this article, may request that the division issue a registration plate bearing specially arranged letters or numbers with the maximum number of letters or numbers to be determined by the commissioner. The division shall attempt to comply with the request wherever possible.

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-1-1 *et seq.* of this code regarding the orderly distribution of the plates: *Provided*, That for purposes of this subdivision, the registration plates requested and issued shall include all plates bearing the numbers two through 2,000.

(C) An annual fee of \$15 shall be charged for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(5) The division may issue honorably discharged veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged veteran of any branch of the armed services of the United States a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration. All fees collected by the division shall be deposited in the State Road

Fund: *Provided*, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged veterans license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(6) The division may issue disabled veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any disabled veteran who is exempt from the payment of registration fees under the provisions of this chapter a registration plate for a vehicle titled in the name of the qualified applicant which bears the letters "DV" in red and also the regular identification numerals in red.

(B) A surviving spouse may continue to use his or her deceased spouse's disabled veterans license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(C) A qualified disabled veteran may obtain a second disabled veterans license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of \$10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(7) The division may issue recipients of the distinguished Purple Heart medal special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any armed service person holding the distinguished Purple Heart medal for persons wounded in combat a registration plate for a vehicle titled in the name of the qualified applicant bearing letters or numbers. The registration plate shall be designed by the Commissioner of the Division of Motor Vehicles and shall denote that those individuals who are granted this special registration plate are recipients of the Purple Heart. All letterings shall be in purple where practical.

(B) Registration plates issued pursuant to this subdivision are exempt from all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's Purple Heart medal license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(D) A recipient of the Purple Heart medal may obtain a second Purple Heart medal license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of \$10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(8) The division may issue survivors of the attack on Pearl Harbor special registration plates as follows:

(A) Upon appropriate application, the owner of a motor vehicle who was enlisted in any branch of the armed services that participated in and survived the attack on Pearl Harbor on December 7, 1941, the division shall issue a special registration plate for a vehicle titled in the name of the qualified applicant. The registration plate shall be designed by the Commissioner of the Division of Motor Vehicles.

(B) Registration plates issued pursuant to this subdivision are exempt from the payment of all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's survivors of the attack on Pearl Harbor license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(D) A survivor of the attack on Pearl Harbor may obtain a second survivors of the attack on Pearl Harbor license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of \$10 to be deposited into the State Road Fund, in

addition to all other fees required by this chapter, for the second plate.

(9) The division may issue special registration plates to nonprofit charitable and educational organizations authorized under prior enactment of this subdivision as follows:

(A) Approved nonprofit charitable and educational organizations previously authorized under the prior enactment of this subdivision may accept and collect applications for special registration plates from owners of Class A motor vehicles together with a special annual fee of \$15, which is in addition to all other fees required by this chapter. The applications and fees shall be submitted to the Division of Motor Vehicles with the request that the division issue a registration plate bearing a combination of letters or numbers with the organization's logo or emblem, with the maximum number of letters or numbers to be determined by the commissioner.

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code regarding the procedures for and approval of special registration plates issued pursuant to this subdivision.

(C) The commissioner shall set an appropriate fee to defray the administrative costs associated with designing and manufacturing special registration plates for a nonprofit charitable or educational organization. The nonprofit charitable or educational organization shall collect this fee and forward it to the division for deposit in the State Road Fund. The nonprofit charitable or educational organization may also collect a fee for marketing the special registration plates.

(10) The division may issue specified emergency or volunteer registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of the State of West Virginia and who is a certified paramedic or emergency medical technician, a member of a paid fire department, a member of the State Fire Commission, the State Fire Marshal, the State Fire

Marshal's assistants, the State Fire Administrator, and voluntary rescue squad members may apply for a special license plate for any number of Class A vehicles titled in the name of the qualified applicant which bears the insignia of the profession, group, or commission. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia in addition to the registration number issued to the applicant pursuant to the provisions of this article.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the fire chief or department head of the applicant stating that the applicant is justified in having a registration with the requested insignia, proof of compliance with all laws of this state regarding registration and licensure of motor vehicles, and payment of all required fees.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of \$10, which is in addition to any other registration or license fee required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(11) The division may issue specified certified firefighter registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of the State of West Virginia and who is a certified firefighter may apply for a special license plate which bears the insignia of the profession, for any number of Class A vehicles titled in the name of the qualified applicant. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia pursuant to the provisions of this article. Upon presentation of written evidence of certification as a certified firefighter, certified firefighters are eligible to purchase the special registration plate issued pursuant to this subdivision.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit stating that the applicant is justified in having a registration with the requested insignia, proof of compliance with all laws of this state regarding registration and

licensure of motor vehicles, and payment of all required fees. The firefighter certification department, section, or division of the West Virginia University fire service extension shall notify the commissioner in writing immediately when a firefighter loses his or her certification. If a firefighter loses his or her certification, the commissioner may not issue him or her a license plate under this subdivision.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of \$10, which is in addition to any other registration or license fee required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(12) The division may issue special scenic registration plates as follows:

(A) Upon appropriate application, the commissioner shall issue a special registration plate displaying a scenic design of West Virginia which displays the words “Wild Wonderful” as a slogan.

(B) The division shall charge a special one-time initial application fee of \$10 in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund.

(13) The division may issue honorably discharged Marine Corps League members special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged Marine Corps League member a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) The division may charge a special one-time initial application fee of \$10 in addition to all other fees required by this chapter. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in the State Road Fund: *Provided*, That nothing in this

section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged Marine Corps League license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(14) The division may issue military organization registration plates as follows:

(A) The division may issue a special registration plate for the members of any military organization chartered by the United States Congress upon receipt of a guarantee from the organization of a minimum of 100 applicants. The insignia on the plate shall be designed by the commissioner.

(B) Upon appropriate application, the division may issue members of the chartered organization in good standing, as determined by the governing body of the chartered organization, a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) The division shall charge a special one-time initial application fee of \$10 for each special license plate in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund: *Provided*, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse's military organization registration plate until the surviving spouse dies, remarries, or does not renew the special military organization registration plate.

(15) The division may issue special nongame wildlife registration plates and special wildlife registration plates as follows:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a species of West Virginia

wildlife which shall display a species of wildlife native to West Virginia as prescribed and designated by the commissioner and the Director of the Division of Natural Resources.

(B) The division shall charge an annual fee of \$15 for each special nongame wildlife registration plate and each special wildlife registration plate in addition to all other fees required by this chapter. All annual fees collected for nongame wildlife registration plates and wildlife registration plates shall be deposited in a special revenue account designated the Nongame Wildlife Fund and credited to the Division of Natural Resources.

(C) The division shall charge a special one-time initial application fee of \$10 in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited in the State Road Fund.

(16) The division may issue members of the Silver Haired Legislature special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any person who is a duly qualified member of the Silver Haired Legislature a specialized registration plate which bears recognition of the applicant as a member of the Silver Haired Legislature.

(B) A qualified member of the Silver Haired Legislature may obtain one registration plate described in this subdivision for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge an annual fee of \$15, in addition to all other fees required by this chapter, for the plate. All annual fees collected by the division shall be deposited in the State Road Fund.

(17) Upon appropriate application, the commissioner shall issue to a classic motor vehicle or classic motorcycle, as defined in §17A-10-3a of this code, a special registration plate designed by the commissioner. An annual fee of \$15, in addition to all other fees required by this chapter, shall be charged for each classic registration plate.



(18) Honorably discharged veterans may be issued special registration plates for motorcycles subject to Class G registration as follows:

(A) Upon appropriate application, there shall be issued to any honorably discharged veteran of any branch of the armed services of the United States a special registration plate for any number of motorcycles subject to Class G registration titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) A special initial application fee of \$10 shall be charged in addition to all other fees required by law. This special fee is to be collected by the division and deposited in the State Road Fund: *Provided*, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged veterans license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(19) Racing theme special registration plates:

(A) The division may issue a series of special registration plates displaying National Association for Stock Car Auto Racing themes.

(B) An annual fee of \$25 shall be charged for each special racing theme registration plate in addition to all other fees required by this chapter. All annual fees collected for each special racing theme registration plate shall be deposited into the State Road Fund.

(C) A special application fee of \$10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(20) The division may issue recipients of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Bronze Star, Silver Star, or Air Medal special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any recipient of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star, or Air Medal, a registration plate for any number of vehicles titled in the name of the qualified applicant bearing letters or numbers. A separate registration plate shall be designed by the Commissioner of the Division of Motor Vehicles for each award that denotes that those individuals who are granted this special registration plate are recipients of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star, or Air Medal as applicable.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: *Provided*, That nothing in this section exempts the applicant for a special registration plate under this subdivision from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star, or Air Medal special registration plate until the surviving spouse dies, remarries, or does not renew the special registration plate.

(21) The division may issue honorably discharged veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged veteran of any branch of the armed services of the United States with verifiable service during World War II, the Korean War, the Vietnam War, the Persian Gulf War, or the War Against Terrorism a special registration plate for any number of vehicles titled in the name of the qualified applicant with

an insignia designed by the commissioner denoting service in the applicable conflict.

(B) The division shall charge a special one-time initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: *Provided*, That nothing contained in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged veterans' registration plate until the surviving spouse dies, remarries, or does not renew the special registration plate.

(22) The division may issue special volunteer firefighter registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of West Virginia and who is a volunteer firefighter may apply for a special license plate for any Class A vehicle titled in the name of the qualified applicant which bears the insignia of the profession in white letters on a red background. The insignia shall be designed by the commissioner and shall contain a fireman's helmet insignia on the left side of the license plate.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the applicant's fire chief, stating that the applicant is a volunteer firefighter and justified in having a registration plate with the requested insignia. The applicant must comply with all other laws of this state regarding registration and licensure of motor vehicles and must pay all required fees.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special one-time initial application fee of \$10, which is in addition to any other registration or license fee required by this chapter. All application fees shall be deposited into the State Road Fund.

(23) The division may issue special registration plates which reflect patriotic themes, including the display of any United States symbol, icon, phrase, or expression which evokes patriotic pride or recognition. The division shall also issue registration plates with the words “In God We Trust”:

(A) Upon appropriate application, the division shall issue to an applicant a registration plate of the applicant’s choice, displaying a patriotic theme as provided in this subdivision, for a vehicle titled in the name of the applicant. A series of registration plates displaying patriotic themes shall be designed by the Commissioner of the Division of Motor Vehicles for distribution to applicants.

(B) The division shall charge a special one-time initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of the license plates designated by this subdivision.

(24) Special license plates bearing the American flag and the logo “9/11/01”:

(A) Upon appropriate application, the division shall issue special registration plates which shall display the American flag and the logo “9/11/01”.

(B) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(C) A special application fee of \$10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(25) The division may issue a special registration plate celebrating the centennial of the 4-H youth development movement

and honoring the Future Farmers of America organization as follows:

(A) Upon appropriate application, the division may issue a special registration plate depicting the symbol of the 4-H organization which represents the head, heart, hands, and health, as well as the symbol of the Future Farmers of America organization which represents a cross section of an ear of corn for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special 4-H Future Farmers of America registration plate in addition to all other fees required by this chapter.

(26) The division may issue special registration plates to educators in the state's elementary and secondary schools and in the state's institutions of higher education as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special educator registration plate in addition to all other fees required by this chapter.

(27) The division may issue special registration plates to members of the Nemesis Shrine as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any

number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in Nemesis Shrine.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) Notwithstanding the provisions of §17A-3-14(d) of this code, the time period for the Nemesis Shrine to comply with the minimum 100 prepaid applications is hereby extended to January 15, 2005.

(28) The division may issue volunteers and employees of the American Red Cross special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any person who is a duly qualified volunteer or employee of the American Red Cross a specialized registration plate which bears recognition of the applicant as a volunteer or employee of the American Red Cross for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(29) The division shall issue special registration plates to individuals who have received ~~either the Combat Infantry Badge or the Combat Medic Badge~~ the U.S. Army Combat Infantryman Badge, Combat Action Badge, or Combat Medical Badge; the U.S. Marine Corps, U.S. Navy, or U.S. Coast Guard Combat Action Ribbon; or the U.S. Air Force Combat Action Medal as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof that they have received ~~either the Combat Infantry Badge or the Combat Medic Badge~~ the U.S. Army Combat Infantryman Badge, Combat Action Badge, or Combat Medical Badge; the U.S. Marine Corps, U.S. Navy, or U.S. Coast Guard Combat Action Ribbon; or the U.S. Air Force Combat Action Medal.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(30) The division may issue special registration plates to members of the Knights of Columbus as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Knights of Columbus.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) Notwithstanding the provisions of §17A-3-14(d) of this code, the time period for the Knights of Columbus to comply with the minimum 100 prepaid applications is hereby extended to January 15, 2007.

(31) The division may issue special registration plates to former members of the Legislature as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of former service as an elected or appointed member of the West Virginia House of Delegates or the West Virginia Senate.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund. The design of the plate shall indicate total years of service in the Legislature.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(32) Democratic state or county executive committee member special registration plates:

(A) The division shall design and issue special registration plates for use by democratic state or county executive committee members. The design of the plates shall include an insignia of a donkey and shall differentiate by wording on the plate between state and county executive committee members.

(B) An annual fee of \$25 shall be charged for each democratic state or county executive committee member registration plate in addition to all other fees required by this chapter. All annual fees collected for each special plate issued under this subdivision shall be deposited into the State Road Fund.

(C) A special application fee of \$10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(D) The division shall not begin production of a plate authorized under the provisions of this subdivision until the division receives at least 100 completed applications from the state



or county executive committee members, including all fees required pursuant to this subdivision.

(E) Notwithstanding the provisions of §17A-3-14(d) of this code, the time period for the democratic executive committee to comply with the minimum 100 prepaid applications is hereby extended to January 15, 2005.

(33) The division may issue honorably discharged female veterans' special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any female honorably discharged veteran, of any branch of the armed services of the United States, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as a woman veteran.

(B) A special initial application fee of \$10 shall be charged in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: *Provided*, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his deceased spouse's honorably discharged veterans license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(34) The division may issue special registration plates bearing the logo, symbol, insignia, letters, or words demonstrating association with West Liberty State College to any resident owner of a motor vehicle. Resident owners may apply for the special license plate for any number of Class A vehicles titled in the name of the applicant. The special registration plates shall be designed by the commissioner. Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of \$15, which is in addition to any other registration or license fee required by this chapter. The division shall charge an annual fee of \$15 for each special registration plate in addition to

all other fees required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(35) The division may issue special registration plates to members of the Harley Owners Group as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Harley Owners Group.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(36) The division may issue special registration plates for persons retired from any branch of the armed services of the United States as follows:

(A) Upon appropriate application, there shall be issued to any person who has retired after service in any branch of the armed services of the United States, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as retired from the armed services of the United States.

(B) A special initial application fee of \$10 shall be charged in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: *Provided*, That nothing in this section may be construed to exempt any registrants from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's retired military license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(37) The division may issue special registration plates bearing the logo, symbol, insignia, letters, or words demonstrating association with or support for Fairmont State ~~College~~ University as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(38) The division may issue special registration plates honoring the farmers of West Virginia, and the division may issue special beekeeper pollinator registration plates as follows:

(A) Upon appropriate application, the division shall issue a special registration plate depicting a farming scene or other apt reference to farming, whether in pictures or words, at the discretion of the commissioner. Upon appropriate application, the division shall issue a special registration plate displaying a pollinator species or advocating its protection as prescribed and designated by the commissioner.

(B) The division shall charge a special initial application fee of \$10 for each plate in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(39) The division shall issue special registration plates promoting education as follows:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a children's education-related theme as prescribed and designated by the commissioner and the State Superintendent of Schools.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(40) The division may issue members of the 82nd Airborne Division Association special registration plates as follows:

(A) The division may issue a special registration plate for members of the 82nd Airborne Division Association upon receipt of a guarantee from the organization of a minimum of 100 applicants. The insignia on the plate shall be designed by the commissioner.

(B) Upon appropriate application, the division may issue members of the 82nd Airborne Division Association in good standing, as determined by the governing body of the organization, a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) The division shall charge a special one-time initial application fee of \$10 for each special license plate in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund: *Provided*, That nothing in this section may be construed to exempt the applicant from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse's special 82nd Airborne Division Association registration plate until the surviving spouse dies, remarries, or does not renew the special registration plate.

(41) The division may issue special registration plates to applicants supporting law-enforcement officers, to retired members of the West Virginia State Police, and the division may ~~issue special registration plates~~ to survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner which recognizes, supports, and honors the men and women of law-enforcement and includes the words “Back the Blue”. Upon appropriate application, the division shall issue to any member of a municipal police department, sheriff’s department, the State Police, or the law-enforcement division of the Division of Natural Resources who has been wounded in the line of duty and awarded a Purple Heart in recognition thereof by the West Virginia Chiefs of Police Association, the West Virginia Sheriffs’ Association, the West Virginia Troopers Association, or the Division of Natural Resources a special registration plate for one vehicle titled in the name of the qualified applicant with an insignia appropriately designed by the commissioner.

(B) For special registration plates supporting law-enforcement officers, the division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund. An annual fee of \$15 shall be charged for each plate supporting law-enforcement officers in addition to all other fees required by this chapter.

(C) Registration plates issued pursuant to this subdivision to survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency are exempt from the registration fees otherwise required by the provisions of this chapter. A surviving spouse may continue to use his or her deceased spouse’s special registration plate until the surviving spouse dies, remarries, or does not renew the plate. Survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency may obtain a license plate as described in this subdivision for use on a passenger vehicle titled

in the name of the qualified applicant. The division shall charge a one-time fee of \$10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(D) Upon appropriate application, the division may issue special registration plates designed by the commissioner for any number of vehicles titled in the name of the qualified applicant who offers sufficient proof of being a retired member of the West Virginia State Police. The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(42) The division may issue a special registration plate for persons who are Native-Americans and residents of this state:

(A) Upon appropriate application, the division shall issue to an applicant who is a Native-American resident of West Virginia a registration plate for a vehicle titled in the name of the applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as a Native-American.

(B) The division shall charge a special one-time initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(43) The division may issue special registration plates commemorating the centennial anniversary of the creation of Davis and Elkins College as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to commemorate the centennial anniversary of Davis and Elkins College for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of \$10. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(44) The division may issue special registration plates recognizing and honoring breast cancer survivors. The division may also issue special registration plates to support a cure for childhood cancer:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to recognize and honor breast cancer survivors, such plate to incorporate somewhere in the design the “pink ribbon emblem”, for any number of vehicles titled in the name of the applicant. Upon appropriate application, the division may also issue a special registration plate designed by the commissioner to support a cure for childhood cancer, such plate to incorporate somewhere in the design the gold ribbon emblem with “WV Kids Cancer Crusaders” below or next to the emblem and “Cure Childhood Cancer” at the bottom of the plate, for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of \$10. This special fee shall be deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(45) The division may issue special registration plates to members of the Knights of Pythias or Pythian Sisters as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Knights of Pythias or Pythian Sisters.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(46) The commissioner may issue special registration plates for whitewater rafting enthusiasts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.

(47) The division may issue special registration plates to members of Lions International as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with Lions International for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in Lions International.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.



(48) The division may issue special registration plates supporting organ donation and adoption as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner which recognizes, supports, and honors organ and tissue donors and includes the words “Donate Life”, and the division may issue a special registration plate designed by the commissioner which supports and encourages adoption and includes the words ‘Choose Life’.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(49) The division may issue special registration plates to members of the West Virginia Bar Association as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the West Virginia Bar Association for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the West Virginia Bar Association.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(50) The division may issue special registration plates bearing an appropriate logo, symbol, or insignia combined with the words “SHARE THE ROAD” designed to promote bicycling in the state as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(51) The division may issue special registration plates honoring coal miners and the coal industry ~~as follows, as well as other professions, as set forth in this subdivision as follows:~~

(A)(i) Upon appropriate application, the division shall issue a special registration plate depicting and displaying coal miners in mining activities as prescribed and designated by the commissioner and the board of the National Coal Heritage Area Authority.

(ii) The division may ~~also~~ issue registration plates with the words "Friends of Coal".

(iii) The division may issue special registration plates recognizing the occupation of linemen, showing appreciation for workers who construct and maintain utility lines, and depicting a scene or other apt reference to the occupation of linemen, whether in words or pictures, at the discretion of the commissioner.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of license plates designated by this subdivision.

(52) The division may issue special registration plates to present and former Boy Scouts, and to present and former members of the Civil Air Patrol as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of present or past membership in the Boy Scouts as either a member or a leader, or in the Civil Air Patrol, as applicable. The special registration plates for the Civil Air Patrol shall be designed by the commissioner in cooperation with the Civil Air Patrol.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(53) The division may issue special registration plates to present and former Boy Scouts who have achieved Eagle Scout status as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of achievement of Eagle Scout status.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(54) The division may issue special registration plates recognizing and memorializing victims of domestic violence:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to recognize and memorialize victims of domestic violence, such plate to incorporate somewhere in the design the “purple ribbon emblem”, for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of \$10. This special fee shall be deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(55) The division may issue special registration plates bearing the logo, symbol, insignia, letters, or words demonstrating association with, or support for, the University of Charleston as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(56) The division may issue special registration plates to members of the Sons of the American Revolution as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the Sons of the American Revolution for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Sons of the American Revolution.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(57) The commissioner may issue special registration plates for horse enthusiasts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.

(58) The commissioner may issue special registration plates to the next of kin of a member of any branch of the armed services of the United States killed in combat as follows:

(A) Upon appropriate application, the division shall issue a special registration plate for any number of vehicles titled in the name of a qualified applicant depicting the Gold Star awarded by the United States Department of Defense as prescribed and designated by the commissioner.

(B) The next of kin shall provide sufficient proof of receiving a Gold Star lapel button from the United States Department of Defense in accordance with Public Law 534, 89th Congress, and criteria established by the United States Department of Defense, including criteria to determine next of kin.

(C) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(D) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of special license plates designated by this subdivision.

(59) The commissioner may issue special registration plates for retired or former justices of the Supreme Court of Appeals of West Virginia as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.

(D) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of special license plates designated by this subdivision.

(60) Upon approval by the commissioner of an appropriate application, and upon all requirements of this subdivision being satisfied, the division may issue special registration plates for Class A and Class G motor vehicles to members of an organization for which a special registration plate has not been issued pursuant to any other subdivision in this subsection prior to January 1, 2010, in accordance with the provisions of this subdivision:

(A) An organization desiring to create a special registration plate must comply with the following requirements to be eligible to apply for the creation and issuance of a special registration plate:

(i) The organization must be a nonprofit organization organized and existing under Section 501(c)(3) of Title 26 of the Internal Revenue Code and based, headquartered, or have a chapter in West Virginia;

(ii) The organization may be organized for, but may not be restricted to, social, civic, higher education, or entertainment purposes;

(iii) The organization may not be a political party and may not have been created or exist primarily to promote a specific political or social belief, as determined by the commissioner in his or her sole discretion;

(iv) The organization may not have as its primary purpose the promotion of any specific faith, religion, religious belief, or antireligion;

(v) The name of the organization may not be the name of a special product or brand name, and may not be construed, as determined by the commissioner, as promoting a product or brand name; and

(vi) The organization's lettering, logo, image, or message to be placed on the registration plate, if created, may not be obscene, offensive, or objectionable as determined by the commissioner in his or her sole discretion.

(B) Beginning July 1, 2010, an organization requesting the creation and issuance of a special registration plate may make application with the division. The application shall include sufficient information, as determined by the commissioner, to determine whether the special registration plate requested, and the organization making the application, meet all of the requirements set forth in this subdivision. The application shall also include a proposed design, including lettering, logo, image, or message to be placed on the registration plate. The commissioner shall notify the organization of the commissioner's approval or disapproval of the application.

(C)(i) The commissioner may not begin the design or production of any license plates authorized and approved pursuant to this subdivision until the organization which applied for the special registration plate has collected and submitted collectively to the division applications completed by at least 250 persons and collectively deposited with the division all fees necessary to cover the first year's basic registration, one-time design and manufacturing costs, and to cover the first year additional annual fee for all of the applications submitted.

(ii) If the organization fails to submit the required number of applications and fees within six months of the effective date of the approval of the application for the plate by the commissioner, the plate will not be produced until a new application is submitted and is approved by the commissioner: *Provided*, That an organization that is unsuccessful in obtaining the minimum number of applications may not make a new application for a special plate until at least two years have passed since the approval of the previous application of the organization.

(D) The division shall charge a special initial application fee of \$25 for each special license plate in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(E) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.

(F) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the organization for any number of vehicles titled in the name of a qualified registration plate applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the organization.

(G) The commissioner shall discontinue the issuance or renewal of the registration of any special plate issued pursuant to this subdivision if:



(i) The number of valid registrations for the specialty plate falls below 250 plates for at least 12 consecutive months; or

(ii) The organization no longer exists or no longer meets the requirements of this subdivision.

(d) The minimum number of applications required prior to design and production of a special license plate shall be as follows:

(1) The commissioner may not begin the design or production of any license plates for which eligibility is based on membership or affiliation with a particular private organization until at least 100 persons complete an application and deposit with the organization a check to cover the first year's basic registration, one-time design and manufacturing costs, and to cover the first year additional annual fee. If the organization fails to submit the required number of applications with attached checks within six months of the effective date of the original authorizing legislation, the plate will not be produced and will require legislative reauthorization: *Provided*, That an organization or group that is unsuccessful in obtaining the minimum number of applications may not request reconsideration of a special plate until at least two years have passed since the effective date of the original authorization: *Provided, however*, That the provisions of this subdivision are not applicable to the issuance of plates authorized pursuant to §17A-3-14(c)(60) of this code.

(2) The commissioner may not begin the design or production of any license plates authorized by this section for which membership or affiliation with a particular organization is not required until at least 250 registrants complete an application and deposit a fee with the division to cover the first year's basic registration fee, one-time design and manufacturing fee, and additional annual fee, if applicable. If the commissioner fails to receive the required number of applications within six months of the effective date of the original authorizing legislation, the plate will not be produced and will require legislative reauthorization: *Provided*, That if the minimum number of applications is not satisfied within the six months of the effective date of the original authorizing legislation, a person may not request reconsideration

of a special plate until at least two years have passed since the effective date of the original authorization.

(e)(1) Nothing in this section requires a charge for a free prisoner of war license plate or a free recipient of the Congressional Medal of Honor license plate for a vehicle titled in the name of the qualified applicant as authorized by other provisions of this code.

(2) A surviving spouse may continue to use his or her deceased spouse's prisoner of war license plate or Congressional Medal of Honor license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(3) Qualified former prisoners of war and recipients of the Congressional Medal of Honor may obtain a second special registration plate for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of \$10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second special plate.

(f) The division may issue special 10-year registration plates as follows:

(1) The commissioner may issue or renew for a period of no more than 10 years any registration plate exempted from registration fees pursuant to any provision of this code or any restricted use antique motor vehicle license plate authorized by §17A-10-3a of this code: *Provided*, That the provisions of this subsection do not apply to any person who has had a special registration suspended for failure to maintain motor vehicle liability insurance as required by §17D-2A-3 of this code or failure to pay personal property taxes as required by §17A-3-3a of this code.

(2) An initial nonrefundable fee shall be charged for each special registration plate issued pursuant to this subsection, which is the total amount of fees required by §17A-3-3, §17A-10-3a, or §17A-10-15 of this code for the period requested.

(g) The provisions of this section may not be construed to exempt any registrant from maintaining motor vehicle liability

insurance as required by §17D-2A-3 of this code or from paying personal property taxes on any motor vehicle as required by §17A-3-3a of this code.

(h) The commissioner may, in his or her discretion, issue a registration plate of reflectorized material suitable for permanent use on motor vehicles, trailers, and semitrailers, together with appropriate devices to be attached to the registration to indicate the year for which the vehicles have been properly registered or the date of expiration of the registration. The design and expiration of the plates shall be determined by the commissioner. The commissioner shall, whenever possible and cost effective, implement the latest technology in the design, production, and issuance of registration plates, indices of registration renewal and vehicle ownership documents, including, but not limited to, offering Internet renewal of vehicle registration and the use of bar codes for instant identification of vehicles by scanning equipment to promote the efficient and effective coordination and communication of data for improving highway safety, aiding law enforcement, and enhancing revenue collection.

(i) Any license plate issued or renewed pursuant to this chapter which is paid for by a check that is returned for nonsufficient funds is void without further notice to the applicant. The applicant may not reinstate the registration until the returned check is paid by the applicant in cash, money order, or certified check and all applicable fees assessed as a result thereof have been paid.

(j) The division shall, upon request of a qualifying applicant, exempt one nonexempt military special registration plate per qualifying applicant from all registration fees. For purposes of this subsection:

(1) 'Exempt military special registration plate' means a special registration plate related to military service that is issued pursuant to this section for which registration fees are exempt pursuant to this section or §17A-10-8 of this code, including, but not limited to, a special registration plate issued to one of the following:

(A) A disabled veteran pursuant to §17A-3-14(c)(6), §17A-10-8(4), or §17A-10-8(5) of this code;

(B) A recipient of the Purple Heart medal pursuant to §17A-3-14(c)(7) of this code;

(C) A survivor of the attack on Pearl Harbor pursuant to §17A-3-14(c)(8) of this code;

(D) A former prisoner of war pursuant to §17A-10-8(6) of this code; or

(E) A recipient of the Congressional Medal of Honor pursuant to §17A-10-8(7) of this code.

(2) ‘Nonexempt military special registration plate’ means a special registration plate related to military service that is issued pursuant to this section for which registration fees are not exempt pursuant to this section or §17A-10-8 of this code, including, but not limited to, special registration plate issued to one of the following:

(A) A member of the National Guard forces pursuant to §17A-3-14(c)(3) of this code;

(B) An honorably discharged veteran pursuant to §17A-3-14(c)(5) or §17A-3-14(c)(21) of this code;

(C) An honorably discharged Marine Corps League member pursuant to §17A-3-14(c)(13) of this code;

(D) A member of a military organization pursuant to §17A-3-14(c)(14) of this code;

(E) A recipient of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Bronze Star, Silver Star, or Air Medal pursuant to §17A-3-14(c)(20) of this code;

(F) A recipient of the Combat Infantry Badge or the Combat Medic Badge pursuant to §17A-3-14(c)(29) of this code;

(G) An honorably discharged female veteran pursuant to §17A-3-14(c)(33) of this code;

(H) A person retired from any branch of the armed services of the United States pursuant to §17A-3-14(c)(36) of this code; or

(I) A member of the 82nd Airborne Division Association pursuant to §17A-3-14(c)(40) of this code.

(3) ‘Qualifying applicant’ means an applicant who qualifies for an exempt military special registration plate, and who also qualifies for a nonexempt military special registration plate, who requests that the division issue one such nonexempt military special registration plate instead of such exempt military special registration plate in order to have such nonexempt military special registration plate be exempt from the payment of registration fees.”

And,

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

**Com. Sub. for H. B. 2733** – “A Bill to amend and reenact §17A-3-14 of the Code of West Virginia, 1931, as amended, relating to authorizing special registration plates and establishing fees.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 597**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Hardy, Householder, Howell and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2733) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4059**, Clarifying that new Department of Health and Human Resources' Deputy Commissioners are exempt from civil service.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

On page two, section four, line thirty-four, by striking out the word "and";

On page two, section four, line thirty-five, after the word "areas" by changing the period to a semicolon and inserting the word "and";

And,

After line thirty-five, by inserting a new subdivision, designated subdivision (16), to read as follows:

"(16) Any person hired as an attorney beginning July 1, 2022."

And,

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

**Com. Sub. for H. B. 4059** - "A Bill to amend and reenact §29-6-4 of the Code of West Virginia, 1931, as amended, relating to exemptions from classified service; clarifying that all new Department of Health and Human Resources' Deputy Commissioners are policy-making positions exempt from civil service; and exempting persons employed as attorneys from the civil service."

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 598**), and there were—yeas 82, nays 15, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Barach, Boggs, Brown, Fluharty, Griffith, Hansen, Hornbuckle, Lovejoy, Pethtel, Pushkin, Rowe, Skaff, Thompson, Williams and Zukoff.

Absent and Not Voting: Mallow, Walker and Young.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4059) passed.

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

On this question, the yeas and nays were taken (**Roll No. 599**), and there were—yeas 92, nays 6, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Barach, Fleischauer, Fluharty, Hansen, Rowe and Zukoff.

Absent and Not Voting: Mallow and Walker.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4059) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4087**, Allowing variance in state fire code for certain buildings used solely for emergency equipment storage.

On motion of Delegate Kessinger, the House refused to concur in the following amendment of the bill by the Senate, and requested the Senate to recede therefrom:

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

**“CHAPTER 15A. DEPARTMENT OF HOMELAND  
SECURITY.**

**ARTICLE 11. FIRE COMMISSION.**

**§15A-11-5. Promulgation of rules and statewide building code.**

(a) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to safeguard life and property and to ensure the quality of construction of all structures erected or renovated throughout this state through the adoption of a State Building Code. The rule may include provisions regarding building construction, renovation, and all other aspects as related to the construction and mechanical operations of a structure. The rule shall include building energy codes. The rules shall be in accordance with standard safe practices so embodied in widely recognized standards of good practice for building construction and all aspects related thereto and have force and effect in those counties and municipalities adopting the State Building Code: *Provided*, That each county or municipality may adopt the code to the extent that it is only prospective and not retroactive in its application; *Provided, however*, That buildings or structures utilized primarily for agricultural purposes shall be exempt from the provisions of the State Building Code, the State Fire Code, and any county or municipal building code or ordinance that is or may be adopted, such as the ICC International Property Maintenance Code.

(b) The State Fire Commission may establish advisory boards as it considers appropriate to encourage representative participation in subsequent rulemaking from groups or individuals



with an interest in any aspect of the State Building Code or related construction or renovation practices.

(c) For the purpose of this section, the term “building code” is intended to include all aspects of safe building construction and mechanical operations and all safety aspects related thereto. Whenever any other state law, county, or municipal ordinance, or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the State Building Code, the provisions of the state law, county or municipal ordinance, or regulation of any agency thereof governs if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices. In any question, the decision of the State Fire Commission determines the relative priority of any such state law, county or municipal ordinance, or regulation of any agency thereof, and determines compliance with State Building Code by officials of the state, counties, municipalities, and political subdivisions of the state.

(d) Enforcement of the provisions of the State Building Code is the responsibility of the respective local jurisdiction. Also, any county or municipality may enter into an agreement with any other county or municipality to provide inspection and enforcement services: *Provided*, That any county or municipality may adopt the State Building Code with or without adopting the BOCA National Property Maintenance Code. If a county adopts a property maintenance code or ordinance including, but not limited to, the ICC International Property Maintenance Code, such code or ordinance shall exempt all property used for agricultural purposes or otherwise cause such property to be exempted from any such code or ordinance from enforcement. Any such code that may be or is adopted by any county shall be and is unenforceable as to agricultural property.

(e) After the State Fire Commission has promulgated rules as provided in this section, each county or municipality intending to adopt the State Building Code shall notify the State Fire Marshal of its adoption.

(f) The State Fire Commission may conduct public meetings in each county or municipality adopting the State Building Code to explain the provisions of the rules.

(g) The provisions of the State Building Code relating to the construction, repair, alteration, restoration, and movement of structures are not mandatory for existing buildings and structures identified and classified by the State Register of Historic Places under the provisions of §29-1-8 of this code or the National Register of Historic Places, pursuant to 16 U.S.C. § 470a. Prior to renovations regarding the application of the State Building Code, in relation to historical preservation of structures identified as such, the authority having jurisdiction shall consult with the Division of Culture and History, State Historic Preservation Office. The final decision is vested in the State Fire Marshal. Additions constructed on a historic building are not excluded from complying with the State Building Code.

(h) For purposes of this section, the term “agricultural purposes” has the same meaning as is set forth in §15A-11-3 of this code.

(i) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code relating to sprinkler protection, specifically providing that buildings commencing construction after July 1, 2022, housing emergency fire, rescue, or ambulance services shall be protected throughout by approved automatic sprinkler systems: *Provided*, That emergency services buildings, not exceeding a total of 5,000 square feet in area, that house only equipment, and do not have designated sleeping areas or quarters within them, regardless when constructed or commencing construction, are exempt from this requirement.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 3E. FIREWORKS SAFETY.**

**§29-3E-7. Fireworks safety fee; administration; tax crimes; collections; remittances; deposits; distributions; rules.**

(a) In addition to the sales tax, a fireworks safety fee of 12 percent of all sales is levied on retail sales of consumer fireworks in this state. The fee shall be distributed pursuant to the provisions of this subsection. The fee computation under this subsection shall be carried to the third decimal place, and the fee rounded up to the next whole cent whenever the third decimal place is greater than four, and rounded down to the lower whole cent whenever the third decimal place is four or less.

The State Tax Commissioner shall disburse all proceeds of the fireworks safety fee into the State Treasury each month in the following manner:

(1) Seventy-five percent shall be deposited into a special account in the State Treasury, designated the Veterans' Facility Support Fund established by the provisions of §9A-1-11 of this code for expenditure on veterans' programs.

(2) Twenty-five percent shall be deposited into a special account in the State Treasury, designated the Fire Protection Fund ~~established in §33-3-33 of this code and~~ shall be allocated and distributed in accordance with that section to each volunteer fire company or department on an equal share basis by the State Treasurer according to the requirements of §33-3-33 of this code.

(b) A person who purchases consumer fireworks in a retail transaction shall pay to the retailer the amount of the fee levied by this section, which fee is added to and constitutes a part of the sale price, and is collectible by the retailer who shall account to the state for all fees paid by a purchaser. If the retailer fails to collect the fee or fails to account to the state for the fees paid by a purchaser, then the retailer is liable for the payment of the fee to the state.

(c) A retailer shall remit to the State Tax Commissioner no later than 30 days after the end of each preceding month all moneys collected for such preceding month, pursuant to the requirements

of this section, and shall report such collections on forms and in the manner prescribed by the State Tax Commissioner.

(d) All moneys so remitted, net of refunds and adjustments, shall be paid by the State Tax Commissioner into the funds specified in this section.

(e) Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth §11-9-1 *et seq.* of this code applies to the fees imposed pursuant to this article, with like effect as if that act were applicable only to the fees imposed by this article and were set forth in extenso in this article.

(f) The State Tax Commissioner shall propose legislative rules and may promulgate such emergency rules as are necessary to implement the provisions of this article.

## **CHAPTER 33. INSURANCE.**

### **ARTICLE 3. LICENSING, FEES, AND TAXATION OF INSURERS.**

#### **§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.**

(a) (1) For the purpose of providing additional revenue for municipal policemen's and firemen's pension and relief funds and the Teachers Retirement System Reserve Fund and for volunteer and part-volunteer fire companies and departments, there is hereby levied and imposed an additional premium tax equal to one percent of taxable premiums for fire insurance and casualty insurance policies. For purposes of this section, casualty insurance does not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.

(2) All moneys collected from this additional tax shall be received by the commissioner and paid by him or her into a special account in the State Treasury, designated the Municipal Pensions

and Protection Fund, to be allocated as follows: *Provided, That on or after January 1, 2010, the commissioner shall pay*

(A) Ten percent of the amount collected ~~to~~ shall be deposited in the Teachers Retirement System Reserve Fund created in §18-7A-18 of this code;

(B) Twenty-five percent of the amount collected ~~to~~ shall be deposited in the Fire Protection Fund created in section 33 of this article for allocation distribution by the State Treasurer to volunteer and part-volunteer fire companies and departments according to the requirements of §33-3-33 of this code; and

~~65% of the amount collected to the Municipal Pensions and Protection Fund: *Provided, however, That upon notification by the Municipal Pensions Oversight Board pursuant to the provisions of §8-22-18b of this code, on or after January 1, 2010, or as soon thereafter as the Municipal Pensions Oversight Board is prepared to receive the funds,*~~

(C) Sixty-five percent of the amount collected by the commissioner shall be deposited in the Municipal Pensions Security Fund created in §8-22-18b of this code ~~the net proceeds of this tax after appropriation thereof by the Legislature is to be distributed in accordance with the provisions of this section, except for distribution from proceeds pursuant to §8-22-8a(d) §8-22-18a(d) of this code.~~

(b) *Municipal Pensions Security Fund allocation and distribution —*

(1) Before August 1 of each year, the treasurer of each municipality in which a municipal policemen's or firemen's pension and relief fund is established shall report to the ~~State Treasurer~~ Municipal Pensions Oversight Board the average monthly number of members who worked at least 100 hours per month and the average monthly number of retired members of municipal policemen's or firemen's pension and relief fund or the Municipal Police Officers and Firefighters Retirement System during the preceding fiscal year. ~~*Provided, That beginning in the*~~

year 2010 and continuing thereafter, the report shall be made to the oversight board created in §8-22-18a. ~~These reports received by the oversight board shall be provided~~ The reports received by the Municipal Pensions Oversight Board shall be provided annually to the State Treasurer by September 1.

(2) ~~Before September 1 of each calendar year, the State Treasurer, or the Municipal Pensions Oversight Board once in operation, shall allocate and authorize for distribution the revenues in the Municipal Pensions and Protection Fund which were collected during the preceding calendar year for the purposes set forth in this section. Before September 1 of each calendar year, and after the Municipal Pensions Oversight Board has notified the Treasurer and commissioner pursuant to §8-22-18b of this code,~~ the Municipal Pensions Oversight Board shall allocate and authorize for distribution the revenues in the Municipal Pensions Security Fund which were collected during the preceding calendar year for the purposes set forth in this section. In any year the actuarial report required by §8-22-20 of this code indicates no actuarial deficiency in the municipal policemen's or firemen's pension and relief fund, no revenues may be allocated from ~~the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund~~ to that fund. The revenues from the Municipal Pensions ~~and Protection~~ Security Fund shall then be allocated to all other pension and relief funds which have an actuarial deficiency.

(3) ~~The Municipal Pensions Oversight Board shall annually review the investment performance of each municipal policemen's or firemen's pension and relief fund. If the municipal pension and relief fund's board fails for three consecutive years to comply with the investment provisions established by §8-22-22a of this code, the oversight board may require the municipal policemen's or firemen's pension and relief fund to invest with the Investment Management Board to continue to receive its allocation of funds from the premium tax. If the municipal pension and relief fund fails to move its investments to the Investment Management Fund within the 18-month drawdown period, provided in §8-22-19(e) of this code, the revenues shall be reallocated to all other municipal~~

~~policemen's or firemen's pension and relief funds that have drawn down one hundred percent of their allocations.~~

~~(4) The moneys, and the interest earned thereon, in the Municipal Pensions and Protection Fund allocated to volunteer and part volunteer fire companies and departments shall be allocated and distributed quarterly to the volunteer fire companies and departments. Before each distribution date, the State Fire Marshal shall report to the State Treasurer the names and addresses of all volunteer and part volunteer fire companies and departments within the state which meet the eligibility requirements established in §8-15-8a of this code.~~

~~(c) (1) Each municipal pension and relief fund shall have allocated and authorized for distribution a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based on the corresponding municipality's average monthly number of police officers and firefighters who worked at least one hundred hours per month during the preceding fiscal year. On and after July 1, 1997, from~~

(3) The Municipal Pensions Oversight Board shall allocate and distribute the growth in any moneys collected pursuant to a pro rata share of the tax imposed by this section and earnings and interest thereon there shall be allocated and authorized for distribution to each municipal policemen's or municipal firemen's pension and relief fund, a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based on the corresponding municipality's average number of police officers and firefighters who worked at least 100 hours per month during the preceding fiscal year and average monthly number of retired police officers and firefighters during the preceding fiscal year. For the purposes of this subsection, the growth in moneys collected from earnings the tax collected pursuant to this section is determined by subtracting the amount of the tax collected during the fiscal year ending June 30, 1996, from the tax collected during the fiscal year for which the allocation is being made and interest thereon. All moneys received by municipal pension and relief funds under this section may be expended only for those purposes described in §8-22-16 through §8-22-28 §8-22-28a of this code.

~~(2) Each volunteer fire company or department shall receive an equal share of the revenues allocated for volunteer and part-volunteer fire companies and departments.~~

~~(3) In addition to the share allocated and distributed in accordance with subdivision (1) of this subsection, each municipal fire department composed of full time paid members and volunteers and part-volunteer fire companies and departments shall receive a share equal to the share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by an amount equal to the share multiplied by the ratio of the number of full-time paid fire department members who are also members of a municipal firemen's pension and relief fund or the Municipal Police Officers and Firefighters Retirement System to the total number of members of the fire department.~~

~~(d) (4) The allocation and distribution of revenues provided in this section are subject to the provisions of §8-22-20, §8-15-8a, and §8-15-8b of said chapter this code.~~

~~(e) Based upon the findings of an audit by the Treasurer, the Legislature hereby finds and declares that during the period of 1982 through April 27, 2012, allocations from the Municipal Pensions and Protection Fund were miscalculated and errors were made in amounts transferred, resulting in overpayments and underpayments to the relief and pension funds and to the Teachers Retirement System, and that the relief and pension funds and the Teachers Retirement System were not at fault for any of the overpayments and underpayments. The Legislature hereby further finds and declares that any attempt by the Municipal Pension Oversight Board or other entity to recover any of the overpayments would be unjust and create economic hardship for the entities that received overpayments. No entity, including, without limitation, the Municipal Pension Oversight Board, may seek to recover from a relief or pension fund, the Teachers Retirement System or the state any overpayments received from the Municipal Pensions and Protection Fund and the overpayments are not subject to recovery, offset or litigation. Pursuant to the audit by the Treasurer, the amount of \$3,631,846.55 is determined owed to specific relief and pension funds through the period of April 27, 2012. The Treasurer~~



is hereby authorized to transfer the amount of \$3,631,846.55 from the Unclaimed Property Trust Fund to the Municipal Pensions and Protection Fund, which is hereby reopened for the sole purpose of the transfer and remittances pursuant to this subsection, and to use the amount transferred to remit the amounts due to the pension and relief funds. The payment of \$3,631,846.55 to the pension and relief funds is complete satisfaction of any amounts due and no entity, including, without limitation, the Municipal Pension Oversight Board and any pension or relief fund, may seek to recover any further amounts.

(c) The Municipal Pensions Oversight Board shall annually review the investment performance of each municipal policemen's or firemen's pension and relief fund. If a municipal pension and relief fund's board fails for three consecutive years to comply with the investment provisions established by §8-22-22a of this code, the oversight board may require the municipal policemen's or firemen's pension and relief fund to invest with the Investment Management Board to continue to receive its allocation of funds from the premium tax. If the municipal pension and relief fund fails to move its investments to the Investment Management Fund within the 18-month drawdown period provided in §8-22-19(e) of this code, the revenues shall be reallocated to all other municipal policemen's or firemen's pension and relief funds that have drawn down 100 percent of their allocations.

**§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part-volunteer fire departments; ~~Public Employees Insurance Agency and municipal pension plans; special fund created; Fire Protection Fund; allocation of proceeds. effective date.~~**

~~(a)(1) For the purpose of providing additional revenue for volunteer fire departments, part-volunteer fire departments and certain retired teachers and the teachers retirement reserve fund, there is hereby authorized and imposed on and after July 1, 1992, on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to one percent of the taxable premium for each such policy. After June 30,~~

2005, the surcharge shall be imposed as specified in subdivisions (2) and (3) of this subsection.

~~(2) After June 30, 2005, through December 31, 2005, for the purpose of providing additional revenue for volunteer fire departments, part volunteer fire departments and to provide additional revenue to the Public Employees Insurance Agency and municipal pension plans, there is hereby authorized and imposed on and after July 1, 2005, on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to one percent of the taxable premium for each such policy.~~

(a) For the purposes of this section:

(1) 'Full-time paid members' means the members of a fire department who are compensated to provide services to the department on a full-time basis and are also members of a municipal firemen's pension and relief fund or the Municipal Police Officers and Firefighters Retirement System.

(2) The 'policy surcharge' refers to the surcharge on certain insurance policies imposed by subsection (b) of this section.

(3) 'Volunteer fire departments' or 'departments' includes volunteer and part-volunteer fire departments and companies, as described in §18-15-1 et seq. of this code.

(3) (b) After ~~December 31, 2005,~~ December 31, 2022, for the purpose of providing additional revenue for volunteer fire departments and part-volunteer fire departments, there is hereby authorized and imposed on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to ~~0.055%~~ one percent of the taxable premium for each such policy. The policy surcharge is separate from and in addition to the tax imposed by §33-3-14d of this code.

(4) (c) For purposes of this section, casualty insurance ~~may~~ does not include insurance on the life of a debtor pursuant to or in

connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy. The policy surcharge ~~may~~ is not ~~be~~ subject to premium taxes, agent commissions, or any other assessment against premiums.

~~(b)~~ (d) The policy surcharge imposed by this section shall be collected and remitted to the commissioner by the insurer, or in the case of surplus lines coverage, by the surplus lines licensee, or if the policy is issued by a risk retention group, by the risk retention group. The amount required to be collected under this section shall be remitted to the commissioner on a quarterly basis on or before the 25th day of the month succeeding the end of the quarter in which they are collected, except for the fourth quarter for which the surcharge shall be remitted on or before March 1 of the succeeding year. All money from the policy surcharge shall be collected by the commissioner who shall disburse all of the money received from the surcharge into the Fire Protection Fund for distribution as provided in subsection (f) of this section.

~~(e)~~ (e) Any person failing or refusing to collect and remit to the commissioner any policy surcharge and whose surcharge payments are not postmarked by the due dates for quarterly filing is liable for a civil penalty of up to \$100 for each day of delinquency, to be assessed by the commissioner. The commissioner may suspend the insurer, broker, or risk retention group until all surcharge payments and penalties are remitted in full to the commissioner.

~~(d)~~ (f) Fire Protection Fund allocation and distribution. —

(1) ~~All money from the policy surcharge shall be collected by the Commissioner who shall disburse the money received from the surcharge into a special account in the state Treasury, designated the Fire Protection Fund. The State Treasurer's Office shall distribute the net proceeds of this portion of the tax the policy surcharge, the amount deposited into the Fire Protection Fund pursuant to §29-3E-7 of this code, the amount deposited into the Fire Protection Fund pursuant to §33-3-14d of this code, and the interest thereon on a quarterly basis, after appropriation by the~~

Legislature. ~~shall be distributed quarterly~~ The distributions shall occur on the first day of the months of January, April, July, and October to each eligible volunteer fire company or department, ~~on an equal share basis by the state Treasurer. After June 30, 2005, the money received from the surcharge shall be distributed as specified in subdivisions (2) and (3) of~~ as provided in this subsection.

~~(2)(A) After June 30, 2005, through December 31, 2005, all money from the policy surcharge shall be collected by the Commissioner who shall disburse one half of the money received from the surcharge into the Fire Protection Fund for distribution as provided in subdivision (1) of this subsection.~~

~~(B) The remaining portion of moneys collected shall be transferred into the fund in the state Treasury of the Public Employees Insurance Agency into which are deposited the proportionate shares made by agencies of this state of the Public Employees Insurance Agency costs of those agencies, until November 1, 2005. After the October 31, 2005, through December 31, 2005, the remain portion shall be transferred to the special account in the state Treasury, known as the Municipal Pensions and Protection Fund.~~

~~(3) After December 31, 2005, all money from the policy surcharge shall be collected by the Commissioner who shall disburse all of the money received from the surcharge into the Fire Protection Fund for distribution as provided in subdivision (1) of this subsection.~~

(4) (2) Before each distribution date to volunteer fire companies or departments, the State Fire Marshal shall report to the State Treasurer:

(A) The names and addresses of all volunteer and part-volunteer fire companies and departments within the state which meet met the eligibility requirements established in §8-15-8a of this code during the preceding quarter; and

(B) The number of volunteer firefighters and the number of full-time paid members providing services to each volunteer and part-volunteer department during the preceding quarter.

(3) Each eligible volunteer fire department shall receive an equal share of the amount of proceeds to be distributed each quarter: *Provided*, That each part-volunteer department's share will be reduced by a percentage amount equal to the percentage of the members of the fire department who are full-time paid members of the department, according to the report described in subdivision (2) of this subsection.

~~(e)~~ (g) The allocation, distribution, and use of revenues provided in the Fire Protection Fund are subject to the provisions of §8-15-8a and §8-15-8b of this code.

## **CHAPTER 37. REAL PROPERTY.**

### **ARTICLE 6. LANDLORD AND TENANT.**

#### **§37-6-5a. Recovery residences.**

(a) The purpose of this section is to create one pilot program in Cabell County to study the uniqueness of recovery residences as they relate to landlord-tenant law and determine an equitable resolution when circumstances arise which bring about an unanticipated cessation of an individual's participation in a recovery residence's program.

(b) For the purposes of this section:

(1) 'Recovery residence' has the meaning ascribed in §16-59-1(4) of this code.

(2) 'Residence agreement' means an agreement between an individual residing in a recovery residence and the recovery residence.

(3) 'Resident' means a person residing in and receiving services from a recovery residence.

(c) A recovery residence in the pilot county may immediately discharge a resident without filing a petition for summary relief for wrongful occupation of residential rental property for any of the following reasons:

(1) The use, possession, or distribution of alcohol, any controlled substance, or prescription medication for which the resident does not have a valid prescription;

(2) Sexual misconduct;

(3) Any crime of violence against a person or threat of crime of violence against a person; or

(4) Any conduct which jeopardizes the safety of another resident.

(d) If a recovery residence in the pilot county seeks to discharge a resident for a reason not enumerated in subdivisions (1) through (4), subsection (c) of this section, the resident is entitled to the due process and protections afforded a “tenant” as that term is defined in §37-6A-1 of this code; the recovery residence shall be treated as a “landlord” as that term is defined in §37-6A-1 of this code; and the recovery residence shall be required to proceed against the resident under §55-3A-1 of this code with the filing of a petition for summary relief seeking removal of the resident for wrongful occupation of residential rental property.

(e) If a resident is discharged, evicted, or otherwise removed from a recovery residence in the pilot county prior to the expiration of the time period for which he or she has previously paid rent or any other fee for residency or services, the recovery residence shall issue a refund of the rent or fee to the discharged resident in an amount prorated, on a per diem basis, to account for the remainder of that time period.

(f) If requested by the resident, a recovery residence in the pilot county shall first apply any refund required by subsection (e) of this section to costs related to placing the resident in a higher level care facility or transferring the resident to another recovery residence: *Provided*, That if the resident does not request to be

placed in a higher level care facility or does not request to be transferred to another recovery residence, within 72 hours of a resident's discharge, eviction, or removal, the recovery residence shall issue any refund due to a resident: *Provided, however,* That if the rent or fee moneys were paid by a third party on behalf of the resident, any refund required by subsection (e) of this section shall be issued directly to the third-party payor within 72 hours of a resident's discharge, eviction, or removal.

(g) If a resident was transported by the recovery residence in the pilot county from any location outside the state of West Virginia and is discharged, evicted, or otherwise removed from the recovery residence, the recovery residence shall provide transportation to the location from which the resident was initially transported to the discharged, evicted, or otherwise removed resident, at the expense of the recovery residence.

(h) If the resident is discharged, evicted, or otherwise removed prior to the expiration of the time period for which he or she has previously paid rent or any other fee for residency or service, the recovery residence in the pilot county shall report non-identifying resident information regarding the reason for the early discharge, eviction, or removal of the resident to the West Virginia Department of Health and Human Resources, Office of Drug Control Policy.

## **ARTICLE 6A. RESIDENTIAL RENTAL SECURITY DEPOSITS.**

### **§37-6A-5. Landlord's noncompliance.**

(a) If a landlord fails to comply with any of the provisions of this article, and ~~such~~ the noncompliance is willful or not in good faith, the tenant is entitled to a judgment for:

(1) The amount of any unreturned security deposit; and

(2) Damages for annoyance or inconvenience resulting from the landlord's nonconformance equal to one and a half times the amount wrongfully withheld, unless the tenant owes rent to the landlord, in which case, the court shall order an amount equal to

any amount awarded to the tenant pursuant to this subsection to be credited against any rent due to the landlord: Provided, That if an individual is residing in a recovery residence in the pilot county established under the provisions of §37-6-5a, the recovery residence is required to comply with the provisions of this article, and if the recovery residence's noncompliance is willful or not in good faith, the court shall also award reasonable attorney's fees.

(b) Jurisdiction for any civil action brought pursuant to this article shall be in magistrate ~~court~~ or circuit court in the county where the residential rental premises or units are located.

(c) This section does not limit rights or remedies available to a landlord or tenant under any other law.

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

### **ARTICLE 3A. REMEDIES FOR WRONGFUL OCCUPATION OF RESIDENTIAL RENTAL PROPERTY.**

#### **§55-3A-1. Petition for summary relief for wrongful occupation of residential rental property.**

(a) A person desiring to remove a tenant, including a resident of a recovery residence in the pilot county established under the provisions of §37-6-5a who is discharged for a reason other than those enumerated in §37-6-5a(c)(1) through (4) of this code, from residential rental property may apply for ~~such~~ relief to the magistrate ~~court~~ or the circuit court of the county in which ~~such~~ the property is located, by verified petition, setting forth the following:

(1) That he or she is the owner or agent of the owner and as such has a right to recover possession of the property;

(2) A brief description of the property sufficient to identify it;

(3) That the tenant is wrongfully occupying ~~such~~ the property in that the tenant is in arrears in the payment of rent, has breached a warranty or a leasehold covenant, or has deliberately or



negligently damaged the property or knowingly permitted another person to do so, and describing such arrearage, breach, or act or omission; and

(4) A prayer for possession of the property.

(b) Previous to the filing of the petition the person shall request from the court the time and place at which the petitioner shall be heard. The court shall fix a time for ~~such~~ the hearing, which time shall not be less than five nor more than 10 judicial days following ~~such~~ the request.

(c) Immediately upon being apprised of the time and place for the hearing, the petitioner shall ~~cause~~ have a notice of the ~~same to be hearing~~ served upon the tenant in accordance with the provisions of Rule 4 of the West Virginia Rules of Civil Procedure or by certified mail, return receipt requested. ~~Such~~ The notice shall inform the tenant that any defense to the petition ~~must~~ shall be submitted in writing to the petitioner within five days of the receipt by the tenant of the notice, and in no case later than the fifth day next preceding the date of hearing. Upon receipt of the return of service or the return receipt as the case may be, evidencing service upon the tenant, the petitioner shall file with the court his or her petition and such proof of service.”

And,

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

**Com. Sub. for H. B. 4087** – “A Bill to amend and reenact §15A-11-5, §37-6A-5, and §55-3A-1 of the Code of West Virginia, 1931, as amended; and amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §37-6-5a; relating to requiring the State Fire Commission to propose rules relating to sprinkler protection, providing that buildings commencing construction after July 1, 2022, housing emergency fire, rescue, or ambulance services shall be protected throughout by approved automatic sprinkler systems; and exempting emergency services buildings meeting certain criteria that only house equipment and do not have sleeping areas or quarters within

them from the requirement; all relating generally to residents of recovery residences; creating one pilot program in Cabell County relating to recovery residences as they relate to landlord-tenant law; defining terms; providing that a resident of a recovery residence in the pilot county may be immediately discharged in certain circumstances; establishing procedures for removing recovery resident in the pilot county; establishing refund process for fees for residency or services paid to a recovery residence in the pilot county; requiring return transportation be provided to an individual transported to a recovery residence in the pilot county from outside the state of West Virginia; requiring the reporting of certain information to West Virginia Department of Health and Human Resources; requiring award of reasonable attorney's fees against recovery residence in the pilot county in certain instances; and requiring recovery residence in the pilot county file a petition for summary relief for wrongful occupation of residential rental property in certain circumstances."

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4098**, Relating to Geothermal Energy Development.

On motion of Delegate Summers, the House concurred in the following amendment by the Senate, with further amendment:

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

**"ARTICLE 33. GEOTHERMAL ENERGY DEVELOPMENT.**

**§22-33-1. Short title.**

This article shall be known and cited as the Geothermal Resources Act.

**§22-33-2. Legislative findings; declaration of policy.**

(a) The Legislature finds that:

(1) A geothermal resource is a reservoir inside the Earth from which heat can be extracted economically compared to other conventional sources of energy and used for generating electric power or any other suitable industrial, commercial, agricultural, residential, or domestic application in the future;

(2) Geothermal resources vary widely from one location to another depending on the temperature and depth of the resource;

(3) There are no existing laws in this state that allow for the safe and efficient development of a regulatory program for geothermal resources; and

(4) The secretary should have broad authority to develop a regulatory program for geothermal resources to meet the economic needs of the state and to protect the public interest.

(b) The Legislature declares that the establishment of a new regulatory program to address the exploration, development, and production of geothermal resources in this state is in the public interest and should be done in a manner that protects the environment and our economy for current and future generations.

(c) The Legislature declares that in view of the urgent need for prompt decision of matters submitted to the secretary under this article, all actions which the secretary is required to take pursuant to this article shall be taken as quickly as possible consistent with adequate consideration of the issues involved.

**§22-33-3. Applicability; exceptions.**

The provisions of this article shall apply to geothermal resources at temperatures and volumetric flow rates established by the secretary by legislative rule: *Provided*, That this article shall

not apply to geothermal heating and cooling heat pump systems for private residential dwellings and farm buildings and any geothermal system regulated pursuant to section 10 of the Bureau of Public Health legislative rule for Water Well Design Standards, 64 CSR 46 or any horizontal system with a depth of less than 30 feet.

#### **§22-33-4. Ownership of geothermal resources.**

(a) Ownership of any geothermal resource is vested in the owner of the surface property overlying the geothermal resource unless severance of the geothermal resource is clear and unambiguous in an instrument conveying ownership of the geothermal resource.

(b) No mineral or water estate shall be construed to include any geothermal resource unless clearly and unambiguously included in an instrument reserving or conveying the geothermal resource.

(c) Nothing in this article shall divest any person or the state of any right, title, or interest they might have in any geothermal resource.

(d) Nothing in this article may be construed as vesting in the secretary the jurisdiction to adjudicate property rights disputes.

#### **§22-33-5. Definitions.**

As used in this article:

(a) “Correlative right” means the right of each geothermal owner in a geothermal system to produce without waste his or her just and equitable share of the geothermal resource in the geothermal system.

(b) ‘Geothermal energy’ means the usable energy that is produced or that can be produced from a geothermal resource.

(c) ‘Geothermal resource’ means the natural heat of the earth and the energy, in whatever form, that is present in, associated

with, or created by, or that may be extracted from, such natural heat, as determined by the secretary by legislative rule.

(d) ‘Geothermal system’ means any aquifer, pool, reservoir, or other geologic formation containing geothermal resources.

(e) ‘Secretary’ means the Secretary of the Department of Environmental Protection or his or her designee as provided in article one of this chapter.

#### **§22-33-6. Geothermal resources permit required.**

It is unlawful for any person to commence any work relating to the exploration, development, or production of geothermal resources without first obtaining a well permit from the secretary pursuant to this article.

#### **§22-33-7. Jurisdiction of the secretary; powers and duties; geothermal resources regulatory program.**

(a) The secretary is vested with jurisdiction over all aspects of this article and has the exclusive authority to perform all acts necessary to implement this article.

(b) The secretary shall develop a regulatory program for the exploration, development, and production of geothermal resources in this state. The regulatory program promulgated by the secretary shall include, but not be limited to, the following:

(1) Application for a permit on a form prescribed by the secretary and containing any information the secretary considers is necessary to issue a decision on the permit application;

(2) A procedure for reviewing a permit application and issuance of decision to grant or deny a permit;

(3) A procedure allowing the public to comment on a permit application prior to issuance of a decision by the secretary;

(4) A permit term not to exceed five years;

(5) A procedure to renew or modify permits on forms prescribed by the secretary and containing any information the secretary considers is necessary to issue a decision on the renewal or modification;

(6) Fees for permit applications and for permit renewals and modifications;

(7) A procedure to suspend or revoke permits;

(8) Standards for developing, drilling, and reclaiming well sites;

(9) Guidelines for the safe disposal of spent geothermal fluids and other unusable or contaminated fluids generated in the production of geothermal resources;

(10) Standards to ensure protection of all water resources of this state; and

(11) Inspections and investigations to ensure compliance with any provision in this article or rule or permit or order issued by the secretary.

#### **§22-33-8. Civil penalties.**

Any person who knowingly violates any provision of this article or rule promulgated hereunder or order or permit issued pursuant to this article is a liable for a civil penalty of not less than \$100 nor more than \$500 for each violation.

#### **§22-33-9. Administrative orders; injunctive relief.**

(a) When the secretary determines, on the basis of any information, that a person is in violation of any requirement of this article or rule promulgated thereunder, the secretary may issue an order stating with reasonable specificity the nature of the violation and requiring compliance within a reasonable specified time period, or the secretary may commence a civil action in the circuit court of the county in which the violation occurred or in the circuit court of Kanawha County for appropriate relief, including a

temporary or permanent injunction. The secretary or the Environmental Quality Board may stay any order issued by the secretary until the order is reviewed by the Environmental Quality Board.

(b) In addition to the powers and authority granted to the secretary by this chapter to enter into consent agreements, settlements, and otherwise enforce this chapter, the secretary shall propose a rule for legislative approval to establish a mechanism for the administrative resolution of violations set forth in this article through consent order or agreement as an alternative to instituting a civil action.

#### **§22-33-10. Appeal to Environmental Quality Board.**

Any person aggrieved or adversely affected by an action, decision, or order of the secretary made and entered in accordance with the provisions of this article may appeal to the Environmental Quality Board pursuant to the provisions of §22B-1-1 *et seq.* of this code.

#### **§22-33-11. Judicial review.**

Any person or the secretary aggrieved or affected by a final order of the Environmental Quality Board is entitled to judicial review thereof pursuant to the provisions of §29B-1-9 of this code.

#### **§22-33-12. Rulemaking.**

The secretary shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement and carry out the provisions of this article.”

And,

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

**Com. Sub. for H. B. 4098** – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-33-1, §22-33-2, §22-33-3, §22-33-4, §22-33-5, §22-33-6, §22-33-7, §22-33-8, §22-33-9, §22-33-10, §22-33-11,

and §22-33-12, all relating to geothermal energy development; providing for a short title; providing for certain legislative findings and declaration of policy; providing for applicability of geothermal resources regulatory program and exceptions; providing for ownership of geothermal resources; defining terms; requiring a permit; establishing the jurisdiction of the secretary of the Department of Environmental Protection to regulate the geothermal resources regulatory program; providing for powers and duties of the secretary and minimum requirements of the regulatory program; providing for civil penalties; providing for administrative orders and injunctive relief; providing for administrative and judicial review of decisions and orders issued pursuant to the provisions of the program; and directing the secretary to propose a legislative rule to implement the geothermal resources regulatory program.”

With the further amendment, sponsored by Delegate Capito, being as follows:

On page 1, section 2, on line 7, after the word “resource” and the semicolon by inserting the word “and”,

On page 1, section 2, beginning on line 8, by striking subdivision (3) in its entirety and renumbering the remaining subdivisions;

Beginning on page 1, section 2, beginning on line 16, by striking subsection (c) in its entirety;

On page 2, section 4, on line 3, after the word “conveying” by inserting the words “or reserving”

And,

On page 4, section 7, on line 18, after the word “drilling” and the comma by inserting the word “plugging” and a comma.

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



On the passage of the bill, the yeas and nays were taken (**Roll No. 600**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Gearheart and Paynter.

Absent and Not Voting: Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4098) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4112**, Provide consumers a choice for pharmacy services.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 51. PHARMACY AUDIT INTEGRITY ACT.**

**§33-51-3. Definitions.**

For purposes of this article:

‘340B entity’ means an entity participating in the federal 340B drug discount program, as described in 42 U.S.C. § 256b, including its pharmacy or pharmacies, or any pharmacy or pharmacies, contracted with the participating entity to dispense drugs purchased through such program.

‘Affiliate’ means a pharmacy, pharmacist, or pharmacy technician which, either directly or indirectly through one or more intermediaries: (A) Has an investment or ownership interest in a pharmacy benefits manager licensed under this chapter; (B) shares common ownership with a pharmacy benefits manager licensed under this chapter; or (C) has an investor or ownership interest holder which is a pharmacy benefits manager licensed under this article.

‘Auditing entity’ means a person or company that performs a pharmacy audit, including a ~~covered entity~~, pharmacy benefits manager, managed care organization, or third-party administrator.

‘Business day’ means any day of the week excluding Saturday, Sunday, and any legal holiday as set forth in §2-2-1 of this code.

‘Claim level information’ means data submitted by a pharmacy, or required by a ~~payer~~ payor, or claims processor to adjudicate a claim.

~~‘Covered entity’ means a contract holder or policy holder providing pharmacy benefits to a covered individual under a health insurance policy pursuant to a contract administered by a pharmacy benefits manager and may include a health benefit plan.~~

‘Covered individual’ means a member, participant, enrollee, or beneficiary of a ~~covered entity~~ health benefit plan who is provided ~~health coverage~~ health care service coverage by a ~~covered entity~~ health benefit plan, including a dependent or other person provided health coverage through the policy or contract of a covered individual.

‘Extrapolation’ means the practice of inferring a frequency of dollar amount of overpayments, underpayments, nonvalid claims, or other errors on any portion of claims submitted, based on the frequency of dollar amount of overpayments, underpayments, nonvalid claims, or other errors actually measured in a sample of claims.

‘Defined cost sharing’ means a deductible payment or coinsurance amount imposed on an enrollee for a covered prescription drug under the enrollee’s health plan.

‘Health benefit plan’ or ‘health plan’ means a policy, contract, certificate, or agreement entered into, offered, or issued by a ~~health~~ ~~earlier~~ health care payor to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

‘Health care payor’ or ‘payor’ means a health insurance company, a health maintenance organization, a hospital, medical, or dental corporation, a health care corporation, an entity that provides, administers, or manages a self-funded health benefit plan, including a governmental plan, or any other payor that provides prescription drug coverages, including a workers’ compensation insurer. Health care payor does not include an insurer that provides coverage under a policy of casualty or property insurance.

‘Health care provider’ has the same meaning as defined in §33-41-2 of this code.

‘Health insurance policy’ means a policy, subscriber contract, certificate, or plan that provides prescription drug coverage. The term includes both comprehensive and limited benefit health insurance policies.

‘Insurance commissioner’ or ‘commissioner’ has the same meaning as defined in §33-1-5 of this code.

‘Network’ means a pharmacy or group of pharmacies that agree to provide prescription services to covered individuals on behalf of a ~~covered entity or group of covered entities~~ health benefit plan in exchange for payment for its services by a pharmacy benefits manager or pharmacy services administration organization. The term includes a pharmacy that generally dispenses outpatient prescriptions to covered individuals or dispenses particular types of prescriptions, provides pharmacy services to particular types of covered individuals or dispenses

prescriptions in particular health care settings, including networks of specialty, institutional or long-term care facilities.

‘Maximum allowable cost’ means the per unit amount that a pharmacy benefits manager reimburses a pharmacist for a prescription drug, excluding dispensing fees and copayments, coinsurance, or other cost-sharing charges, if any.

‘National average drug acquisition cost’ means the monthly survey of retail pharmacies conducted by the federal Centers for Medicare and Medicaid Services to determine average acquisition cost for Medicaid covered outpatient drugs.

‘Nonproprietary drug’ means a drug containing any quantity of any controlled substance or any drug which is required by any applicable federal or state law to be dispensed only by prescription.

‘Pharmacist’ means an individual licensed by the West Virginia Board of Pharmacy to engage in the practice of pharmacy.

‘Pharmacy’ means any place within this state where drugs are dispensed and pharmacist care is provided.

‘Pharmacy audit’ means an audit, conducted ~~on-site~~ by or on behalf of an auditing entity of any records of a pharmacy for prescription or nonproprietary drugs dispensed by a pharmacy to a covered individual.

‘Pharmacy benefits management’ means the performance of any of the following:

(1) The procurement of prescription drugs at a negotiated contracted rate for dispensation within the state of West Virginia to covered individuals;

(2) The administration or management of prescription drug benefits provided by a ~~covered entity~~ health benefit plan for the benefit of covered individuals;

(3) The administration of pharmacy benefits, including:

(A) Operating a mail-service pharmacy;

(B) Claims processing;

(C) Managing a retail pharmacy network;

(D) Paying claims to a pharmacy for prescription drugs dispensed to covered individuals via retail or mail-order pharmacy;

(E) Developing and managing a clinical formulary including utilization management and quality assurance programs;

(F) Rebate contracting administration; and

(G) Managing a patient compliance, therapeutic intervention, and generic substitution program.

‘Pharmacy benefits manager’ means a person, business, or other entity that performs pharmacy benefits management for ~~covered entities~~ health benefit plans;

‘Pharmacy record’ means any record stored electronically or as a hard copy by a pharmacy that relates to the provision of prescription or nonproprietary drugs or pharmacy services or other component of pharmacist care that is included in the practice of pharmacy.

‘Pharmacy services administration organization’ means any entity that contracts with a pharmacy to assist with ~~third-party payer~~ payor interactions and that may provide a variety of other administrative services, including contracting with pharmacy benefits managers on behalf of pharmacies and managing pharmacies’ claims payments from ~~third-party payers~~ payors.

‘Point-of-sale fee’ means all or a portion of a drug reimbursement to a pharmacy or other dispenser withheld at the time of adjudication of a claim for any reason.

‘Rebate’ means any and all payments that accrue to a pharmacy benefits manager or its health plan client, directly or indirectly, from a pharmaceutical manufacturer, including, but not limited to, discounts, administration fees, credits, incentives, or penalties associated directly or indirectly in any way with claims

administered on behalf of a health plan client. The term ‘rebate’ does not include any discount or payment that may be provided to or made to any 340B entity through such program.

‘Retroactive fee’ means all or a portion of a drug reimbursement to a pharmacy or other dispenser recouped or reduced following adjudication of a claim for any reason, except as otherwise permissible as described in this article.

‘Specialty drug’ means a drug used to treat chronic and complex, or rare medical conditions and requiring special handling or administration, provider care coordination, or patient education that cannot be provided by a non-specialty pharmacy or pharmacist.

~~‘Third party’ means any insurer, health benefit plan for employees which provides a pharmacy benefits plan, a participating public agency which provides a system of health insurance for public employees, their dependents and retirees, or any other insurer or organization that provides health coverage, benefits, or coverage of prescription drugs as part of workers’ compensation insurance in accordance with state or federal law. The term does not include an insurer that provides coverage under a policy of casualty or property insurance.~~

### **§33-51-8. Licensure of pharmacy benefit managers.**

(a) A person or organization may not establish or operate as a pharmacy benefits manager in the state of West Virginia without first obtaining a license from the Insurance Commissioner pursuant to this section: *Provided*, That a pharmacy benefit manager registered pursuant to §33-51-7 of this code may continue to do business in the state until the Insurance Commissioner has completed the legislative rule as set forth in ~~§33-55-10~~ §33-51-10 of this code: *Provided, however*, That additionally the pharmacy benefit manager shall submit an application within six months of completion of the final rule. The Insurance Commissioner shall make an application form available on its publicly accessible internet website that includes a request for the following information:

(1) The identity, address, and telephone number of the applicant;

(2) The name, business address, and telephone number of the contact person for the applicant;

(3) When applicable, the federal employer identification number for the applicant; and

(4) Any other information the Insurance Commissioner considers necessary and appropriate to establish the qualifications to receive a license as a pharmacy benefit manager to complete the licensure process, as set forth by legislative rule promulgated by the Insurance Commissioner pursuant to §33-51-10 of this code.

(b) *Term and fee.* —

(1) The term of licensure shall be two years from the date of issuance.

(2) The Insurance Commissioner shall determine the amount of the initial application fee and the renewal application fee for the registration. The fee shall be submitted by the applicant with an application for registration. An initial application fee is nonrefundable. A renewal application fee shall be returned if the renewal of the registration is not granted.

(3) The amount of the initial application fees and renewal application fees must be sufficient to fund the Insurance Commissioner's duties in relation to his/her responsibilities under this section, but a single fee may not exceed \$10,000.

(4) Each application for a license, and subsequent renewal for a license, shall be accompanied by evidence of financial responsibility in an amount of \$1 million.

(c) *Licensure.* —

(1) The Insurance Commissioner shall propose legislative rules, in accordance with §33-51-10 of this code, establishing the

licensing, fees, application, financial standards, and reporting requirements of pharmacy benefit managers.

(2) Upon receipt of a completed application, evidence of financial responsibility, and fee, the Insurance Commissioner shall make a review of each applicant and shall issue a license if the applicant is qualified in accordance with the provisions of this section and the rules promulgated by the Insurance Commissioner pursuant to this section. The commissioner may require additional information or submissions from an applicant and may obtain any documents or information reasonably necessary to verify the information contained in the application.

(3) The license may be in paper or electronic form, is nontransferable, and shall prominently list the expiration date of the license.

(d) *Network adequacy.* —

(1) A pharmacy benefit manager's network shall be reasonably adequate, shall provide for convenient patient access to pharmacies within a reasonable distance from a patient's residence and shall not be comprised only of mail-order benefits but must have a mix of mail-order benefits and physical stores in this state.

(2) A pharmacy benefit manager shall provide a pharmacy benefit manager's network report describing the pharmacy benefit manager's network and the mix of mail-order to physical stores in this state in a time and manner required by rule issued by the Insurance Commissioner pursuant to this section. A pharmacy benefit manager's network report shall include a detailed description of any separate, sub-networks for specialty drugs.

(3) Failure to provide a timely report may result in the suspension or revocation of a pharmacy benefit manager's license by the Insurance Commissioner.

(4) A pharmacy benefit manager may not require a pharmacy or pharmacist, as a condition for participating in the pharmacy benefit manager's network, to obtain or maintain accreditation, certification, or credentialing that is inconsistent with, more



stringent than, or in addition to state requirements for licensure or other relevant federal or state standards.

(e) *Enforcement.* —

(1) The Insurance Commissioner shall enforce this section and may examine or audit the books and records of a pharmacy benefit manager providing pharmacy benefits management to determine if the pharmacy benefit manager is in compliance with this section: *Provided*, That any information or data acquired during the examination or audit is considered proprietary and confidential and exempt from disclosure under the West Virginia Freedom of Information Act pursuant to §29B-1-4(a)(1) of this code.

(2) The Insurance Commissioner may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code regulating pharmacy benefit managers in a manner consistent with this chapter. Rules adopted pursuant to this section shall set forth penalties or fines, including, without limitation, monetary fines, suspension of licensure, and revocation of licensure for violations of this chapter and the rules adopted pursuant to this section.

~~(f) *Applicability.* —~~

~~This section is applicable to any contract or health benefit plan issued, renewed, recredentialled, amended, or extended on or after July 1, 2019.~~

### **§33-51-9. Regulation of pharmacy benefit managers.**

(a) A pharmacy, a pharmacist, and a pharmacy technician shall have the right to provide a covered individual with information related to lower cost alternatives and cost share for the covered individual to assist health care consumers in making informed decisions. Neither a pharmacy, a pharmacist, nor a pharmacy technician may be penalized by a pharmacy benefit manager for discussing information in this section or for selling a lower cost alternative to a covered individual, if one is available, without using a health insurance policy.

(b) A pharmacy benefit manager may not collect from a pharmacy, a pharmacist, or a pharmacy technician a cost share charged to a covered individual that exceeds the total submitted charges by the pharmacy or pharmacist to the pharmacy benefit manager.

~~(c) A pharmacy benefit manager may only directly or indirectly charge or hold a pharmacy, a pharmacist, or a pharmacy technician responsible for a fee related to the adjudication of a claim if:~~

~~(1) The total amount of the fee is identified, reported, and specifically explained for each line item on the remittance advice of the adjudicated claim; or~~

~~(2) The total amount of the fee is apparent at the point of sale and not adjusted between the point of sale and the issuance of the remittance advice.~~

~~(d) (c)~~ A pharmacy benefit manager, ~~or any other third party,~~ that reimburses a 340B entity for drugs that are subject to an agreement under 42 U.S.C. § 256b shall not reimburse the 340B entity for pharmacy-dispensed drugs at a rate lower than that paid for the same drug to pharmacies similar in prescription volume that are not 340B entities, and shall not assess any fee, charge-back, or other adjustment upon the 340B entity on the basis that the 340B entity participates in the program set forth in 42 U.S.C. §256b. For purposes of this subsection, the term ‘other adjustment’ includes placing any additional requirements, restrictions, or unnecessary burdens upon the 340B entity that results in administrative costs or fees to the 340B entity that are not placed upon other pharmacies that do not participate in the 340B program, including affiliate pharmacies of the pharmacy benefit manager, and further includes but is not limited to requiring a claim for a drug to include a modifier or be processed or resubmitted to indicate that the drug is a 340B drug: *Provided*, That nothing in this subsection shall be construed to prohibit the Medicaid program or a Medicaid managed care organization as described in 42 U.S.C. § 1396b(m) from preventing duplicate discounts as described in 42 U.S.C. 256b(a)(5)(A)(i). The provisions of this subsection are applicable to the West Virginia Public Employees Insurance Agency.

~~(e)~~ (d) With respect to a patient eligible to receive drugs subject to an agreement under 42 U.S.C. § 256b, a pharmacy benefit manager, ~~or any other third party that makes payment for such drugs,~~ shall not discriminate against a 340B entity in a manner that prevents or interferes with the patient's choice to receive such drugs from the 340B entity: *Provided*, That ~~for purposes of this section, 'third party' does not include~~ apply to the state Medicaid program when Medicaid is providing reimbursement for covered outpatient drugs, as that term is defined in 42 U.S.C. § 1396r-8(k), on a fee-for-service basis: *Provided, however*, That 'third party' does include this subsection does apply to a Medicaid-managed care organization as described in 42 U.S.C. § 1396b(m). For purposes of this subsection, it shall be considered a discriminatory practice that prevents or interferes with a patient's choice to receive drugs at a 340B entity if a pharmacy benefit manager places additional requirements, restrictions or unnecessary burdens upon a 340B entity that results in administrative costs or fees to the 340B entity that are not placed upon other pharmacies that do not participate in the 340B program, including affiliate pharmacies of the pharmacy benefit manager or any other third-party, and further includes but is not limited to requiring a claim for a drug to include a modifier or be processed or resubmitted to indicate that the drug is a 340B drug: *Provided further*, That nothing in this subsection shall be construed to prohibit the Medicaid program or a Medicaid managed care organization as described in 42 U.S.C. § 1396b(m) from preventing duplicate discounts as described in 42 U.S.C. 256b(a)(5)(A)(i). The provisions of this subsection are applicable to the West Virginia Public Employees Insurance Agency.

(f) (e) A pharmacy benefit manager may not reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than the national average drug acquisition cost for the prescription drug or pharmacy service at the time the drug is administered or dispensed, plus a professional dispensing fee of \$10.49: *Provided*, That if the national average drug acquisition cost is not available at the time a drug is administered or dispensed, a pharmacy benefit manager may not reimburse in an amount that is less than the wholesale acquisition cost of the drug,

as defined in 42 U.S.C. § 1395w-3a(c)(6)(B), plus a professional dispensing fee of \$10.49.

~~(g)~~ (f) A pharmacy benefit manager may not reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than the amount the pharmacy benefit manager reimburses itself or an affiliate for the same prescription drug or pharmacy service.

~~(h)~~ (g) The commissioner may order reimbursement to an insured, pharmacy, or dispenser who has incurred a monetary loss as a result of a violation of this article or legislative rules implemented pursuant to this article.

~~(i)~~ (h) (1) Any methodologies utilized by a pharmacy benefits manager in connection with reimbursement shall be filed with the commissioner at the time of initial licensure and at any time thereafter that the methodology is changed by the pharmacy benefit manager for use in determining maximum allowable cost appeals. The methodologies are not subject to disclosure and shall be treated as confidential and exempt from disclosure under the West Virginia Freedom of Information Act §29B-1-4(a)(1) of this code. The filed methodologies shall comply with the provisions of §33-51-9(e) of this code, and a pharmacy benefits manager shall not enter into a contract with a pharmacy that provides for reimbursement methodology not permissible under the provisions of §33-51-9(e) of this code.

(2) For purposes of complying with the provisions of §33-51-9(e) of this code, A a pharmacy benefits manager shall utilize the most recently published monthly national average drug acquisition cost as a point of reference for the ingredient drug product component of a pharmacy's reimbursement for drugs appearing on the national average drug acquisition cost list; and,

~~(j)~~ (i) A pharmacy benefits manager may not:

(1) Discriminate in reimbursement, assess any fees or adjustments, or exclude a pharmacy from the pharmacy benefit

manager's network on the basis that the pharmacy dispenses drugs subject to an agreement under 42 U.S.C. § 256b; or

(2) Engage in any practice that:

(A) In any way bases pharmacy reimbursement for a drug on patient outcomes, scores, or metrics. This does not prohibit pharmacy reimbursement for pharmacy care, including dispensing fees from being based on patient outcomes, scores, or metrics so long as the patient outcomes, scores, or metrics are disclosed to and agreed to by the pharmacy in advance;

(B) Includes imposing a point-of-sale fee or retroactive fee; or

(C) Derives any revenue from a pharmacy or insured in connection with performing pharmacy benefits management services: *Provided*, That this may not be construed to prohibit pharmacy benefits managers from receiving processing deductibles or copayments as have been approved by a covered individual's health benefit plan.

~~(k)~~(j) A pharmacy benefits manager shall offer a health plan the option of charging such health plan the same price for a prescription drug as it pays a pharmacy for the prescription drug: *Provided*, That a pharmacy benefits manager shall charge a health benefit plan administered by or on behalf of the state or a political subdivision of the state, the same price for a prescription drug as it pays a pharmacy for the prescription drug.

~~(k)~~(k) A covered individual's defined cost sharing for each prescription drug shall be calculated at the point of sale based on a price that is reduced by an amount equal to at least 100% percent of all rebates received, or to be received, in connection with the dispensing or administration of the prescription drug. Any rebate over and above the defined cost sharing would then be passed on to the health plan to reduce premiums. Nothing precludes an insurer from decreasing a covered individual's defined cost sharing by an amount greater than what is previously stated. The commissioner may propose a legislative rule or by policy effectuate the provisions of this subsection. ~~Notwithstanding any~~

~~other effective date to the contrary, the amendments to this article enacted during the 2021 regular legislative session shall apply to all policies, contracts, plans, or agreements subject to this section that are delivered, executed, amended, adjusted, or renewed on or after January 1, 2022.~~

~~(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2022. This section applies to all policies, contracts, plans, or agreements subject to this section that are delivered, executed, amended, adjusted, or renewed on or after the effective date of this section.~~

### **§33-51-11. Freedom of consumer choice for pharmacy.**

(a) A pharmacy benefits manager ~~or health benefit plan~~, may not:

(1) Prohibit or limit any covered individual from selecting a pharmacy or pharmacist of his or her choice who has agreed to participate in the health benefit plan according to the terms offered by the ~~insurer~~ health benefit plan;

(2) Deny a pharmacy or pharmacist the right to participate as a contract provider under the policy or plan if the pharmacy or pharmacist agrees to provide pharmacy services, including, but not limited to, prescription drugs, that meet the terms and requirements set forth by the ~~insurer under the policy or~~ health benefit plan and agrees to the terms of reimbursement set forth by the insurer;

(3) Impose upon a pharmacy or pharmacist, as a condition of participation in a health benefit plan network, any course of study, accreditation, certification, or credentialing that is inconsistent with, more stringent than, or in addition to state requirements for licensure or certification as provided for in the §30-5-1 et seq. and legislative rules of the Board of Pharmacy.

~~(3)~~(4) Impose upon a beneficiary of pharmacy services under a health benefit plan any copayment, fee, or condition that is not equally imposed upon all beneficiaries in the same benefit category, class, or copayment level under the health benefit plan when receiving services from a contract provider;

(4) (5) Impose a monetary advantage or penalty under a health benefit plan that would affect a beneficiary's choice among those pharmacies or pharmacists who have agreed to participate in the plan according to the terms offered by the insurer. Monetary advantage or penalty includes higher copayment, a reduction in reimbursement for services, or promotion of one participating pharmacy over another by these methods;

(5) (6) Reduce allowable reimbursement for pharmacy services to a beneficiary under a health benefit plan because the beneficiary selects a pharmacy of his or her choice, so long as that pharmacy has enrolled with the health benefit plan under the terms offered to all pharmacies in the plan coverage area;

(7) Prohibit or otherwise limit a beneficiary's access to prescription drugs from a pharmacy or pharmacist enrolled with the health benefit plan under the terms offered to all pharmacies in the plan coverage area by unreasonably designating the covered prescription drug as a specialty drug. Any beneficiary or pharmacy impacted by an alleged violation of this subsection may file a complaint with the Insurance Commissioner, who shall, in consultation with the West Virginia Board of Pharmacy, make a determination as to whether the covered prescription drug meets the definition of a specialty drug;

(8) Limit a beneficiary's access to specialty drugs;

(6) (9) Require a beneficiary, as a condition of payment or reimbursement, to purchase pharmacy services, including prescription drugs, exclusively through a mail-order pharmacy; or

(7) (10) Impose upon a beneficiary any copayment, amount of reimbursement, number of days of a drug supply for which reimbursement will be allowed, or any other payment or condition relating to purchasing pharmacy services from any pharmacy, including prescription drugs, that is are more costly or more restrictive than that which would be imposed upon the beneficiary if such services were purchased from a mail-order pharmacy or any other pharmacy that is willing to provide the same services or

products for the same cost and copayment as any mail order service.

(b) If a health benefit plan providing reimbursement to West Virginia residents for prescription drugs restricts pharmacy participation, the ~~entity providing the~~ health benefit plan shall notify, in writing, all pharmacies within the geographical coverage area of the health benefit plan, and offer to the pharmacies the opportunity to participate in the health benefit plan at least 60 days prior to the effective date of the plan. All pharmacies in the geographical coverage area of the plan shall be eligible to participate under identical reimbursement terms for providing pharmacy services, including prescription drugs. Participating pharmacies shall be entitled to 30 business days effective date notice for any subsequent contract amendment or provider manual change by a health benefit plan or a pharmacy benefit manager. The ~~entity providing the~~ health benefit plan shall, through reasonable means, on a timely basis and on regular intervals, inform the beneficiaries of the plan of the names and locations of pharmacies that are participating in the plan as providers of pharmacy services and prescription drugs. Additionally, participating pharmacies shall be entitled to announce their participation to their customers through a means acceptable to the pharmacy and the ~~entity providing the~~ health benefit plans. The pharmacy notification provisions of this section shall not apply when an individual or group is enrolled, but when the plan enters a particular county of the state.

(c) The Insurance Commissioner shall not approve any pharmacy benefits manager or health benefit plan providing pharmaceutical services which do not conform to this section.

(d) Any covered individual or pharmacy injured by a violation of this section may maintain a cause of action to enjoin the continuance of any such violation.

(e) This section shall apply to all pharmacy benefits managers and health benefit plans providing pharmaceutical services benefits, including prescription drugs, to any resident of West Virginia. ~~For purposes of this section, 'health benefit plan' means~~



~~any entity or program that provides reimbursement for pharmaceutical services. This section shall also apply to insurance companies and health maintenance organizations that provide or administer coverages and benefits for prescription drugs. This section shall not apply to any entity that has its own facility, employs or contracts with physicians, pharmacists, nurses, and other health care personnel, and that dispenses prescription drugs from its own pharmacy to its employees and dependents enrolled in its health benefit plan; but this section shall apply to an entity otherwise excluded that contracts with an outside pharmacy or group of pharmacies to provide prescription drugs and services.~~

**§33-51-4213. Effective date.**

Notwithstanding any other effective date to the contrary, the amendments to this article enacted during the 2022 regular legislative session shall apply to all policies, contracts, plans, or agreements subject to this section that are delivered, executed, amended, adjusted, or renewed on or after January 1, 2023.”

And,

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

**Com. Sub for H. B. 4112** – “A Bill to amend and reenact §33-51-3, §33-51-8, §33-51-9, and §33-51-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-51-13, all relating to the regulation of pharmacy benefit managers; defining terms; updating terminology; prohibiting a pharmacy benefit manager from limiting a consumer’s access to prescription drugs through the designation of specialty drugs; prohibiting a pharmacy benefit manager from placing certain requirements or restrictions on a pharmacist or pharmacy; updating requirements placed upon 340B entities; clarifying how drug acquisition cost is to be calculated; requiring pharmacy benefit managers to disclose any sub-networks for specialty drugs to the Insurance Commissioner; prohibiting a pharmacy benefit manager from limiting network access; providing clarification regarding assessment of fees related to adjudication of claims; providing clarification regarding criteria for

requirements of methodologies; requiring notice of contract changes; and providing an effective date.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 601**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Barrett and Paynter.

Absent and Not Voting: Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4112) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4285**, Relating to real estate appraiser licensing board requirements.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 38. THE REAL ESTATE APPRAISER  
LICENSING AND CERTIFICATION ACT.**

**§30-38-10. Civil liability for board members; liability  
limitations of professionals reporting to board;  
disqualification of board members from disciplinary  
proceedings or actions.**

(a) Members of the board will be immune from individual civil liability for actions taken in good faith and without malice, within the scope of their duties as board members.

(b) Any person licensed or certified by this board who reports or otherwise provides evidence of violations of this article or the board's rules by another person engaging in real estate appraisal activity to the board, is not liable for making the report if it is made without malice and in the reasonable belief that the report is warranted by the facts known to him or her at the time.

(c) No member of the board may participate in or vote on a disciplinary proceeding or action concerning a real estate appraisal activity in which he or she has previously participated or in which he or she has given testimony or been engaged to give testimony, or in which the board member has a conflict of interest. In any such instance, the board member shall recuse himself or herself from the proceeding or action.

### **§30-38-11. Applications for license or certification; renewals.**

(a) An individual who desires to engage in real estate appraisal activity in this state shall make application for a license, in writing, ~~in on~~ a form as the board may prescribe. ~~In addition to any other information required, the applicant's Social Security number will be recorded on the application~~

(b) To assist the board in determining whether grounds exist to deny the issuance of a license to an applicant, the board may require the fingerprinting of every applicant for an original license.

(c) The payment of the appropriate fee must accompany all applications for original certification and renewal of certification and all applications to take an examination.

(d) At the time of filing an application for original certification or for renewal of certification, each applicant shall sign a pledge to comply with the standards of professional appraisal practice and the ethical rules to be observed by an appraiser. Each applicant shall also certify that he or she understands the types of

misconduct, as set forth in this article, for which disciplinary proceedings may be initiated.

(e) To obtain a renewal of license or certification under this article, the holder of a current license or certification shall make application and pay the prescribed fee to the board no earlier than 120 days nor later than 30 days prior to the expiration date of the current license or certification. Each application for renewal must be accompanied by evidence in the form prescribed by the board that the applicant has completed the continuing education requirements for renewal specified in this article and the board's rules.

(f) If the board determines that an applicant for renewal has failed to meet the requirements for renewal of license or certification through mistake, misunderstanding, or circumstances beyond the control of the applicant, the board may extend the term of the applicant's license or certification for a period not to exceed six months upon payment by the applicant of a prescribed fee for the extension. If the applicant for renewal of license or certification satisfies the requirements for renewal during the extension period, the beginning date of his or her renewal license or certificate shall be the day following the expiration of the certificate previously held by the applicant.

(g) If a state-licensed or certified real estate appraiser under this article fails to renew his or her license or certification prior to its expiration or within any period of extension granted by the board pursuant to this article, the applicant may obtain a renewal of his or her license or certification by satisfying all of the requirements for renewal and filing an application for renewal, accompanied by a late renewal fee, within two years of the date that his or her license or certification expired.

(h) The board may deny the issuance or renewal of a license or certification for any reason enumerated in this article or in the rules of the board, or for any reason for which it may refuse an initial license or certification.

(i)(1) If the board denies issuance of a renewal of a license or certification, or denies an initial license or certification application, the board shall provide a written statement to the applicant for an initial license or certification, or applicant for a renewal of a license or certification, clearly describing the deficiencies of the application for his or her license or certificate.

(2) The board shall provide this statement to an initial applicant or a renewal applicant within 15 calendar days of its decision to deny licensure or certification. The board may send its statement through the United States mail, electronic mail service, or both, to ensure it reaches the applicant or renewal applicant.

(3) If the basis for the denial is due to submitted appraisals failing to conform to the Uniform Standards of Professional Appraisal Practice (USPAP), the board shall provide written guidance to the applicant describing, in detail, each aspect of each submitted appraisal that does not conform to USPAP and the corrective action necessary to remedy nonconformity. The board shall provide 60 days to the applicant to remedy any nonconformity. The applicant shall resubmit any corrected appraisals on or before the 60<sup>th</sup> day and the board shall reevaluate the appraisals only pertaining to any nonconformity. If the nonconformity or nonconformities are remedied and resubmitted on or before the 60<sup>th</sup> day, the board shall accept the appraisal for purposes of issuing a license.

### **§30-38-17. Standards of professional appraisal practice.**

Each real estate appraiser licensed or certified under this act shall comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of professional appraisal practice are currently evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal foundation. ~~The board may, after a public hearing or public comment period held in accordance with provisions of §29A-3-1 et seq., adopt revised versions or make modifications of or additions to the uniform standards of professional appraisal practice.”~~

And,

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

**Com. Sub. for H. B. 4285** – “A Bill to amend and reenact §30-38-10, §30-38-11, and §30-38-17 of the Code of West Virginia, 1931, as amended, all relating to real estate appraiser licensing board requirements; prohibiting board members from participating in any decision regarding disciplinary action concerning real estate appraiser activity in which member has participated, testified, been engaged to testify, or otherwise has conflict of interest; requiring board provide applicants written statement when applicant’s request for license is denied; requiring board send written statement within 15 calendar days of its decision to deny an applicant’s license or renewal request; setting forth content and mailing requirements for board’s written statement; requiring board offer guidance on certain issues relating to nonconformity with Uniform Standards of Professional Appraisal Practice when submitted to the board; providing 60 days for applicant to cure any nonconformity to appraisal practice standards; revising process for adoption of uniform standards of appraisal practice; and making other technical modifications.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 602**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Longanacre and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4285) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 4355**, Relating to the disclosure by state institutions of higher education of certain information regarding textbooks and digital courseware and certain charges assessed for those items.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 10. FEES AND OTHER MONEY COLLECTED  
AT STATE INSTITUTIONS OF HIGHER EDUCATION.**

**§18B-10-14. Bookstores.**

(a) Definitions: The following words when used in this section have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) ‘Digital Courseware’ means a system of educational content and software designed to support the delivery of all or part of a particular course. The term does not include a learning management platform or any other software system designed to provide support for courses generally;

(2) ‘Course material’ means a textbook, supplemental material, or open educational resource; and

(3) ‘Open Education Resource Materials’ has the meaning assigned in §10-1-14a of this code.

~~(a)~~ (b) Each governing board may establish and operate a bookstore at the institutions under its jurisdiction to sell course materials, educational materials, books, stationery, and other school and office supplies generally carried in college bookstores.

~~(b)~~ (c) The prices to be charged may not be less than the prices fixed by any fair trade agreements and shall, in all cases, include in

addition to the purchase price paid by the bookstore, a sufficient handling charge to cover all expenses incurred for personal and other services, supplies and equipment, storage, and other operating expenses.

~~(e)~~ (d) Each governing board shall establish, or if already established, continue, an educational materials affordability committee consisting of faculty, students, administrators and bookstore representatives and the committee shall make recommendations to the governing board to:

(1) ~~Ensure that~~ Encourage bookstores operated at institutions under its jurisdiction minimize the costs to students of purchasing educational materials;

(2) ~~Ensure~~ Encourage course instructors to select appropriate, high quality course educational materials; ~~are selected by course instructors~~

(3) ~~Encourage and incentivize~~ the use of previous or older versions of basic educational materials to the extent those older versions are available and less costly to students and remain relevant, high quality educational materials with up-to-date information and content;

(4) Require the repurchase and resale of educational materials on an institutional basis;

(5) ~~Provide for~~ Encourage the use of certain basic educational materials for a reasonable number of years;

(6) ~~Encourage and incentivize~~ the use of emerging technologies, such as electronic textbooks, online textbooks, print-on-demand services, and other open resource materials; and

(7) Prohibit employees from profiteering by requiring the purchase of one-time use materials (such as worksheets) or receiving payment or other consideration as an inducement to require students to purchase ~~particular textbooks~~ course materials.



~~(d) The Legislature recognizes that in 2004, the Congress of the United States commissioned the United States Government Accountability Office to study the high prices of college textbooks. Upon completion of the study, the Legislative Oversight Commission on Education Accountability shall obtain the results and any related reports produced by the office.~~

(e) An employee of a governing board:

(1) May not:

(A) Receive a payment, loan, subscription, advance, deposit of money, service, benefit or thing of value, present or promised, as an inducement for requiring students to purchase a specific ~~textbook~~ course material for coursework or instruction; or

(B) Require for any course a ~~textbook~~ course material that includes his or her own writing or work if the ~~textbook~~ course material incorporates either detachable worksheets or workbook-style pages intended to be written on or removed from the ~~textbook~~ course material. This provision does not prohibit an employee from requiring as a supplement to a ~~textbook~~ course materials any workbook or similar material which is published independently from the ~~textbook~~ course material; and

(2) May receive:

(A) Sample copies, instructor's copies and instructional material which are not to be sold; and

(B) Royalties or other compensation from sales of ~~textbooks~~ course materials that include the employee's own writing or work.

(f) A governing board shall provide to students a listing of ~~textbooks~~ course materials required or assigned for any course offered at the institution.

(1) The listing shall be prominently posted:

(A) In a central location at the institution;

(B) In any campus bookstore; and

(C) On the institution's website.

(2) The list shall include for each textbook the International Standard Book Number (ISBN), the edition number and any other relevant information.

(3) The list shall include whether the course material is an open educational resource material, and whether all educational materials required for the course or course section are generally available at no cost and without limitation to all students enrolled in the course or course section.

(4) The list shall include any associated fee or charge, such as a technology cost, library use cost, or printing or publication fee.

(5) If the student will be charged for the course material or for access to digital courseware for a course by the institution or another entity on the student's enrollment in a course, course section, or program or in the institution for the applicable semester or term, the list shall include the disclosures required under subsections (g)-(j) of this section.

~~(3)~~ (6) An institution shall post a ~~book~~ course material to the listing when the adoption process is complete and, for course materials that comes at a cost to the student, when the textbook course material is designated for order by the bookstore.

(g) An institution shall disclose to a student enrolled at the institution as provided by this section any charges for course materials or access to digital courseware assessed by the institution or another entity to the student on the student's enrollment in a course, course section, or program or in the institution for the applicable semester or term, regardless of how the charge is assessed on an opt-in, opt-out, or compulsory basis. This subsection does not apply to a charge assessed for a purchase initiated by the student separately from the enrollment process at the institution, such as the purchase of course materials at a bookstore that may be charged to the student's account at the institution.

(h) If the required course materials or digital courseware have not been selected prior to a student's enrollment in a course or course section such that the requirements of subsection (g) are not met, or if a change to the course materials or digital courseware required would cause an increased charge to the student, the institution shall:

(1) Provide individual notice to each student affected of the new or increased charges, including all of the information required under subsection (g);

(2) Provide each student affected with the opportunity to withdraw from the course or course section, or change to a different course or course section, without penalty; and

(3) Only assess the new or increased charge to a student if that student affirmatively opts in to accepting the charge for that specific course or course section.

(i) For a charge described by subsection (g) that is assessed based on the cost of required or recommended course materials or access to digital courseware for a certain course or course section in which the student is enrolled, the institution shall:

(1) In the listing required under subsection (f), state or provide an internet website link to:

(A) The full amount of the charge;

(B) If the charge is for a course material in a primarily electronic format or for access to digital courseware, the terms under which the publisher of the course material or digital courseware collects and uses student data obtained through a student's use of the course material or digital courseware; and

(C) Any provision that allows the student to opt in or opt out of the charge or the collection or use of the student's data; and

(2) Itemize the charge separately from any other charges assessed for the course or course section in the institution's billing to the student.

(j) For a charge described by subsection (g) that is assessed on the basis of the number of semester credit hours or the equivalent or the number of courses in which the student is enrolled or on any other basis not described by subsection (i), the institution shall:

(1) Include the amount of the charge in the institution's tuition or fees under §18B-10-1 of this code;

(2) In a prominent location in any written or electronic agreement authorizing the charge, disclose:

(A) If the charge is for course materials in a primarily electronic format or for access to digital courseware, the terms under which the publisher of the course material or digital courseware collects and uses student data obtained through a student's use of the course material or digital courseware; and

(B) Any provision that allows the student to opt in or opt out of the charge or the collection or use of the student's data; and

(3) Not assess the charge to a student for a course or course section for which all required educational materials are generally available at no cost in at least one form to the student, such as:

(A) An open educational resource material;

(B) Digital materials available at no cost through a multi-user license held by the institution's library; or

(C) Other lawfully made materials available to the public at no cost and without limitation to all students enrolled in the course or course section.

(k) An institution may enter into an agreement between the institution and an entity under which the institution assesses on the entity's behalf or allows the entity to assess a charge described by subsection (g) to students enrolled at the institution only if:

(1) The institution's educational materials affordability committee established under subsection (d) determines the

agreement to be consistent with the goals enumerated in subsection (d);

(2) The governing board of the institution adopts a policy that provides that:

(A) The institution's refund policy would apply with respect to the charges assessed to a student if the student withdraws from the course or course section; and

(B) A student may opt out of the charge at any time during a period beginning no later than when the student enrolls in the course or course section or takes any other action triggering the assessment of the charge, and ending no earlier than the last day to withdraw from the course without penalty;

(3) The agreement does not provide for a penalty or charge added to price of materials provided under the agreement based on failing to meet a target or quota for a number or percentage of:

(A) Students to whom the charge is assessed; or

(B) Courses or course sections for which the charge is assessed; and

(4) The agreement prohibits the entity from engaging in, or authorizing third parties to engage in, the sale, disclosure, licensing, use, retention, or other exploitation of any data collected under the agreement, including but not limited to personally identifiable information, location data, anonymized data, and any materials derived therefrom, except as expressly authorized, in each case, in the agreement: *Provided*, That this subsection shall not apply to the disclosure of information to a government entity or scholarship entity in order to be reimbursed for the distribution of course materials to a student using financial aid subsidies for course materials.

(l) An agreement authorized under subsection (k) is a public record under chapter 29B of this code.

(m) An institution may not deny, or enter into an agreement with another entity that would permit the entity to deny, a student access to educational materials for which the student has been, or would otherwise be, automatically charged under subsection (g) based on the student's refusal or failure to agree to the sale, disclosure, licensing, use, retention, or other exploitation of any data pertaining to the student that would be obtained through the student's use of the educational materials.

~~(g)~~ (n) All moneys derived from the operation of the bookstore shall be paid into a special revenue fund as provided in §12-2-2 of this code. Subject to the approval of the Governor, each governing board periodically shall change the amount of the revolving fund necessary for the proper and efficient operation of each bookstore.

~~(h)~~ (o) Moneys derived from the operation of the bookstore shall be used first to replenish the stock of goods and to pay the costs of operating and maintaining the bookstore. Notwithstanding any other provision of this section, any institution that has contracted with a private entity for bookstore operation shall deposit into an appropriate account all revenue generated by the operation and enuring to the benefit of the institution. The institution shall use the funds for nonathletic scholarships.

~~(i)~~ (p) Each governing board shall promulgate a rule in accordance with the provisions of §18B-1-6 of this code to implement the provisions of this section

~~(j)~~ (q) This section applies to ~~textbook~~ course material sales and bookstores supported by an institution's auxiliary services and those operated by a private contractor.

(r) This section may not be construed to affect any authority granted to a faculty member by an institution to select course materials for courses taught by the faculty member.

~~(k) "Educational Materials" means textbooks and other supplementary course materials that come at a cost to the student, regardless of format."~~

And,

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

**H. B. 4355** – “A Bill to amend and reenact §18B-10-14 of the Code of West Virginia, 1931, as amended, relating to higher education course materials and digital courseware; defining terms; modifying requirements for recommendations by an educational materials affordability committee to the higher education institution governing board; removing obsolete language; changing the term textbook to course material; modifying information that is required to be included in the listing of course materials required or assigned for any course offered at an institution; requiring institution to disclose to a student enrolled at the institution any charges for course materials or access to digital courseware assessed by the institution or another entity to the student on the student’s enrollment in a course, course section, or program or in the institution for the applicable semester or term; imposing requirements on institutions in instances where the required course materials or digital courseware has not been selected prior to a student’s enrollment or if a change to the course materials or digital courseware required would cause an increased charge to the student; imposing requirements on institutions in instances where certain charges are assessed based on the cost of required or recommended course material or access to digital courseware for a certain course or course section in which the student is enrolled; imposing requirements on institutions in instances where certain charges are assessed on the basis of the number of semester credit hours or the equivalent or the number of courses in which the student is enrolled or on certain other basis; allowing an institution to enter into an agreement between the institution and an entity under which the institution assesses on the entity’s behalf or allows the entity to assess a charge; allows an institution to enter into an agreement between the institution and an entity under which the institution assesses on the entity’s behalf or allows the entity to assess a certain described charge to students enrolled at the institution under certain conditions; making the agreement a public record; prohibiting an institution from denying or entering into an agreement with another entity that would permit the entity to deny, a student access to certain educational materials on the student’s refusal or failure to agree to the sale, disclosure, licensing, use,

retention, or other exploitation of any data pertaining to the student that would be obtained through the student's use of the educational materials; and providing that section cannot be construed to affect any authority granted to a faculty member by an institution to select course materials for courses taught by the faculty member."

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 603**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Longanacre and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4355) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4373**, To exclude fentanyl test strips from the definition of drug paraphernalia.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

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

## **"CHAPTER 47. REGULATION OF TRADE.**

### **ARTICLE 19. DRUG PARAPHERNALIA.**

#### **§47-19-3. Drug paraphernalia defined.**



(a) The following items, if marketed for use or designed for the use with controlled substances, are considered drug paraphernalia for the purpose stated in section one of this article:

(1) Kits marketed for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits marketed for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(3) Isomerization devices marketed for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment marketed for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances; Provided, That fentanyl test strips shall not be considered drug paraphernalia for the purpose stated in section one of this article;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, marketed for use, or designed for use in cutting controlled substances;

(7) Separation gins and sifters marketed for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(9) Capsules, balloons, envelopes and other containers marketed for use, or designed for use in packaging small quantities of controlled substances;

(10) Hypodermic syringes, needles and other objects marketed for use, or designed for use in parenterally injecting controlled substances into the human body;

(11) Paper of colorful design, with names oriented for use with controlled dangerous substances and displayed: *Provided*, That white paper or tobacco oriented paper not necessarily designed for use with controlled substances is not covered;

(12) Pipes displayed in the proximity of roach clips, or literature encouraging illegal use of controlled substances, are covered by this article: *Provided*, That pipes otherwise displayed are not covered by this article;

(13) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(14) Miniature cocaine spoons, and cocaine vials; or

(15) Chillums or bongs.

(b) In determining whether an object is marketed for use or designed for use as drug paraphernalia, the State Tax Commissioner or other authority should consider the following:

(1) The proximity of the object, in time and space, to a controlled substance;

(2) The existence of any residue of controlled substances on the object;

(3) Instructions, oral or written, provided with the object concerning its use;

(4) Descriptive materials accompanying the object which explain or depict its use;

(5) National and local advertising concerning its use;

(6) The manner in which the object is displayed for sale;

(7) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(8) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;

(9) The existence and scope of legitimate uses for the object in the community.

## **CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.**

### **ARTICLE 4. OFFENSES AND PENALTIES.**

#### **§60A-4-403a. Prohibition of illegal drug paraphernalia businesses; definitions; places deemed common and public nuisances; abatement; suit to abate nuisances; injunction; search warrants; forfeiture of property; penalties.**

(a) Any person who conducts, finances, manages, supervises, directs or owns all or part of an illegal drug paraphernalia business is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$5,000, or confined in jail not less than six months nor more than one year, or both.

(b) A person violates subsection (a) of this section when:

(1) The person conducts, finances, manages, supervises, directs, or owns all or part of a business which for profit, in the regular course of business or as a continuing course of conduct, manufactures, sells, stores, possesses, gives away or furnishes objects designed to be primarily useful as drug devices.

(2) The person knows or has reason to know that the design of such objects renders them primarily useful as drug devices.

(c) As used in this section, “drug device” means an object usable for smoking marijuana, for smoking controlled substances defined as tetrahydrocannabinols, or for ingesting or inhaling cocaine, and includes, but is not limited to:

(i) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) Water pipes;

(iii) Carburetion tubes and devices;

(iv) Smoking and carburetion masks;

(v) Roach clips; meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(vi) Chamber pipes;

(vii) Carburetor pipes;

(viii) Electric pipes;

(ix) Air-driven pipes;

(x) Chillums;

(xi) Bongs;

(xii) Ice pipes or chillers; and

(xiii) Miniature cocaine spoons, and cocaine vials.

In any prosecution under this section, the question whether an object is a drug device shall be a question of fact.

(d) A place where drug devices are manufactured, sold, stored, possessed, given away or furnished in violation of this section shall be deemed a common or public nuisance. Conveyances or vehicles of any kind shall be deemed places within the meaning of this section and may be proceeded against under the provisions of subsection (e) of this section. A person who shall maintain, or shall aid or abet or knowingly be associated with others in maintaining such common or public nuisance shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not

more than \$1,000, or by confinement in jail not more than six months for each offense, and judgment shall be given that such nuisance be abated or closed as a place for the manufacture, sale, storage, possession, giving away or furnishing of drug devices.

(e) The prosecuting attorney or a citizen of the county or municipality where a nuisance as defined in subsection (d) is located, may maintain a suit in the name of the state to abate and perpetually enjoin the same. Circuit courts shall have jurisdiction thereof. The injunction may be granted at the commencement of the suit and no bond shall be required if such action for injunction be brought by the prosecuting attorney. If such suit for injunction be brought or maintained by a citizen of the county or municipality where such nuisance is alleged to be located, then the court may require a bond as in other cases of injunction. On the finding that the material allegations of the complaint are true, the court or judge thereof in vacation shall order the injunction for such period of time as it or he or she may think proper, with the right to dissolve the injunction upon the application of the owner of the place, if a proper case is shown for such dissolution.

The continuance of the injunction as provided in this section may be ordered, although the place complained of may not at the time of hearing be unlawfully used.

(f) If there be complaint on oath or affirmation supported by affidavit or affidavits setting forth the facts for such belief that drug devices are being manufactured, sold, kept, stored or in any manner held, used or concealed in a particular house or other place with intent to engage in illegal drug paraphernalia business in violation of law, a magistrate or a circuit court, or the judge thereof in vacation to whom such complaint is made, if satisfied that there is probable cause for such belief, shall issue a warrant to search such house or other place for such devices. Such warrants, except as herein otherwise provided, shall be issued, directed and executed in accordance with the laws of West Virginia pertaining to search warrants. Warrants issued under this section for the search of any automobile, boat, conveyance or vehicle, or for the search of any trunk, grip or other article of baggage, for such devices, may be executed in any part of the state where the same are overtaken, and

shall be made returnable before any magistrate or circuit court, or the judge thereof in vacation, within whose jurisdiction such automobile, boat, conveyance, vehicle, trunk, grip or other article of baggage, or any of them, were transported or attempted to be transported.

An officer charged with the execution of a warrant issued under this section, may, whenever it is necessary, break open and enter a house, or other place herein described.

(g) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the state.

(h) Nothing in this chapter prohibits the possession, sale or purchase of fentanyl test strips.”

And,

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

**Com. Sub. for H. B. 4373** – “A Bill to amend and reenact §47-19-3 of the Code of West Virginia, 1931, as amended; and to amend §60A-4-403a of said code, all relating to excluding fentanyl test strips from the definition of drug paraphernalia; and specifying that possession, sale, or purchase of fentanyl test strips are not prohibited under Chapter 60A of this code.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 604**), and there were—yeas 94, nays 5, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Barnhart, Burkhammer, Fast, Foster and Phillips.

Absent and Not Voting: Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4373) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4389**, Relating to repealing school innovation zones provisions superseded by Innovation in Education Act.

Delegate Kessinger moved that the House refuse to concur in the following amendment of the bill by the Senate, and request the Senate to recede therefrom:

On page one, after the enacting clause, by inserting the following:

**“ARTICLE 2. STATE BOARD OF EDUCATION.**

**§18-2-25e. Athletic eligibility of transfer students.**

(a) The West Virginia Secondary School Activities Commission shall modify its rule, prior to the 2022-2023 school year, to allow students to transfer schools and retain athletic eligibility one time during a student’s four years of secondary school, inclusive of grades nine through 12. The West Virginia Secondary School Activities Commission may promulgate an emergency rule, if necessary, to modify its rule prior to the 2022-2023 school year.

(b) The State Board of Education, in its review and approval of the West Virginia Secondary School Activities Commission’s rule described in this section, shall ensure that the rule modification achieves the intent of this section to not require a student to undergo one year of athletic ineligibility if the student transfers secondary schools during or after the student’s ninth grade year.

(c) Nothing in this section is intended to limit or restrict a student transferring more than one time for the following reasons:

(1) A student transferring back to the student's residential district and participating in athletics as currently permitted by the West Virginia Secondary School Activities Commission's rules;

(2) The West Virginia Secondary School Activities Commission's ability to make eligibility determinations on a case-by-case basis when warranted by a student's circumstances in accordance with the West Virginia Secondary School Activities Commission's rules; or

(3) For any other reason permitted under the rules of the West Virginia Secondary School Athletics Commission."

And,

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

**Com. Sub. for H. B. 4389** – "A Bill to repeal §18-5B-1, §18-5B-2, §18-5B-3, §18-5B-4, §18-5B-5, §18-5B-6, §18-5B-7, §18-5B-8, §18-5B-9, §18-5B-11, §18-5B-12, §18-5B-13 and §18-5B-14 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-2-25e; to amend and reenact §18-5B-10 of said code; and to amend and reenact §18-5E-3 of said code, all relating to education generally; allowing students to transfer schools and retain their athletic eligibility one time during a student's four years of secondary school; requiring West Virginia Secondary School Activities Commission to modify its rule; authorizing emergency rule; requiring State Board of Education to ensure rule does not require student to undergo one year of athletic ineligibility upon transfer after ninth grade; clarifying effect on multiple transfers for certain reasons; repealing school innovation zones provisions superseded by Innovation in Education Act; updating exceptions to statutes granted to schools to reflect changes in underlying circumstances; updating provisions related to granted exceptions to accommodate exceptions which may be granted to innovation in education schools and school systems; and clarifying process for state board and legislative oversight commission on education accountability to approve and recommend exceptions to statutes."



On this motion, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 605**), and there were—yeas 71, nays 26, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Burkhammer, Conley, Diserio, Fast, Fluharty, Hanna, Haynes, Hornbuckle, Horst, J. Jeffries, Keaton, Kimble, Kimes, Longanacre, Lovejoy, Martin, Mazzocchi, McGeehan, Paynter, Phillips, Pritt, Rowe, Storch, G. Ward, Williams and Worrell.

Absent and Not Voting: Foster, Griffith and Walker.

So, a majority of the members present having voted in the affirmative, the motion prevailed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 4419**, Allowing candidate committees and campaign committees to make contributions to affiliated state party executive committees.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

**§3-8-5c. Contribution limitations.**

(a)(1) A person, political party, or political action committee may not, in an election cycle:

(A) Contribute more than \$2,800, directly or indirectly, to a candidate's committee for a candidate seeking nomination, including by making contributions to the candidate's committee; or

(B) Contribute more than \$2,800, directly or indirectly, to a candidate's committee for a candidate seeking election, including by making contributions to the candidate's committee: *Provided*, That a candidate may receive contributions for the general election prior to nomination, however, such funds may not be expended until after the date of the nomination is declared.

(2) The contribution limits of this section apply only to elections to be held after the effective date of this section and do not apply to candidate committees that were created for elections held prior to the effective date of this section.

(b) A person, except candidate committees and caucus campaign committees, may not, directly or indirectly, make contributions to a state party executive committee, or any subsidiary, branch, or local unit thereof, or a caucus campaign committee which, in the aggregate, exceed \$10,000 in any calendar year: *Provided*, That a person may not earmark or otherwise designate any portion of a contribution made pursuant to this subsection to be used to support or oppose the election of a particular candidate: *Provided, however*, That any such designation or earmark that accompanies a contribution made pursuant to this subsection may not be binding on the entity that receives the contribution.

(c) A person may not, directly or indirectly, make contributions to a political action committee, related to a particular election, which, in the aggregate, exceed \$5,000.

(d) Candidate committees and caucus campaign committees may make contributions to their affiliated state party executive committees, or any subsidiary, branch, or local unit thereof, or a caucus campaign committee up to \$75,000.

(e) The amendments to this section enacted during the regular session of the Legislature, 2022, shall not be effective until November 9, 2022.

**§3-8-9b. Coordinated expenditures by political party committees and political party caucuses in connection with certain statewide candidates.**

(a) Notwithstanding the provisions of §3-8-9a of this code, the state committee of a political party and caucus campaign committee may make coordinated expenditures ~~in an amount not to exceed \$5,000 in connection~~ in any amount with the general election campaign of the candidate for each of the following offices: Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State, Treasurer, State Senate, and House of Delegates.

(b) Any communication that results from a political expenditure and is made in coordination with a state committee of a political party and caucus campaign committee must contain a disclaimer that clearly identifies that the expenditure is coordinated with the candidate or candidate's committee with whom it was coordinated.

(c) The amendments to this section enacted during the regular session of the Legislature, 2022, shall not be effective until November 9, 2022.

**§3-8-10. Use of certain contributions.**

(a) Notwithstanding any provision of this code to the contrary, amounts received by a candidate as contributions that are in excess of any amount necessary to defray his or her expenditures may be:

(1) Used by the candidate to defray any usual and customary expenses incurred in connection with his or her duties as a holder of public office; and

(2) Contributed by the candidate, after the general election, to:

(A) Any charitable organization or subsequent campaign by the same candidate, without limitation;

(B) Any national committee in accordance with federal requirements;

(C) Any state party executive committee or state party legislative caucus committee, ~~in an amount not to exceed \$15,000 in a calendar year~~ any amount; or

(D) Any local committee of any political party or any other candidate for public office, in accordance with the existing limitations on contributions.

(b) The State Election Commission shall promulgate emergency and legislative rules, in accordance with the provisions of §29A-1-1 *et seq.* of this code, to establish guidelines for the administration of this section.

(c) The amendments to this section enacted during the regular session of the Legislature, 2022, shall not be effective until November 9, 2022.”

And,

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

**H. B. 4419** - “A Bill to amend and reenact §3-8-5c, §3-8-9b, and §3-8-10 of the Code of West Virginia, 1931, as amended, all relating to allowing candidate committees and campaign committees to make contributions to affiliated state party executive committees; excepting candidate committees and caucus campaign committees from making certain contributions; authorizing candidate committees and caucus campaign committees to make certain contributions up to \$75,000; eliminating coordinated expenditure limit for a state political party committee or a caucus campaign committee; eliminating limit for excess contributions to be contributed by a candidate to a state party executive committee or state party legislative caucus committee; and making amendments effective on November 9, 2022.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 606**), and there were—yeas 73, nays 24, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Barach, Boggs, Brown, Diserio, Doyle, Evans, Fast, Fleischauer, Fluharty, Garcia, Hansen, Hornbuckle, Kimble, Kimes, Lovejoy, Pethtel, Pushkin, Rowe, Skaff, Thompson, G. Ward, Williams, Young and Zukoff.

Absent and Not Voting: Griffith, Pinson and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4419) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4511**, To make numerous amendments to modernize and increase efficiencies in the administration of the West Virginia Unclaimed Property Act.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.**

**§36-8-1. Definitions.**

As used in this article:

(1) 'Administrator' means the State Treasurer.

(2) 'Apparent owner' means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(3) 'Business association' means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(4) 'Domicile' means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

'Electronic' means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

'Electronic mail' means a communication by electronic means which is automatically retained and stored and may be readily accessed or retrieved.

(5) 'Financial organization' means a savings and loan association, bank, banking organization, or credit union.

(6) 'Holder' means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this article.

(7) 'Insurance company' means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(8) 'Mineral' means gas; oil; coal; other gaseous, liquid and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and non-fissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

(9) 'Mineral proceeds' means amounts payable for the extraction, production or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

(i) For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

(ii) For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

(iii) Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(10) 'Money order' includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

(11) 'Owner' means a person who has a legal or equitable interest in property subject to this article or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(12) 'Person' means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

~~(13)~~ ‘Property’ means tangible personal property described in section three of this article or a fixed and certain interest in intangible personal property that is held, issued, or owed in the course of a holder’s business, or by a government, governmental subdivision, agency or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

~~(i)~~ Money, virtual currency, check, draft, warrant for payment issued by the State of West Virginia, deposit, interest, or dividend;

~~(ii)~~ Credit balance, customer’s overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

~~(iii)~~ Stock or other evidence of ownership of an interest in a business association or financial organization;

~~(iv)~~ A bond, debenture, note, or other evidence of indebtedness;

~~(v)~~ Money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

~~(vi)~~ An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers’ compensation insurance, or health and disability insurance; and

~~(vii)~~ An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

~~(14)~~ ‘Record’ means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.



~~(15)~~ ‘State’ means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

~~(16)~~ ‘United States savings bond’ means property, tangible or intangible, in the form of a savings bond issued by the United States Treasury whether in paper form, electronic or paperless form, along with the proceeds thereof.

~~(17)~~ ‘Utility’ means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas as defined in §24-1-2 of this code.

‘Virtual currency’ means a digital representation of value, including cryptocurrency, used as a medium of exchange, unit of account, or store of value, which does not have legal tender status recognized by the United States. The term does not include:

(A) The software or protocols governing the transfer of the digital representation of value;

(B) Game-related digital content; or

(C) A loyalty card or gift card.

### **§36-8-2. Presumptions of abandonment.**

(a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler’s check, 15 years after issuance;

(2) Money order, seven years after issuance;

(3) Stock or other equity interest in a business association or financial organization, including a security entitlement under article eight of the uniform commercial code, five years after the earlier of: (i) The date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner; or (ii) the date

of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner;

(4) Debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, ~~five~~ three years after the date of the most recent interest payment unclaimed by the apparent owner;

~~(5) A noninterest bearing demand, savings, or time deposit, including a deposit that is automatically renewable, five years after the earlier of maturity or the date of the last indication by the owner of interest in the property; an interest bearing demand, savings, or time deposit including a deposit that is automatically renewable, seven years after the earlier of maturity or the date of the last indication by the owner of interest in the property. A deposit that is automatically renewable is deemed matured for purposes of this section upon its initial date of maturity, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder~~ A demand, savings, or time deposit, including a deposit that is automatically renewable, five years after the maturity of the deposit, except a deposit that is automatically renewable is deemed matured on its initial date of maturity unless the apparent owner consented in a record on file with the holder to renewal at or about the time of the renewal;

(6) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(7) Gift certificate, three years after December 31, of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be 60 percent of the certificate's face value;

(8) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured

has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(9) Property distributable by a business association or financial organization in a course of dissolution, one year after the property becomes distributable;

(10) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(11) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;

(12) Wages or other compensation for personal services, one year after the compensation becomes payable;

(13) Deposit or refund owed to a subscriber by a utility, ~~two~~ one year after the deposit or refund becomes payable;

(14) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

(15) Warrants for payment issued by the State of West Virginia which have not been presented for payment, within six months of the date of issuance;

(16) All funds held by a fiduciary, including the state Municipal Bond Commission, for the payment of a note, bond, debenture, or other evidence or indebtedness, ~~five~~ three years after the principal maturity date, or if such note, bond, debenture, or evidence of indebtedness is called for redemption on an earlier date, then the redemption date, such premium or redemption date

to also be applicable to all interest and premium, if any, attributable to such note, bond, debenture, or other evidence of indebtedness; ~~and~~

(17) Any virtual currency held or owing by any banking organization, corporation, custodian, exchange, or other entity engaged in virtual currency business activity, three years after the owner's last indication of interest in the property; and

~~(17)~~ (18) All other property, ~~five~~ three years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(b) At the time that an interest is presumed abandoned under subsection (a) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(c) Property is unclaimed if, for the applicable period set forth in subsection (a) of this section, the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(d) An indication of an owner's interest in property includes:

(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase,

decrease, or change the amount or type of property held in the account;

(3) The making of a deposit to or withdrawal from a bank account;

(4) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions; and

(5) For demand, savings and time deposits held by a financial organization, any indication of the owner's interest in any demand, savings and time deposit held by the financial organization for that owner is an indication of the owner's interest in all demand, savings, and time deposits held by that financial organization.

(e) Property is payable or distributable for purposes of this article notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

### **§36-8-8. Payment or delivery of abandoned property.**

(a) Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by §36-8-7 of this code, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the administrator the property described in the report as unclaimed, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Property held in a safe deposit box or other safekeeping depository may not be delivered to the administrator until 120 days after filing the report required by §36-8-7 of this code.

(b) If the property reported to the administrator is a security or security entitlement under article eight of the uniform commercial code, the administrator is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with article eight of the uniform commercial code.

(c) If the holder of property reported to the administrator is the issuer of a certificated security, the administrator has the right to obtain a replacement certificate pursuant to article eight, section four hundred eight of the uniform commercial code, but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with section 10 of this article.

(e) If the property reported is virtual currency, the holder shall liquidate the virtual currency anytime within 30 days of filing the report and remit the proceeds to the administrator. The owner shall have no recourse against either the holder or the administrator for any gain in value after liquidation.

**§36-8-10. Custody by state; recovery by holder; defense of holder.**

(a) In this section, payment or delivery is made in “good faith” if:

(1) Payment or delivery was made in a reasonable attempt to comply with this article;

(2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned: *Provided*, That no fiduciary shall be deemed to be in breach of a fiduciary obligation for purposes of this section

by virtue of paying or delivering property to the administrator prior to the expiration of the period for holding unclaimed or abandoned property contained in the instrument under which such fiduciary is acting; and

(3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the administrator pursuant to this article may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under §36-8-19(a) of this code.

(d) A holder who has delivered property other than money to the administrator pursuant to this article may reclaim the property if it is still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The administrator may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the administrator.

(g) Property removed from a safe deposit box or other safekeeping depository is received by the administrator subject to the holder's right to be reimbursed for the cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges in an amount not to exceed \$150. The administrator shall reimburse the holder ~~out of the proceeds remaining after deducting the expense incurred by the administrator in selling the property after the property has been claimed and returned to the apparent owner using funds in the Unclaimed Property Fund.~~

### **§36-8-13. Deposit of funds**

(a) The administrator shall record the name and last known address of each person appearing from the holders reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company, and the amount due.

(b) The Unclaimed Property Fund is continued. The administrator shall deposit all funds received pursuant to this article in the Unclaimed Property Fund, including the proceeds from the sale of abandoned property under §36-8-12 of this code. The administrator may invest the Unclaimed Property Fund with the West Virginia Board of Treasury Investments or the Investment Management Board and all earnings shall accrue to the fund and are available for expenditure in accordance with the article. In addition to paying claims of unclaimed property duly allowed, the



administrator may deduct the following expenses from the Unclaimed Property Fund:

(1) Expenses of the sale of abandoned property;

(2) Expenses incurred in returning the property to owners, including without limitation the costs of mailing and publication to locate owners;

(3) Reasonable service charge; and

(4) Expenses incurred in examining records of holders of property and in collecting the property from those holders.

(c) The Unclaimed Property Trust Fund is continued within the State Treasury. The administrator may invest the Unclaimed Property Trust Fund with the West Virginia Board of Treasury Investments and all earnings shall accrue to the fund and are available for expenditure in accordance with this article. After deducting the expenses specified in subsection (b) of this section and maintaining a sum of money from which to pay claims duly allowed, the administrator shall transfer the remaining moneys in the Unclaimed Property Fund to the Unclaimed Property Trust Fund.

~~(d) (1) On July 1, 2009, the unclaimed property administrator shall transfer the amount of \$8 million from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund~~

~~(2) On or before December 15 of each year, notwithstanding any provision of this code to the contrary, the administrator shall may transfer the sum of \$1 million from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Jumpstart Savings Trust Fund, until the an actuary certifies there are sufficient funds to pay out all contracts satisfy all obligations and administrative expenses of the Jumpstart Savings Program.~~

~~(e) On or before June 1, 2007, the unclaimed property administrator shall transfer the amount of \$2 million from the Unclaimed Property Trust Fund to the Deferred Compensation Matching Fund for operation of the deferred compensation~~

~~matching program for state employees. On or before June 1, 2008, the unclaimed property administrator shall transfer the amount of \$1 million from the Unclaimed Property Trust Fund to the Deferred Compensation Matching Fund for operation of the matching program.~~

~~(f) On or before June 1, 2013, the unclaimed property administrator shall transfer the amount of \$3,631,846.55 from the Unclaimed Property Trust Fund to the Municipal Pensions and Protection Fund for the purpose of satisfying any amounts due as of April 27, 2012 to policemen's and firemen's pension and relief funds in accordance with section fourteen d, article three, chapter thirty three of this Code~~

~~(g)~~ (e) After transferring any money required by ~~subsections (d) through (f)~~ subsection (d) of this section, the administrator shall transfer moneys remaining in the Unclaimed Property Trust Fund to the General Revenue Fund.

**§36-8-15. Filing claim with administrator; handling of claims by administrator.**

(a) A person, excluding another state, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(b) Within 90 days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under section 16 of this article.

(c) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant.

(d) The administrator may waive the requirement in subsection (a) and may pay or deliver property directly to a person who does not file a claim if:

(1) The person receiving the property or payment is shown to be the apparent owner included on a report filed pursuant to this act;

(2) The administrator reasonably believes the person is entitled to receive the property or payment; and

(3) The property has a value of less than \$5,000.

### **§36-8-25. Records of abandoned property.**

Records of abandoned property kept by the administrator are available for inspection and copying only by an owner of such property as to the particular property he or she owns, or by his or her personal representative, next of kin, attorney at law, or such person entitled to inherit from the owner conducting a legal audit thereof. These records are exempt from the provisions of the West Virginia Freedom of Information Act, chapter 29B of this code: *Provided*, That nothing in this section prevents the administrator from disclosing the monetary value of an unclaimed property or the general nature or type of said property to any person that the administrator reasonably believes to be the apparent owner of said property or a person entitled to claim the property on the apparent owner's behalf.

### **§36-8-33. Report by administrator.**

(a) Not later than six months after the end of the state's fiscal year, the administrator shall compile and publish a report on the West Virginia Treasury website. The report must contain the following information about property deemed unclaimed for the preceding fiscal year for the state:

(1) The total amount and value of all property paid or delivered under this act to the administrator, separated into:

(A) The portion voluntarily paid or delivered; and

(B) The portion delivered as the result of an examination under the act.

(2) The total amount and value of all property paid or delivered by the administrator to persons that made claims for property held by the administrator under this act.

(b) The report required under subsection (a) of this section is a public record and is subject to disclosure pursuant to the West Virginia Freedom of Information Act, Chapter 29B of this code.

And,

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

**Com. Sub. for H. B. 4511** – “A Bill to amend and reenact §36-8-1, §36-8-2, §36-8-8, §36-8-10, §36-8-13, §36-8-15, §36-8-25, and §36-8-33 of the Code of West Virginia, 1931, as amended, all relating generally to unclaimed property and escheatment of said property to the state; defining terms; setting forth presumption of abandonment period for virtual currency; setting forth the presumption of abandonment period for demand, savings, or time deposits; requiring the holder of virtual currency to liquidate said currency prior to remittance to the state; providing that the owner of abandoned virtual currency has no recourse against the holder or state for gain in value after liquidation; providing that the administrator shall reimburse the holder of a safety deposit box for the cost of opening said box upon remittance to the administrator using administrative funds in the Unclaimed Property Fund; authorizing the administrator to invest the moneys in the Unclaimed Property Fund and allowing earnings to accrue to said fund; eliminating obsolete language related to previous transfers of moneys from the Unclaimed Property Fund; discontinuing an annual transfer from the Unclaimed Property Trust Fund to the Prepaid Trust Escrow Fund and instead providing for an annual transfer from the Unclaimed Property Trust Fund to the Jumpstart Savings Trust Fund; authorizing the administrator to waive the requirement that an apparent owner file a claim with the administrator in certain circumstances; permitting the administrator to disclose the monetary value and nature or type of a property to a person who is reasonably believed to be the property’s apparent owner or a person authorized to receive the property on the owner’s behalf; and requiring the administrator to

publish a report including certain unclaimed property data for the most recently concluded fiscal year.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 607**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Ferrell, Graves, Thompson and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4511) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with a title amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4563**, Provide for a license plate for auto mechanics.

On motion of Delegate Summers, the House of Delegates concurred in the following Senate title amendment:

**Com. Sub. for H. B. 4563** – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17A-6-15a, relating to authorizing auto mechanics to make application for access to the Division of Motor Vehicles’ electronic temporary plate issuance system in order to access temporary plates to be used to operate or move a vehicle upon the highways and streets of this state solely for the purposes of diagnosing mechanical or functional problems of a vehicle or testing a vehicle being repaired or serviced; setting forth application, renewal, and plate fees; requiring the Commissioner of

the Division of Motor Vehicles to determine whether applicants are qualified; requiring the display of proof of insurance upon any vehicles bearing a temporary registration plate; setting forth definitions; and authorizing the Commissioner of the Division of Motor Vehicles to terminate an auto mechanic's access to the electronic temporary plate issuance system upon a finding that an auto mechanic's use of that system is in violation of law."

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 608**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Ferrell, Graves, Linville, Skaff and Walker.

So, a majority of the members elected having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4563) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4636**, Clarifying when business and occupation taxes owed to a city or municipality are considered to be remitted on time.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**"ARTICLE 13. TAXATION AND FINANCE.**

**§8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax; exemptions; activity in two or more municipalities; administrative provisions.**

(a) *Authorization to impose tax.* — (1) Whenever any business activity or occupation, for which the state imposed its annual business and occupation or privilege tax under §11-13-1 *et seq.* of this code, prior to July 1, 1987, is engaged in or carried on within the corporate limits of any municipality, the governing body thereof shall have plenary power and authority, unless prohibited by general law, to impose a similar business and occupation tax thereon for the use of the municipality.

(2) Municipalities may impose a business and occupation or privilege tax upon every person engaging or continuing within the municipality in the business of aircraft repair, remodeling, maintenance, modification, and refurbishing services to any aircraft, or to an engine or other component part of any aircraft as a separate business activity.

(b) *Maximum tax rates.* — In no case shall the rate of ~~such the~~ municipal business and occupation or privilege tax on a particular activity exceed the maximum rate imposed by the state, exclusive of surtaxes, upon any business activities or privileges taxed under §11-13-2a, 11-13-2b, 11-13-2c, 11-13-2d, 11-13-2e, 11-13-2g, 11-13-2h, 11-13-2i, and 11-13-2j of this code, as ~~such~~ those rates were in effect under §11-13-1 *et seq.* of this code, on January 1, 1959, or in excess of one percent of gross income under §11-13-2k of this code, or in excess of three-tenths of one percent of gross value or gross proceeds of sale under §11-13-2m of this code. The rate of municipal business and occupation or privilege tax on the activity described in subdivision (2), subsection (a) of this section shall be ten one-hundredths of one percent. The rate of municipal business and occupation or privilege tax on the activity of a health maintenance organization holding a certificate of authority under the provisions of §33-25A-1 *et seq.* of this code, shall not exceed one-half of one percent to be applied solely to that portion of gross income received from the Medicaid program pursuant to Title XIX of the Social Security Act, the state employee programs administered by the Public Employees Insurance Agency pursuant

to §5-16-1 *et seq.* of this code, and other federal programs, for health care items or services provided directly or indirectly by the health maintenance organization, that is expended for administrative expenses; and shall not exceed one half of one percent to be applied to the gross income received from enrollees, or from employers on behalf of enrollees, from sources other than Medicaid, state employee programs administered by the Public Employees Insurance Agency, and other federal programs for health care items or services provided directly or indirectly by the health maintenance organization: *Provided*, That this tax rate limitation shall not extend to that part of the gross income of health maintenance organizations which is received from the use of real property other than property in which any ~~such~~ company maintains its office or offices in this state, whether ~~such~~ the income is in the form of rentals or royalties. This provision concerning the maximum municipal business and occupation tax rate on the activities of health maintenance organizations is effective beginning after December 31, 1996. Any payments of business and occupation tax made by a health maintenance organization to a municipality for calendar year 1997 ~~shall not be~~ is not subject to recovery by the health maintenance organization. Administrative expenses shall include all expenditures made by a health maintenance organization other than expenses paid for claims incurred or payments made to providers for the benefits received by enrollees.

(c) *Effective date of local tax.* — Any taxes levied pursuant to the authority of this section may be made operative as of the first day of the then current fiscal year or any date thereafter: *Provided*, That any new imposition of tax or any increase in the rate of tax upon any business, occupation or privilege taxed under §11-2E-1 *et seq.* of this code, ~~shall apply~~ applies only to gross income derived from contracts entered into after the effective date of ~~such~~ the imposition of tax or rate increase, and which effective date shall not be retroactive in any respect: *Provided, however*, That no tax imposed or revised under this section upon public utility services may be effective unless and until the municipality provides written notice of the same by certified mail to said public utility at least 60 days prior to the effective date of said tax or revision thereof.



(d) *Exemptions.* — A municipality shall not impose its business and occupation or privilege tax on any activity that was exempt from the state's business and occupation tax under the provisions of §11-13-3 of this code, prior to July 1, 1987, and determined without regard to any annual or monthly monetary exemption also specified therein: *Provided*, That on and after July 1, 2007, a municipality may impose its business and occupation or privilege tax on any activity of a corporation, association, or society organized and operated exclusively for religious or charitable purposes that was exempt from the state's business and occupation tax under the provisions of §11-13-3 of this code, prior to July 1, 1987, but only to the extent that the income generated by the activity is subject to taxation under the provisions of §511 of the Internal Revenue Code of 1986, as amended.

(e) *Activity in two or more municipalities.* — Whenever the business activity or occupation of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount of gross income, or gross proceeds of sales, taxable by each municipality shall be determined in accordance with ~~such legislative regulations~~ as rules as prescribed by the Tax Commissioner may prescribe. It ~~being~~ is the intent of the Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the same classification by two or more municipalities shall not be allowed, and that gross income, or gross proceeds of sales, derived from activity engaged in or carried on within this state, that is presently subject to state tax under §11-13-2c or §11-13-2h of this code, which is not taxed or taxable by any other municipality of this state, may be included in the measure of tax for any municipality in this state, from which the activity was directed, or in the absence thereof, the municipality in this state in which the principal office of the taxpayer is located. Nothing in this subsection shall be construed as permitting any municipality to tax gross income or gross proceeds of sales in violation of the Constitution and laws of this state or the United States, or as permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

(f) Where the governing body of a municipality imposes a tax authorized by this section, ~~such the governing body shall have the authority to~~ may offer tax credits from ~~such the~~ tax as incentives for new and expanding businesses located within the corporate limits of the municipality.

(g) *Administrative provisions.* — The ordinance of a municipality imposing a business and occupation or privilege tax shall provide procedures for the assessment and collection of ~~such the~~ tax, which shall be similar to those procedures in §11-13-1 *et seq.* of this code, as in existence on June 30, 1978, or to those procedures in §11-10-1 *et seq.* of this code, and shall conform with such provisions as they relate to waiver of penalties and additions to tax.

(h) *Timely payment.* — Payments for taxes due under this section that are postmarked after the due date by which they are owed shall be considered late and may be subject to late fees or penalties: *Provided*, That payments that are received by the municipality after the due date, but that were postmarked on or before the due date shall be considered to be on time and shall not be assessed any late fees or penalties.

### **§8-13-13. Special charges for municipal services.**

(a) Notwithstanding any charter provisions to the contrary, a municipality which furnishes any essential or special municipal service, including, but not limited to, police and fire protection, parking facilities on the streets or otherwise, parks and recreational facilities, street cleaning, street lighting, street maintenance and improvement, sewerage and sewage disposal, and the collection and disposal of garbage, refuse, waste, ashes, trash, and any other similar matter, has plenary power and authority to provide by ordinance for the installation, continuance, maintenance, or improvement of the service, to make reasonable regulations of the service, and to impose by ordinance upon the users of the service reasonable rates, fees, and charges to be collected in the manner specified in the ordinance.

(b) Any sewerage and sewage disposal service and any service incident to the collection and disposal of garbage, refuse, waste, ashes, trash, and any other similar matter is subject to the provisions of chapter 24 of this code.

(c) A municipality shall not have a lien on any property as security for payments due under subsection (a) of this section except as provided in subsection (d) of this section.

(d) A municipality ~~has authority to~~ may enact an ordinance, pursuant to this section, permitting it to file a lien on real property located within the municipal corporate limits for unpaid and delinquent fire, police, or street fees. The ordinance must provide an administrative procedure for the municipality's assessment and collection of the fees. The administrative procedure must require that, before any lien is filed, the municipality will give notice to the property owner, by certified mail, return receipt requested, that the municipality will file the lien unless the delinquency is paid by a date stated in the notice, which must be no less than 90 days from the date the notice is mailed. The administrative procedure must include the right to appeal to the circuit court of the county in which the real property is located. The circuit court shall consider the appeal under its general authority, including but not limited to §51-2-2(f) of this code.

(e) Notwithstanding the provisions of §8-11-4 of this code, any ordinance enacted or substantially amended under the provisions of this section shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code. The publication area for the publication is the municipality.

(f) In the event 30 percent of the qualified voters of the municipality, by petition duly signed by them in their own handwriting and filed with the recorder of the municipality within 45 days after the expiration of the publication, protest against the ordinance as enacted or amended, the ordinance shall not become effective until it is ratified by a majority of the legal votes cast by the qualified voters of the municipality at a regular municipal election or special municipal election, as the governing body directs. Voting shall not take place until after notice of the

submission is given by publication as provided in subsection (e) of this section.

(g) The powers and authority granted to municipalities and to the governing bodies of municipalities in this section are in addition and supplemental to the powers and authority named in any charters of the municipalities.

(h) Notwithstanding any other provisions of this section, if rates, fees, and charges provided in this section are imposed by the governing body of a municipality for the purpose of replacing, and in amounts approximately sufficient to replace in its general fund amounts appropriated to be paid from ad valorem taxes upon property within the municipality, pursuant to an election duly called and held under the Constitution and laws of the state to authorize the issuance and sale of the municipality's general obligation bonds for public improvement purposes, the call for the election shall state that the governing body of the municipality proposes to impose rates, fees, and charges in specified amounts under this section for the use of one or more of the services specified in subsection (a) of this section, which shall be related to the public improvement proposed to be made with the proceeds of the bonds, no notice, publication of notice, or referendum, or election or other condition or prerequisite to the imposition of the rates, fees, and charges shall be required or necessary other than the legal requirements for issuance and sale of the general obligation bonds.

(i) Payments for rates, fees, and charges due under this section that are postmarked after the due date by which they are owed shall be considered late and may be subject to late fees or penalties: *Provided*, That payments that are received by the municipality after the due date, but that were postmarked on or before the due date shall be considered to be on time and shall not be assessed any late fees or penalties."

And,

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

**Com. Sub. for H. B. 4636** - “A Bill to amend and reenact §8-13-5 and §8-13-13 of the Code of West Virginia, 1931, as amended, all relating to providing that municipal business and occupation taxes, as well as municipal rates, fees, and charges that are owed to a municipality that are postmarked after the due date are late and subject to late fees or penalties; clarifying that municipal business and occupation taxes, as well as municipal rates, fees, and charges that are owed to a municipality are considered to be remitted on time when the date on which the payment is postmarked is on or before the due date; and clarifying that municipalities may not impose a late fee or penalty for those municipal taxes or municipal rates, fees, and charges owed to them if the payment is postmarked on or before the due date.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 609**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Ferrell, Graves, Longanacre, Skaff and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4636) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4662**, Relating to licensure of Head Start facilities in this state.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**

**§49-2-115a. Head Start program licenses.**

(a) A Head Start program in good standing with the United States Department of Health and Human Services pursuant to 42 USC §9381 *et seq.* may request to be deemed a licensee to operate a child care program for the sole purpose of utilizing the West Virginia Clearance for Access: Registry and Employment Screenings program. At the discretion of the secretary, a deemed license may not permit the licensee to access the other services provided by the Bureau for Family Assistance as it relates to the specific deemed child care license.

(b) The section may not be construed to prevent the department from investigating complaints regarding the health, safety, or welfare of children.

(c) The department shall propose a legislative rule for promulgation by July 1, 2022, to effectuate this section.”

And,

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

**Com. Sub. for H. B. 4662** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-2-115a, relating to licensure of Head Start facilities in this state; permitting deemed licensee to request to utilize West Virginia for Clearance Access Registry and Employment Screening program; and requiring rulemaking.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 610**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Ferrell, Longanacre, Skaff and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4662) passed.

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

On this question, the yeas and nays were taken (**Roll No. 611**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Ferrell, Longanacre, Skaff and Walker.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4662) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4712**, Require the prompt enrollment in payment plans for costs, fines, forfeitures, restitution, or penalties in circuit court and magistrate court.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“CHAPTER 8. MUNICIPAL CORPORATIONS.**

**ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.**

**§8-10-2b. Payment plan; failure to pay will result in late fee and judgment lien; suspension of licenses for failure to pay fines and costs or failure to appear in court.**

(a) Upon request and subject to the following requirements, the municipal court clerk or, upon a judgment rendered on appeal, the clerk shall establish a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties imposed by the court for a motor vehicle violation as defined in §17B-3-3a of this code, a criminal offense as defined in §17B-3-3c of this code, or other applicable municipal ordinances, so long as the person signs and files with the clerk an affidavit stating that he or she is financially unable to pay the costs, fines, forfeitures, restitution, or penalties imposed:

(1) A \$25 administrative processing fee shall be paid at the time the payment form is filed or, in the alternative, the fee may be paid in no more than five equal monthly payments;

(2) Unless incarcerated, a person must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan no later than 90 calendar days after the date the court enters upon the entry of the order assessing the costs, fines, forfeitures, restitution, or penalties; and

(3) If the person is incarcerated, he or she ~~may~~ must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan within 90 30 calendar days after release.

(b) The West Virginia Supreme Court of Appeals shall develop a uniform payment plan form and financial affidavit for requests for the establishment of a payment plan pursuant to subsection (a) of this section. The forms shall be made available for distribution to the offices of municipal clerks, and municipal clerks shall use the payment plan form and affidavit form developed by the Supreme Court of Appeals when establishing payment plans.



(c)(1) The payment plan shall specify: (A) The number of payments to be made; (B) the dates on which such payments are due; (C) the amount due for each payment; (D) all acceptable payment methods; and (E) the circumstances under which the person may receive a late fee, have a judgment lien recorded against him or her, or have the debt sent to collections for nonpayment; and

(2) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, restitution, or penalties owed within the court, and shall be two percent of the person's annual net income divided by 12, or \$10, whichever is greater; Provided, That if this calculation results in a payment plan lasting more than three years, the monthly payments shall be set by dividing the total amount owed by 36.

(3) The court may review the reasonableness of the payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, restitution, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan.

(d)(1) The clerk may assess a \$10 late fee each month if a person fails to comply with the terms of a payment plan and if any payment due is not received within 30 days after the due date, and the person:

(A) Is not incarcerated;

(B) Has not brought the account current;

(C) Has not made alternative payment arrangements with the court; or

(D) Has not entered into a revised payment plan with the clerk before the due date.

(2) If after 90 days, a payment has not been received, the clerk may do one or both of the following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign the

delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(e)(1) If after 90 days of a judgment a person fails to enroll in a payment plan and fails to pay their costs, fines, forfeitures, restitution, or penalties, the clerk may assess a \$10 late fee and shall notify the person of the following:

(A) That he or she is 90 days past due in the payment of costs, fines, forfeitures, restitution, or penalties imposed pursuant to a judgment of the court;

(B) That he or she has failed to enroll in a payment plan;

(C) Whether a \$10 late fee has been assessed; and

(D) That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, restitution, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection a payment has not been received, the clerk may do one or both of the following:

(A) Record a judgment lien as described in subsection (f) of this section; or

(B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal

collection division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not exceed 25 percent of the delinquent payment amount.

(f) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county in which the defendant resides or owns property. The clerk of the county commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant: *Provided*, That when all the costs, fines, fees, forfeitures, restitution, or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(g) Any driver's license suspension entered by the Division of Motor Vehicles prior to July 1, 2016, for the failure to appear or otherwise respond in court or for nonpayment of costs, fines, forfeitures, restitution, or penalties is null and void. A person whose driver's license was suspended on or after July 1, 2016, but prior to July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, restitution, or penalties and a \$25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) of this section and the payment of a \$25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

(h) If a person charged with a motor vehicle violation as defined in §17B-3-3a of this code or criminal offense fails to appear or otherwise respond in court, the municipal court clerk shall notify the Division of Motor Vehicles of the failure to appear: *Provided*, That notwithstanding any other provision of this code to the contrary, for residents of this state, the municipal court clerk shall wait at least 90 days from the date of the person's failure to appear or otherwise respond before notifying the Division of Motor Vehicles thereof. Upon notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the person appears as required.

## **CHAPTER 50. MAGISTRATE COURTS.**

### **ARTICLE 3. COSTS, FINES, AND RECORDS.**

#### **§50-3-2. Costs in criminal proceedings.**

(a) In each criminal case before a magistrate court in which the defendant is convicted, whether by plea or at trial, there is imposed, in addition to other costs, fines, forfeitures, or penalties ~~as may be~~ allowed by law:

(1) Costs in the amount of \$60, of which \$5 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code;

(2) an amount equal to the one-day per diem provided for in §15A-3-16(g) of this code; and

(3) costs in the amount of \$30 to be deposited in the Regional Jail Operations Partial Reimbursement Fund created by §15A-3-16 of this code. A magistrate may not collect costs in advance. Notwithstanding any other provision of this code, a person liable for fines and court costs in a criminal proceeding in which the defendant is confined in a jail or prison and not participating in a work-release program shall not be held liable for the fines and court costs until ~~one hundred eighty~~ 180 days after completion of the term in jail or prison. A magistrate court shall deposit \$5 from each of the criminal proceedings fees collected pursuant to this section in the Court Security Fund created in §51-3-14 of this code. A magistrate court shall, on or before the 10th day of the month following the month in which the fees imposed in this section were collected, remit an amount equal to the one-day per diem provided for in §15A-3-16(g) of this code from each of the criminal proceedings in which the fees specified in this section were collected ~~to~~ to the magistrate court clerk, or if there is no magistrate court clerk to the clerk of the circuit, together with information ~~as may be~~ required by the rules of the Supreme Court of Appeals and the rules of the Office of Chief Inspector. These moneys are paid to the sheriff who shall distribute the moneys solely in accordance with the provisions of §7-5-15 of this code. Amendments made to this section during the 2001 regular session of the Legislature are effective after June 30, 2001.

(b) A magistrate shall assess costs in the amount of \$2.50 for issuing a sheep warrant and the appointment and swearing appraisers and docketing the proceedings.

(c) In each criminal case which must be tried by the circuit court ~~but~~ in which a magistrate renders some service, costs in the amount of \$10 shall be imposed by the magistrate court and ~~is~~ shall be certified to the clerk of the circuit court in accordance with the provisions of §62-5-6 of this code.

(d) The clerk of a magistrate court shall charge and collect a fee of \$10 for services rendered by the clerk for processing criminal bonds and the fees which shall be assessed as costs of the proceeding due only upon conviction.

(e) All fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code. Nothing in this subsection may be construed to impose a fee for the processing of a personal recognizance bond.

(f) The clerk of a magistrate court shall charge and collect a fee of \$25 for services rendered by the clerk for processing a bail piece and the fee shall be paid by the surety at the time of issuance. All fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code.

**§50-3-2a. Payment by electronic payments, credit card payments, cash, money orders, or certified checks; payment plan; failure to pay fines results in a late fee and judgment lien.**

(a) A magistrate court may accept electronic payments, credit cards, cash, money order, or certified check for payment of all costs, fines, fees, forfeitures, restitution, or penalties in accordance with rules promulgated by the Supreme Court of Appeals. Any charges made by the credit company shall be paid by the person responsible for paying the cost, fine, forfeiture, restitution, or penalty.

(b) Upon request and subject to the following requirements, the magistrate clerk shall establish a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties imposed by the court, so long as the person signs and files with the clerk, an affidavit stating that he or she is financially unable to pay the costs, fines, forfeitures, restitution, or penalties imposed:

(1) A \$25 administrative processing fee shall be paid at the time the payment form is filed or, in the alternative, the fee may be paid in no more than five equal monthly payments;

(2) Unless incarcerated, a person must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan ~~no later than 180 calendar days after the date the court enters~~

upon the entry of the order assessing the costs, fines, forfeitures, restitution, or penalties; and

(3) If the person is incarcerated, he or she ~~may~~ must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan within ~~480~~ 30 calendar days after release.

(c) The West Virginia Supreme Court of Appeals shall develop a uniform payment plan form and financial affidavit for requests for the establishment of payment plan pursuant to subsection (a) of this section. The forms shall be made available for distribution to the offices of magistrate clerks, and magistrate clerks shall use the payment plan form and affidavit form developed by the Supreme Court of Appeals when establishing payment plans.

(d)(1) The payment plan shall specify: (A) The number of payments to be made; (B) the dates on which the payments are due; (C) the amount due for each payment; (D) all acceptable payment methods; and (E) the circumstances under which the person may receive a late fee, have a judgment lien recorded against him or her, or have the debt sent to collections for nonpayment.

(2) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, restitution, or penalties owed within the court, and shall be two percent of the person's annual ~~net~~ income divided by 12, or \$10, whichever is greater: Provided, That if this calculation results in a payment plan lasting more than three years, the monthly payments shall be set by dividing the total amount owed by 36.

(3) The court may review the reasonableness of the payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, restitution, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan.

(e)(1) The clerk may assess a \$10 late fee each month if a person fails to comply with the terms of a payment plan, and if any

payment due is not received within 30 days after the due date, and the person:

(A) Is not incarcerated;

(B) Has not brought the account current;

(C) Has not made alternative payment arrangements with the court; or

(D) Has not entered into a revised payment plan with the clerk before the due date.

(2) If, after 90 days, a payment has not been received, the clerk may do one or both of the following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(f)(1) If after 180 days of a judgment, a person fails to enroll in a payment plan and fails to pay his or her costs, fines, forfeitures, restitution, or penalties, the clerk may assess a \$10 late fee and shall notify the person of the following:

(A) That he or she is 180 days past due in the payment of costs, fines, forfeitures, restitution, or penalties imposed pursuant to a judgment of the court;

(B) That he or she has failed to enroll in a payment plan;

(C) Whether a \$10 late fee has been assessed; and



(D) That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, restitution, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection, a payment has not been received, the clerk may do one or both of the following:

(A) Record a judgment lien as described in subsection ~~(f)~~ (g) of this section; or

(B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not exceed 25 percent of the delinquent payment amount.

(g) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county wherein the defendant resides or owns property. The clerk of the county commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant: *Provided*, That when all the costs, fines, fees, forfeitures, restitution, or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions

of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(h) Any driver's license suspension entered by the Division of Motor Vehicles prior to July 1, 2016, for the failure to appear or otherwise respond in court or for nonpayment of costs, fines, forfeitures, restitution, or penalties is null and void. A person whose driver's license was suspended on or after July 1, 2016, but prior to July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, restitution, or penalties and a \$25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) of this section and the payment of a \$25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

(i)(1) If any costs, fines, fees, forfeitures, restitution, or penalties imposed or ordered by the magistrate court for a hunting violation described in chapter 20 of this code are not paid within 180 days from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Director of the Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to hunt in this state, including any hunting license issued to the person by the Division of Natural Resources, until all the costs, fines, fees, forfeitures, restitution, or penalties are paid in full.

(2) If any costs, fines, fees, forfeitures, restitution, or penalties imposed or ordered by the magistrate court for a fishing violation described in Chapter 20 of this code are not paid within 180 days from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Director of the Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to fish in this state, including any fishing license issued to the person by the Division of Natural Resources, until all the costs, fines, fees, forfeitures, restitution, or penalties are paid in full.

(j)(1) If a person charged with any criminal violation of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Commissioner of the Division of Motor Vehicles thereof within 90 days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Division of Motor Vehicles shall suspend any privilege the person failing to appear or otherwise respond may have to operate a motor vehicle in this state, including any driver's license issued to the person by the Division of Motor Vehicles, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full. The suspension shall be imposed in accordance with the provisions of §17B-3-6 of this code.

(2) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any hunting violation described in Chapter 20 of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Director of the Division of Natural Resources of the failure thereof within 15 days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to hunt in this state, including any hunting license issued to the person by the Division of Natural

Resources, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full.

(3) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any fishing violation described in Chapter 20 of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Director of the Division of Natural Resources of the failure thereof within 15 days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to fish in this state, including any fishing license issued to the person by the Division of Natural Resources, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full.

(k) In every criminal case which involves a misdemeanor violation, a magistrate may order restitution where appropriate when rendering judgment.

(l) Notwithstanding any provision of this code to the contrary, except as authorized by this section, payments of all costs, fines, fees, forfeitures, restitution, or penalties imposed by the magistrate court in civil or criminal matters shall be made in full. Partial payments of costs, fines, fees, forfeitures, restitution, or penalties made pursuant to this section shall be credited to amounts due in the following order:

- (1) Regional Jail Fund;
- (2) Worthless check payee;
- (3) Restitution;
- (4) Magistrate Court Fund;
- (5) Worthless Check Fund;

- (6) Per diem regional jail fee;
- (7) Community Corrections Fund;
- (8) Regional Jail Operational Fund;
- (9) Law-Enforcement Training Fund;
- (10) Crime Victims Compensation Fund;
- (11) Court Security Fund;
- (12) Courthouse Improvement Fund;
- (13) Litter Control Fund;
- (14) Sheriff arrest fee;
- (15) Teen Court Fund;
- (16) Other costs, if any; and
- (17) Fine.

## **CHAPTER 59. FEES, ALLOWANCES, AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.**

### **ARTICLE 1. FEES AND ALLOWANCES.**

#### **§59-1-10. Fees to be charged by clerk of county commission.**

For the purpose of this section, the word “page” is defined as being a paper or electronic writing of not more than legal size, 8 1/2” x 14”.

(a) When a writing is admitted to the record, for receiving proof of acknowledgment ~~thereof~~, of the writing, entering an order in connection ~~therewith~~, with the writing, endorsing clerk’s certificate of recordation ~~thereon~~ on the writing and indexing in a proper index, the clerk of the county commission shall charge and collect the following fees:

(1) ~~Twenty-five~~ Thirty dollars for a deed of conveyance (with or without a plat), trust deed, fixture filing, or security agreement concerning real estate lease.

(2) Forty dollars for a trustee's report of sale for any property for which additional information and filing requirements are required by ~~section eight a, article one, chapter thirty-eight~~ §38-1-8a of this code. Twenty dollars of each recording fee received pursuant to this subdivision shall be deposited into the county's general revenue fund and \$20 paid quarterly by the clerk of the county commission to the West Virginia Housing Development Fund established in ~~article eighteen, chapter thirty-one~~ §31-18-1 *et seq.* of this code.

(3) Ten dollars for a financing, continuation, termination, or other statement or writing permitted to be filed under chapter ~~forty-six~~ 46 of this code.

(4) Ten dollars for a plat or map (with no deed of conveyance).

(5) No charge for a service discharge record.

(6) Ten dollars for any document or writing other than those referenced in subdivisions (1), (2), (3), (4) and (5) of this subsection.

(7) One dollar for each additional page for documents or writings containing more than five pages.

For any of the documents admitted to record pursuant to this subsection, if the clerk of the county commission has the technology available to receive these documents in electronic form or other media, the clerk shall set a reasonable fee to record these writings not to exceed the cost for filing paper documents.

(8) Of the fees collected pursuant to subdivision (1), subsection (a) of this section, \$10 shall be deposited in the county general revenue fund in accordance with ~~section twenty-eight~~ §59-1-28 of this code, \$5 shall be deposited in the county reappraisal fund and dedicated to the operation of the assessor's office mapping division, ~~\$3~~ \$8 shall be deposited in the Courthouse Facilities

Improvement Fund created by ~~section six, article twenty-six, chapter twenty-nine~~ §29-26-6 of this code, \$1 to the county 9-1-1 center and \$2 shall be deposited in the county general fund and dedicated to the operation of the county clerk's office. Four dollars of the fees collected pursuant to subdivision (1), subsection (a) of this section and \$5 of the fees collected pursuant to subdivision (6), subsection (a) of this section shall be paid by the county clerk into the State Treasury and deposited in equal amounts ~~for deposit~~ into the Farmland Protection Fund created in ~~in article twelve, chapter eight-a~~ §8A-12-1 et seq. of this code for the benefit of the West Virginia Agricultural Land Protection Authority and into the Outdoor Heritage Conservation Fund created ~~in article two-g, chapter five-b~~ §5B-2G-7(f) of this code. The funds deposited in the State Treasury pursuant to this subdivision may only be used for costs, excluding personnel costs, associated with purpose of land conservation, as defined in ~~subsection (f), section seven, article two-g, chapter five-b~~ §5B-2G-7(f) of this code.

(b) Five dollars for administering any oath other than oaths by officers and employees of the state, political subdivisions of the state, ~~or a~~ public or quasi-public entity of the state, or a political subdivision of the state, taken in his or her official capacity.

(c) Fifty-five dollars for issuance of marriage ~~a~~ license and other duties pertaining to the marriage license (including preparation of the application, administrating the oath, registering and recording the license, mailing acknowledgment of minister's return to one of the licensees, and notification to a licensee after ~~sixty~~ 60 days of the nonreceipt of the minister's return). This fee is reduced to \$35 if the applicants present a premarital education course completion certificate issued pursuant to ~~section seven hundred one, article two, chapter forty-eight~~ §48-2-701 of this code and dated within one year of the application for a marriage license.

(1) One dollar of the marriage license fee received pursuant to this subsection shall be paid by the county clerk into the State Treasury as a state registration fee in the same manner that license taxes are paid into the Treasury under ~~article twelve, chapter eleven~~ §11-12-1 et seq. of this code;

(2) Fifteen dollars of the marriage license fee received pursuant to this subsection shall be paid by the county clerk into the State Treasury for the Family Protection Shelter Support Act in the same manner that license taxes are paid into the Treasury under ~~article twelve, chapter eleven~~ §11-12-1 et seq. of this code;

(3) Ten dollars of the marriage license fee received pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by ~~section six, article twenty six, chapter twenty nine~~ §29-26-6 of this code; and

(4) If a premarital education course completion certificate is not presented, the county clerk shall, on or before the 10th ~~tenth~~ day of each month, transmit \$20 of the marriage license fee received pursuant to this subsection to the State Treasurer for deposit in the State Treasury as follows:

(A) Five dollars to the credit of the Family Protection Shelter Support Act in the same manner that license taxes are paid into the Treasury under ~~article twelve, chapter eleven~~ §11-12-1 et seq. of this code.

(B) Five dollars to the credit of the special revenue account, hereby created, designated the Fund for Civil Legal Services for Low Income Persons, which shall consist of all gifts, grants, bequests, transfers, appropriations, or other donations or payments which may be received and administered by the Division of Justice and Community Services from any governmental entity or unit or any person, firm, foundation, or corporation for the purposes of this section, and all interest or other return earned from investment of the fund. Expenditures from the fund shall be made by the Director of the Division of Justice and Community Services and shall be limited to grants to nonprofit agencies which provide civil legal services to low income persons made at his or her discretion. Any balance in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this section.



(C) Ten dollars to the credit of the Marriage Education Fund created pursuant to ~~section seven hundred two, article two, chapter forty eight~~ §48-2-702 of this code.

(d) (1) One dollar and ~~forty~~ 50 cents for a copy of any writing or document, if it is not otherwise provided for.

(2) One dollar for each additional page if the writing or documents contains more than two pages.

(3) One dollar for annexing the seal of the commission or clerk to any paper.

(4) Five dollars for a certified copy of a birth certificate, death certificate, or marriage license.

(e) For copies of any record in electronic form or a medium other than paper, a reasonable fee set by the clerk of the county commission not to exceed the costs associated with document search and duplication.

## **CHAPTER 62. CRIMINAL PROCEDURE.**

### **ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.**

#### **§62-4-17. Suspension of licenses for failure to appear in court; payment plan; failure to pay fines will result in late fee and judgment lien.**

(a) Upon request and subject to the following requirements, the circuit clerk shall establish a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties imposed by the court, so long as the person signs and files with the clerk an affidavit stating that he or she is financially unable to pay the costs, fines, forfeitures, restitution, or penalties imposed:

(1) A \$25 administrative processing fee shall be paid at the time the payment form is filed or, in the alternative, the fee may be paid in no more than five equal monthly payments;

(2) Unless incarcerated, a person must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment

plan ~~no later than 180 calendar days after the date the court enters upon the entry of~~ the order assessing the costs, fines, forfeitures, restitution, or penalties; and

(3) If the person is incarcerated, he or she must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan within ~~180~~ 90 calendar days after release.

(b) The Supreme Court of Appeals shall develop a uniform payment plan form and financial affidavit for requests for the establishment of payment plan pursuant to subsection (a) of this section. The forms shall be made available for distribution to the offices of circuit clerks and circuit clerks shall use the payment plan form and affidavit form developed by the Supreme Court of Appeals when establishing payment plans.

(c)(1) The payment plan shall specify: (A) The number of payments to be made; (B) the dates on which such payments are due; (C) the amount due for each payment; (D) all acceptable payment methods; and (E) the circumstances under which the person may receive a late fee, have a judgment lien recorded against them, or have the debt sent to collections for nonpayment.

(2) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, restitution, or penalties owed within the court, and shall be two percent of the person's annual ~~net~~ income divided by 12, or \$10, whichever is greater: Provided, That if this calculation results in a payment plan lasting more than five years, the monthly payments shall be set by dividing the total amount owed by 60.

(3) The court may review the reasonableness of the payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, restitution, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan.

(d)(1) The clerk may assess a \$10 late fee each month if a person fails to comply with the terms of a payment plan, and if any

payment due is not received within 30 days after the due date, and the person:

(A) Is not incarcerated;

(B) Has not brought the account current;

(C) Has not made alternative payment arrangements with the court; or

(D) Has not entered into a revised payment plan with the clerk before the due date.

(2) If, after 90 days, a payment has not been received, the clerk may do one or both of the following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(e)(1) If after 180 days of a judgment a person fails to enroll in a payment plan and fails to pay his or her costs, fines, forfeitures, restitution, or penalties, the clerk may assess a \$10 late fee and shall notify the person of the following:

(A) That he or she is 180 days past due in the payment of costs, fines, forfeitures, restitution, or penalties imposed pursuant to a judgment of the court;

(B) That he or she has failed to enroll in a payment plan;

(C) Whether a \$10 late fee has been assessed; and

(D) That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, restitution, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection, a payment has not been received, the clerk may do one or both of the following:

(A) Record a judgment lien as described in subsection (f) of this section; or

(B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not exceed 25 percent of the delinquent payment amount.

(f) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county wherein the defendant resides or owns property. The clerk of the county commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney, and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant: *Provided*, That when all the costs, fines, fees, forfeitures, restitution, or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions

of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(g) Any driver's license suspension entered by the Division of Motor Vehicles prior to July 1, 2016, for the failure to appear or otherwise respond in court or for nonpayment of costs, fines, forfeitures, restitution, or penalties is null and void. A person whose driver's license was suspended on or after July 1, 2016, but prior to July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, restitution, or penalties and a \$25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) of this section and the payment of a \$25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

(h) If a person charged with a criminal offense fails to appear or otherwise respond in court after having received notice to do so, the court shall notify the Division of Motor Vehicles thereof within 15 days of the scheduled date to appear unless such person sooner appears or otherwise responds in court to the satisfaction of the court. Upon such notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the person appears as required."

And,

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

**Com. Sub. for H. B. 4712** – “A Bill to amend and reenact §8-10-2b of the Code of West Virginia, 1931, as amended; to amend and reenact §50-3-2 and §50-3-2a of said code; to amend and reenact §59-1-10 of said code; and to amend and reenact §62-4-17 of said code, all relating generally to costs, fines, forfeiture, restitution and penalties; requiring a person, unless incarcerated, to pay all costs, fines, forfeiture, restitution and penalties upon entry of the order assessing them in municipal court, magistrate court, and circuit court; reducing the time period allowed for enrollment for incarcerated persons in municipal court, magistrate court, and circuit court payment plans and limiting the maximum length of payment plans: voiding driver’s license suspensions entered prior to July 1, 2016, for the failure to appear or otherwise respond in court or for nonpayment of costs, fines, forfeitures, restitution, or penalties; increasing fees to the Courthouse Facilities Improvement Authority; imposing a \$10 processing fee for criminal bail bonds, other than personal recognizance bonds, to be deposited in the fund; imposing a \$25 fee for the processing of bail pieces, to be deposited in the fund; and increasing the fee for a deed of conveyance with the increase dedicated to the fund.”

On the question of passage of the bill, as amended by the Senate, Delegate Fast requested to be excused from voting under the provisions of House Rule 49.

The Speaker ruled that the Delegate was a member of a class of persons possibly to be affected and directed the Member to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 612**), and there were—yeas 86, nays 11, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Barrett, Doyle, Evans, Fast, Fleischauer, Foster, Linville, Pushkin, Rowe, Thompson and B. Ward.

Absent and Not Voting: Ferrell, Skaff and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4712) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 4842**, Relating to obscene matter to minors.

On motion of Delegate Kessinger, the House concurred in the following amendment by the Senate, with further amendment and title amendment:

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

**“ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY  
AND DECENCY.**

**§61-8-9. Indecent exposure.**

(a) A person is guilty of indecent exposure when such person intentionally exposes his or her sex organs or anus or the sex organs or anus of another person, or intentionally causes such exposure by another or engages in any overt act of sexual gratification, and does so under circumstances in which the person knows that the conduct is likely to cause affront or alarm: *Provided*, That it is not considered indecent exposure for a mother to breast feed a child in any location, public or private.

(b) Except as provided in subsection (c), any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than ninety days, or fined not more than \$250, or both fined and confined.

(c) Any person who violates the provisions of subsection (a) of this section by intentionally exposing himself or herself to another person and the exposure was done for the purpose of sexual gratification, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in jail not more than twelve months, or both. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 and confined in jail for not less than thirty days nor more than twelve months. For a third or subsequent offense, the person is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility for not less than one year nor more than five years.

(d) Notwithstanding the provisions of subsection (a), (b), and (c) of this section, any person who intentionally exposes his or her sex organs to another for purposes of sexual gratification knowing or having any reason to know that the person to whom he or she exposed himself or herself was 16 years of age or younger, is guilty of a felony, and upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years or both fined and imprisoned.

## **ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.**

### **§61-8C-3. Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct prohibited; penalty.**

(a) Any person who, knowingly and willfully, sends or causes to be sent or distributes, exhibits, possesses, electronically accesses with intent to view, or displays or transports any material visually portraying a minor engaged in any sexually explicit conduct is guilty of a felony.

(b) Any person who violates the provisions of subsection (a) of this section when the conduct involves fifty or fewer images shall, upon conviction, be imprisoned in a state correctional facility for not more than two years or fined not more than \$2,000 or both.



(c) Any person who violates the provisions of subsection (a) of this section when the conduct involves more than fifty but fewer than six hundred images shall, upon conviction, be imprisoned in a state correctional facility for not less than two nor more than ~~ten~~ 10 years or fined not more than \$5,000, or both.

(d) Notwithstanding the provisions of subsections (b) and (c) of this section any person who violates the provisions of subsection (a) of this section when the conduct involves ~~six hundred~~ 600 or more images or depicts violence against a child or a child engaging in bestiality shall, upon conviction, be imprisoned in a state correctional facility for not less than five nor more than ~~fifteen~~ 15 years or fined not more than \$25,000 or both.

(e) For purposes of this section each video clip, movie or similar recording of five minutes or less shall constitute ~~seventy-five~~ 75 images. A video clip, movie, or similar recording of a duration longer than five minutes shall be deemed to constitute ~~seventy-five~~ 75 images for every two minutes in length if it exceeds five minutes.

(f) The provisions of this section are inapplicable to:

(1) Law enforcement personnel while acting in the performance of their official duties;

(2) Prosecuting attorneys while acting in the performance of their official duties;

(3) Attorneys representing persons charged with a violation of this article or a substantially similar federal law while acting in the performance of their official duties;

(4) Judges and magistrates while acting in the performance of their official duties;

(5) Jurors while acting in the performance of their official duties ; and

(6) Support personnel for the persons listed in subdivisions (1) through (4) of this subsection in the performance of their professional, employment, and fact-finding duties.

(g) The Supreme Court of Appeals is hereby requested to promulgate such rules, protocols, and forms as are necessary to regulate access to, use, and handling of materials depicting minors engaging in sexually explicit conduct with due consideration given to the privacy rights of victims and the due process rights of defendants in judicial proceedings.”

And,

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

**H. B. 4842** – “A Bill to amend and reenact §61-8-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8C-3 of said code, all relating to crimes against minors and child pornography; creating the felony offense of indecent exposure to children 16 years of age or younger and establishing penalties therefore; and clarifying the groups of persons to whom the criminal prohibitions related to child pornography are inapplicable when such persons are performing their official or employment duties.”

With the further amendment, sponsored by Delegate Summers, being as follows:

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

**“ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.**

**§61-8C-3. Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct prohibited; penalty.**

(a) Any person who, knowingly and willfully, sends or causes to be sent or distributes, exhibits, possesses, electronically accesses with intent to view, or displays or transports any material visually

portraying a minor engaged in any sexually explicit conduct is guilty of a felony.

(b) Any person who violates the provisions of subsection (a) of this section when the conduct involves fifty or fewer images shall, upon conviction, be imprisoned in a state correctional facility for not more than two years or fined not more than \$2,000 or both.

(c) Any person who violates the provisions of subsection (a) of this section when the conduct involves more than fifty but fewer than six hundred images shall, upon conviction, be imprisoned in a state correctional facility for not less than two nor more than ten 10 years or fined not more than \$5,000, or both.

(d) Notwithstanding the provisions of subsections (b) and (c) of this section any person who violates the provisions of subsection (a) of this section when the conduct involves six hundred 600 or more images or depicts violence against a child or a child engaging in bestiality shall, upon conviction, be imprisoned in a state correctional facility for not less than five nor more than fifteen 15 years or fined not more than \$25,000 or both.

(e) For purposes of this section each video clip, movie or similar recording of five minutes or less shall constitute seventy-five 75 images. A video clip, movie, or similar recording of a duration longer than five minutes shall be deemed to constitute seventy-five 75 images for every two minutes in length if it exceeds five minutes.

(f) The provisions of this section are inapplicable to:

(1) Law enforcement personnel while acting in the performance of their official duties;

(2) Prosecuting attorneys while acting in the performance of their official duties;

(3) Attorneys representing persons charged with a violation of this article or a substantially similar federal law while acting in the performance of their official duties;

(4) Judges and magistrates while acting in the performance of their official duties;

(5) Jurors while acting in the performance of their official duties ; and

(6) Support personnel for the persons listed in subdivisions (1) through (4) of this subsection in the performance of their professional, employment, and fact-finding duties.

(g) The Supreme Court of Appeals is hereby requested to promulgate such rules, protocols, and forms as are necessary to regulate access to, use, and handling of materials depicting minors engaging in sexually explicit conduct with due consideration given to the privacy rights of victims and the due process rights of defendants in judicial proceedings.”

And,

The further title amendment, sponsored by Delegate Summers, amending the title of the bill to read as follows:

**H. B. 4842** – “A Bill to amend and reenact §61-8C-3 of the Code of West Virginia, 1931, as amended, relating to child pornography; clarifying the groups of persons to whom the criminal prohibitions related to child pornography are inapplicable when such persons are performing their official or employment duties; and requesting the Supreme Court of Appeals to promulgate rules.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 613**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Hornbuckle, Skaff, Walker and Wamsley.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4842) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendment, of a concurrent resolution of the House of Delegates as follows:

**H. C. R. 70**, Calvin H. Shifflett Memorial Bridge.

On motion of Delegate Summers, the House concurred in the following amendment of the resolution by the Senate:

On page two, in the Resolved clause, line thirty-three, by striking out the words “Calvin H. Shifflett” and inserting in lieu thereof the words “U.S. Army Private Calvin H. Shifflett”;

On page two, in the first Further Resolved clause, line thirty-five, by striking out the words “Calvin H. Shifflett” and inserting in lieu thereof the words “U.S. Army Private Calvin H. Shifflett”;

And,

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

**H. C. R. 70** – “Requesting the Division of Highways name bridge number 42-022/00-014.01 (42A251) locally known as Bemis Truss, carrying CR 22 over Shavers Fork Cheat River in Randolph County, the ‘U.S. Army Private Calvin H. Shifflett Memorial Bridge’.”

The resolution, as amended by the Senate, was then adopted.

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

A message from the Senate, by

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

**S. B. 731** - “A Bill making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2022, to the Department of Tourism – Tourism Workforce Development Fund, fund 8903, fiscal year 2022, organization 0304, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022”.

At the respective of Delegate Summers, and by unanimous consent, reference of the bill (S. B. 731) to a committee was dispensed with and it was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Summers moved to dispense with the constitutional rule requiring the bill to be fully and distinctly read on three different days.

On this question, the yeas and nays were taken (**Roll No. 614**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Hornbuckle, J. Jeffries, Linville, Pritt, Skaff and Walker.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a second time and ordered to third reading.

The bill was then read a third time and put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 615**), and there were—yeas 90, nays 2, absent and not voting 8, with the nays and the absent and not voting being as follows:

Nays: Kimble and McGeehan.

Absent and Not Voting: Hornbuckle, J. Jeffries, Linville, Lovejoy, Pritt, Skaff, Storch and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 731) passed.

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

On this question, the yeas and nays were taken (**Roll No. 616**), and there were—yeas 88, nays 3, absent and not voting 9, with the nays and the absent and not voting being as follows:

Nays: Kimble, McGeehan and Zukoff.

Absent and Not Voting: Hornbuckle, J. Jeffries, Linville, Lovejoy, Pack, Pritt, Skaff, Storch and Walker.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 731) takes effect from its passage.

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

A message from the Senate, by

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

**S. B. 732** - “A Bill making a supplementary appropriation of public moneys out of the State Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2022, to the Hospital Finance Authority – Hospital Finance Authority Fund, fund 5475, fiscal year 2022, organization 0509, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.”

At the respective of Delegate Summers, and by unanimous consent, reference of the bill (S. B. 732) to a committee was dispensed with and it was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Summers moved to dispense with the constitutional rule requiring the bill to be fully and distinctly read on three different days.

On this question, the yeas and nays were taken (**Roll No. 617**), and there were—yeas 92, nays none, absent and not voting 8, with the absent and not voting being as follows:

Absent and Not Voting: Boggs, Hornbuckle, Linville, Lovejoy, Pack, Pritt, Skaff and Walker.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a second time and ordered to third reading.

The bill was then read a third time and put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 618**), and there were—yeas 92, nays 1, absent and not voting 7, with the nays and the absent and not voting being as follows:

Nays: Kimes.

Absent and Not Voting: Crouse, Hornbuckle, Kessinger, Linville, Lovejoy, Skaff and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 732) passed.

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



On this question, the yeas and nays were taken (**Roll No. 619**), and there were—yeas 91, nays 2, absent and not voting 7, with the nays and the absent and not voting being as follows:

Nays: J. Kelly and Kimes.

Absent and Not Voting: Brown, Crouse, Hornbuckle, Linville, Lovejoy, Skaff and Walker.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 732) takes effect from its passage.

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

A message from the Senate, by

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

**S. B. 733** - “A Bill supplementing and amending appropriations of public moneys out of the State Treasury in the State Fund, General Revenue, by decreasing an existing item of appropriation and adding a new item of appropriation to the Executive, Governor’s Office, fund 0101, fiscal year 2022, organization 0100, by supplementing and amending appropriations for the fiscal year ending June 30, 2022.”

At the respective of Delegate Summers, and by unanimous consent, reference of the bill (S. B. 733) to a committee was dispensed with and it was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Summers moved to dispense with the constitutional rule requiring the bill to be fully and distinctly read on three different days.

On this question, the yeas and nays were taken (**Roll No. 620**), and there were—yeas 92, nays 2, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: McGeehan and Zukoff.

Absent and Not Voting: Brown, Hornbuckle, Linville, Lovejoy, Skaff and Walker.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a second time and ordered to third reading.

The bill was then read a third time and put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 621**), and there were—yeas 92, nays 2, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Longanacre and McGeehan.

Absent and Not Voting: Brown, Hornbuckle, Linville, Lovejoy, Skaff and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 733) passed.

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

On this question, the yeas and nays were taken (**Roll No. 622**), and there were—yeas 94, nays 2, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Longanacre and McGeehan.

Absent and Not Voting: Linville, Lovejoy, Skaff and Walker.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 733) takes effect from its passage.

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

A message from the Senate, by

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

**S. C. R. 61** - “Requesting the Joint Committee on Government and Finance study how public libraries are funded and supported.”

Whereas, Public libraries have a long and varied history serving the people of West Virginia; and

Whereas, Public libraries serve as anchor institutions for information, education, and the gathering of people for recreation and work; and

Whereas, Public libraries assist the community with needs such as literacy programs, reading materials, internet access, personal computers, and other technology; and

Whereas, West Virginia’s 55 counties are served by 97 library systems charged with promoting a love of reading, access to information, and enhancing their quality of life through community-driven programs. Local public libraries provide services through 171 public library locations located in all 55 counties; and

Whereas, Support to public libraries has traditionally been focused on core library functions such as books and children’s programs, the demands on facilities and operating budgets have increased; and state funding for public libraries has not increased in more than 10 years; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance study how public libraries are funded and supported; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2023, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

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

**S. C. R. 63** - “Requesting the Committee on Government Organization study the potential economic benefits and regulatory challenges associated with certain outdoor recreational opportunities on state-owned land, specifically including available federal funding, wildlife viewing stamps, dispersed camping, and vehicular access.”

Whereas, Outdoor recreational opportunities have the potential to convey significant economic benefits to the State of West Virginia as well as provide physical and mental health benefits to both West Virginia residents and tourists visiting West Virginia; and

Whereas, Ensuring access to federal funding, such as federal funds available directly or through reimbursement under the Pittman-Robertson Act of 1937, and compliance with federal anti-discrimination laws, such as the Americans with Disabilities Act, raise issues that are complex and require further study; and

Whereas, Potentially allowing wildlife viewing stamps on state-owned property could have significant economic and recreational benefits, but also raises compliance issues surrounding the seasonal timing of access to property, such as whether it should

be limited to a certain number of months a year for the general public; and whether physically impaired individuals may have year-round access for a Class Q/QQ hunting program; and

Whereas, Potentially allowing dispersed camping on state-owned property could have significant economic and recreational benefits to both West Virginia residents and tourists visiting West Virginia; and

Whereas, Ensuring access to the state-owned land on which wildlife viewing and dispersed camping would occur could be enhanced by identifying public roads that would provide access to those areas by surface type and further identifying the current feasibility of vehicular traffic on those roads; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Committee on Government Organization is hereby requested to study the potential economic benefits and regulatory challenges associated with certain outdoor recreational opportunities on state-owned land; and, be it

*Further Resolved*, That the Committee on Government Organization report to the regular session of the Legislature, 2023, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

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

**S. C. R. 64** - "Requesting the Joint Committee on Government and Finance study the effectiveness of Local School Improvement

Councils, including, but not limited to, the degree of implementation in the schools of the state, meeting frequency and regularity, and general operations.”

Whereas, Local School Improvement Councils were established in 1990 through the Legislature’s adoption of Senate Bill 1 during the third extraordinary session; and

Whereas, Local School Improvement Councils “...facilitate and encourage the involvement of the school community in the operation of the local schools to improve educational quality...(by establishing) processes at each school which provide opportunities for involvement of the school community in the operation of the local schools and to support local initiatives to improve school performance” (W. Va. Code §18-5A-1 *et seq.*); and

Whereas, Local School Improvement Councils are comprised of various school constituent groups, including the school principal who serves as an ex officio member of the council, and is entitled to vote, and who arranges for the election of members to the Local School Improvement Council, and convenes the Council’s organizational meeting (W. Va. Code §18-5A-2); and

Whereas, The Local School Improvement Councils’ membership includes educators and service personnel, with varied memberships for “vocational-technical schools” and schools of higher grade designations (W. Va. Code §18-5A-2); and

Whereas, Parents and other community members also comprise Local School Improvement Council membership, including at-large members appointed by the school principal (W. Va. Code §18-5A-2); and

Whereas, The Local School Improvement Council is required to have “at least” one meeting to “engage parents, students, school employees, business partners and other interested parties in a positive and interactive dialogue regarding the school’s academic performance and standing... (which includes opportunities) for the parents, students, school employees, business partners and other interested parties to make specific suggestions on how to address

issues which are seen to affect the school's academic performance which may include, but not limited to, parent and community involvement, the learning environment, student engagement, attendance, supports for at-risk students, curricular offerings, resources and the capacity for school improvement..." (W. Va. Code §18-5A-2); and

Whereas, The Local School Improvement Council of "each school deemed to be low performing...shall meet at least annually with the county board...to address the dialogue at its meeting or meetings to give the parents, students, school employees, business partners and other interested parties an opportunity to make specific suggestions on how to address issues which are seen to affect the school's academic performance and any other matters as may be requested by the county board (in the meeting agenda) provided to the council and may further provide any other information, comments or suggestions the local school improvement council wishes to bring to the county board's attention..." (W. Va. Code §18-5A-2); and

Whereas, Local School Improvement Council may provide alternatives to operations of a school, request waivers of rules, policies, interpretations, and statutes to implement these waivers (W. Va. Code §18-5A-3 and 3a); and

Whereas, County boards establish direct links between the county board and Local School Improvement Councils regarding the broad guidelines for oversight procedures, standards of accountability, and planning for future needs; in part, through annual meetings with the councils of each school deemed to be low performing (W. Va. Code §18-5-14); and

Whereas, County boards may meet with and request information from representatives of any of its Local School Improvement Councils at "such time and in such manner determined by the county board" (W. Va. Code §18-5-14), although Local School Improvement Councils may not "...restrict the ability of the county board of education in its efforts to effect county-wide school improvements (W. Va. Code §18-5A-1); and

Whereas, The degree to which Local School Improvement Councils function, understand their roles, and understand the abilities and powers provided them to effect change and innovation at the school and county level may not be well understood by the councils and local and state public education policy-makers at a time parents seek greater involvement in schools; and

Whereas, Well-functioning Local School Improvement Councils will enhance the entirety of the West Virginia public school system; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance study the effectiveness of Local School Improvement Councils, including, but not limited to, the degree of implementation in the schools of the state, meeting frequency and regularity, and general operations; and, be it

*Further Resolved,* That the study ascertain if Local School Improvement Councils are properly structured to ensure greater community involvement and engagement in schools, to inform county boards and state public education policy-makers, including the Legislature, regarding meaningful public education innovation which advances student achievement in their school communities, including technical assistance and resources the councils may expect from local and state educational entities to effectuate waivers of statutes, policies, and pursuit of innovation without undue policy imprint or influence of these entities which modify or diminish the councils' abilities to accomplish statutory objectives, missions, and goals; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2023, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report, and to draft necessary legislation be paid



from legislative appropriations to the Joint Committee on Government and Finance.”

A message from the Senate, by

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

**S. C. R. 65** - “Requesting the Joint Committee on Government and Finance study the West Virginia Consumer Credit and Protection Act.”

Whereas, “The purpose of the [West Virginia Consumer Protection and Credit Act] is to protect consumers from unfair, illegal, and deceptive acts or practices by providing an avenue of relief for consumers who would otherwise have difficulty proving their case under a more traditional cause of action.” *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, at 777, 461 S.E.2d 516, at 523 (1995); and

Whereas, The West Virginia Consumer Protection and Credit Act “represents a comprehensive attempt on the part of the Legislature to extend protection to the consumers and persons who obtain credit in this State and who obviously constitute the vast majority of our adult citizens.” *Harless v. First National Bank in Fairmont, et al.*, 162 W. Va. 116, at 125, 246 S.E.2d 270, at 275 (1978); and

Whereas, Considering the recitals above regarding the West Virginia Consumer Protection and Credit Act, §46A-1-101 *et seq.*; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance through the Joint Committee on the Judiciary is hereby requested to study the West Virginia Consumer Credit and Protection Act; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2023,

on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to concur in the amendment of the House of Delegates and requested the House to recede from its amendment to

**Com. Sub. for S. B. 334**, Authorizing miscellaneous agencies and boards to promulgate rules.

On motion of Delegate Summers, the House of Delegates refused to recede from its amendment and requested the Senate to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Foster, Kimes and Young.

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

### **Resolutions Introduced**

Delegates Riley, Statler, Rohrbach and Ellington offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 109** - “Requesting the Joint Committee on Education and the Joint Committee on Health to study the cause and possible solutions to the issues surrounding the supply of current and

demand for future emergency service personnel, including emergency medical technicians and paramedics in West Virginia.”

Whereas, The Legislature recognizes that there is a current workforce shortage of emergency medical technicians and paramedics in West Virginia during the COVID-19 pandemic; and

Whereas, The best way to plan initiatives to meet future workforce needs is to determine the actual state of the workforce through a comprehensive study of current supply and future demand of emergency service personnel; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Education and the Joint Committee on Health study the cause and possible solutions to the issues surrounding the supply of current and demand for future emergency service personnel, including emergency medical technicians and paramedics, in West Virginia; and, be it

*Further Resolved*, That this study include requesting the West Virginia Higher Education Policy Commission, the West Virginia Community and Technical College System, the West Virginia Department of Education, and the West Virginia Department of Health and Human Resources’ Division of Emergency Services to study the current workforce supply, future demand, current in-state opportunities for training, current enrollees, anticipated graduates, and barriers to expansion of education programs, as well as industry conditions for employment, including cost and availability of initial and ongoing training, salaries, and other barriers to workforce adequacy in West Virginia, and recommend how workforce demand can be met; and, be it

*Further Resolved*, That the West Virginia Higher Education Policy Commission/Community and Technical College System compile the agencies’ findings and provide the committees with their findings and possible solutions to increase the number of emergency service personnel, including emergency medical technicians and paramedics; and, be it

*Further Resolved*, That the Joint Committee on Education, in consultation with the Joint Committee on Health report to the regular session of the Legislature, 2023, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

*Further Resolved*, That the Clerk of the House forward a copy of this resolution to the West Virginia Higher Education Policy Commission, the West Virginia Department of Education, and the West Virginia Department of Health and Human Resources' Division of Emergency Services.

Delegates Dean and Evans offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 110** - "Requesting the Joint Committee on Government and Finance to study solutions for excess litter and waste in coalfield communities and counties around the State of West Virginia."

Whereas, Access to solid waste services in rural areas is a challenge for residents; and

Whereas, The lack of disposal services in coalfield communities and rural areas has presented a significant challenge to public health, safety, and economic revitalization and has hindered potential for new devolvement and future growth; and

Whereas, Excess waste and litter can pollute waterways, including streams and groundwater, causing unsafe water conditions for fish and wildlife, hurting water-based tourism and making water undrinkable for local residents; and

Whereas, Litter deteriorates the natural scenic beauty of the state's coalfield communities; and

Whereas, Litter and excess waste on trails and in parks can become a deterrent for potential tourism opportunities as it diminishes the natural beauty that many of our state's rural areas rely on for tourism; and

Whereas, The prevalence of litter along our roadways and in our cities and towns can be a hinderance for local businesses and organizations; and

Whereas, Some rural municipalities lack efficient waste removal equipment such as proper trucks that keep the waste contained during transport; and

Whereas, Any potential solutions should examine how ensure that rural communities have access and the means to use the correct waste removal equipment; and

Whereas, A study should also examine alternatives to solve excess litter and waste in our communities, including installation of public drop off areas, support for adopt-a-highway programs, grants to local municipalities and counties to encourage and support clean-up initiatives, programs to encourage community recycling, use of day report and work release programs for litter clean-up, and other ways to encourage litter removal and prevention; therefore, be it

*Resolved by the Legislature of West Virginia:*

Therefore, the Joint Committee on Government and Finance shall study solutions for excess litter and waste in rural areas in the State of West Virginia; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance is requested to report to the regular session of the Legislature, 2023, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations.

Delegates Dean and Evans offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 111** - “Requesting the Joint Committee on Government and Finance study barriers to locating utility-scale solar power generating facilities on reclaimed mine and other brownfields sites.”

*Be it Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance study barriers to locating utility-scale solar power generating facilities on reclaimed mine and other brownfields sites in West Virginia; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance study the advantages and disadvantages of using reclaimed mine and brownfields sites as utility-scale solar sites; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance study whether future mine reclamation projects may be modified from current practice in a way to facilitate the development of utility-scale solar projects; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance study the supply chain needed for utility-scale solar power generating facilities in the region to better understand what employment and manufacturing opportunities might exist; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the Regular Session of the Legislature, 2023, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Delegates Dean and Evans offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 112** - “Urging West Virginia’s Congressional Delegation to pass a law or otherwise direct the United States Army Corps of Engineers to transfer land surrounding the listed lakes to the State of West Virginia for purposes of recreational, residential, and commercial development.”

Whereas, The lakes are: Beech Fork Lake, Bluestone Lake, East Lynn Lake, R.D. Bailey Lake, and Summersville Lake; and

Whereas, All of these lakes were constructed by the United States Army Corps of Engineers for their effort towards important flood control measures in West Virginia and in addition the lakes provide great recreational opportunities; and

Whereas, All of these lakes are located in the Southern Coalfield region of the state, which has seen dramatic economic decline in recent years; and

Whereas, Although the lakes themselves have provided great recreational activities, the property surrounding them, owned by the United States Army Corps of Engineers, has been underutilized; and

Whereas, Recreational, residential, and commercial development by the state in the areas surrounding these lakes can occur without hindering the lake and the flood control purpose the lakes serve; and

Whereas, Property surrounding the lakes not used for flood control or maintenance of the lake presents great economic development opportunities which could greatly benefit the surrounding towns and introduce new economic possibilities to the areas; and

Whereas, Transferring the unused property surrounding the lakes to the state would allow for the state to develop roads and other utilities in the areas surrounding the lakes; and

Whereas, Land use and management is of local concern and in addition transferring the land to the state can allow for new

economic developments to be balanced with the nature and beauty of the areas; and

Whereas, Our state's representatives from the United States House and United States Senate should come together and assist the state with this as it would have a significant positive impact on West Virginia; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the West Virginia Legislature urges the Congressional Delegation to pass a law or otherwise direct the United States Army Corps of Engineers to transfer land surrounding the listed lakes to the state for purposes of recreational and commercial development; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a copy of this resolution to the members of West Virginia's Congressional Delegation.

And,

Delegates Ellington, Statler, G. Ward, Kimble, Mazzocchi, Horst, Bridges, Wamsley, Jennings, Phillips and Toney offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 113** - "Requesting the Joint Committee on Government and Finance study how public libraries are funded and supported."

Whereas, Public libraries have a long and varied history serving the people of West Virginia; and

Whereas, Public libraries serve as anchor institutions for information, education, and the gathering of people for recreation and work; and

Whereas, Public libraries assist the community with needs such as reading materials, internet access, personal computers and other technology, literacy programs; and



Whereas, West Virginia's 55 counties are served by 97 library systems charged with promoting a love of reading, access to information and enhancing their quality of life through community driven programs local public libraries provide services through 171 public library locations located in all 55 counties; and

Whereas, Support to public libraries has traditionally been focused on core library functions such as books and children's programs, the demands on facilities and operating budgets have increased; and state funding for public libraries has not increased in more than 10 years; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance study how public libraries are funded and supported; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the Regular Session of the Legislature, 2023, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

### **Special Calendar**

#### **Unfinished Business**

The following resolutions, coming up in regular order as unfinished business, were, in the absence of objection, considered en masse, and adopted:

**S. C. R. 4**, US Army SP4 Warner Ray Osborne Memorial Bridge,

**S. C. R. 10**, US Air Force TSGT Franklin A. Bradford Bridge,

**S. C. R. 14**, US Army SSGT Elson M Kuhn Memorial Bridge,

**S. C. R. 19**, US Army PVT Thomas D. Beckett, Sr., Memorial Bridge,

**S. C. R. 22**, US Army PFC Clifford O. Eckard Memorial Bridge,

**S. C. R. 26**, US Army TEC5 William “Bill” Thurman King Memorial Bridge,

**S. C. R. 36**, USMC CPL Harry Edward Dean, Jr., Memorial Bridge,

And,

**S. C. R. 48**, US Army PFC Ronald Lee Berry Memorial Bridge.

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

**S. C. R. 49**, Establishing Honor Guard in each National Guard unit; coming up in regular order, as unfinished business, was reported by the Clerk, and adopted.

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

**S. C. R. 55**, Respectfully urging current presidential administration to open federal lease sales onshore and offshore; coming up in regular order, as unfinished business, was reported by the Clerk.

On the question of the adoption of the resolution, the yeas and nays were demanded, which demand was sustained.

Having been ordered, the yeas and nays were taken (**Roll No. 623**), and there were—yeas 81, nays 12, absent and not voting 7, with the nays and the absent and not voting being as follows:

Nays: Barach, Diserio, Doyle, Fleischauer, Griffith, Hansen, Hornbuckle, Pushkin, Rowe, Thompson, Williams and Young.

Absent and Not Voting: Boggs, Fluharty, Garcia, Lovejoy, Skaff, Walker and Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the resolution (S. C. R. 55) adopted.

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

**H. C. R. 101**, Urging Congress to pass “Share the Savings” legislation unit; coming up in regular order, as unfinished business, was reported by the Clerk, and adopted.

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

**H. R. 7**, Urging the United States Congress to increase sustainable forest harvesting on public lands in the state of West Virginia and more specifically, the Monongahela National Forest; coming up in regular order, as unfinished business, was reported by the Clerk, and adopted.

**H. R. 19**, A resolution urging Congress and the President to pass federal legislation to speed up the environmental permitting process on new wells and mines; coming up in regular order, as unfinished business, was reported by the Clerk, and adopted.

In the absence of objection, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### **Committee Reports**

Delegate Summers, Vice-Chair of the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

**H. C. R. 68**, Requesting that a formal feasibility study be conducted on the viability of establishing an accredited school of veterinary medicine in West Virginia,

**H. C. R. 104**, Requesting the Joint Committee on Government and Finance study the fiscal feasibility of eliminating the motor fuel excise tax,

**H. C. R. 105**, Requesting the Joint Committee on Government and Finance study economic policy strategies and incentives for drawing into West Virginia employers employing 50 persons or less located in high tax, high regulation, anti-competitive locations out of state,

**H. C. R. 106**, Requesting the Joint Committee on Government and Finance study economic policy strategies and incentives for building Intrastate pipelines,

**H. C. R. 107**, Requesting the Joint Committee on Government and Finance study ways that allow the West Virginia Economic Development Authority (“EDA”) to target companies and have them move to West Virginia without having to go through the Legislative process,

**H. C. R. 108**, Requesting the Joint Committee on Government and Finance study the possibility of combining certain programs related to the West Virginia Department of Health and Human Resources (“DHHR”), Workforce West Virginia, and the West Virginia Community and Technical College System,

**S. C. R. 12**, Raymond Jarrell, Jr., Memorial Road,

**Com. Sub. for S. C. R. 16**, William Gregory “Greg” White, P.E., Memorial Bridge,

**Com. Sub. for S. C. R. 18**, US Army SSGT Fred E. Duty Memorial Highway,

**S. C. R. 20**, US Air Force LT COL Robert J. Hill Memorial Road,

**Com. Sub. for S. C. R. 24**, USMC CPL Roger Lee Boothe Memorial Road,

**S. C. R. 25**, Firefighter Marvin Layton Hughes Memorial Bridge,

**Com. Sub. for S. C. R. 30**, McClintic Family Veterans Memorial Bridge,

**S. C. R. 32**, Curtis “Pap” and Millie “Mammie” Asbury Memorial Bridge,

**Com. Sub. for S. C. R. 33**, US Army SGT Lewis M. “Mike” Totten Memorial Bridge,

**Com. Sub. for S. C. R. 39**, Walker Brothers’ Veteran Memorial Bridge,

**Com. Sub. for S. C. R. 40**, Frye Brothers’ Veterans Memorial Bridge,

**S. C. R. 41**, Henry Preston Hickman Memorial Bridge,

**Com. Sub. for S. C. R. 42**, USMC SSGT Herbert “Herbie” D. Barnes Memorial Bridge,

**Com. Sub. for S. C. R. 50**, US Army T/5 John William (J.W.) Cruse Jr. Memorial Bridge,

And,

**S. C. R. 51**, Deputy Kenneth “Kenny” Ward Love, Sheriff Elvin Eugene “Pete” Wedge, and Jailer Ernest Ray “Ernie” Hesson Memorial Bridge,

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

At the request of Delegate Summers, and by unanimous consent, the resolutions on the report were taken up for immediate consideration.

H. C. R. 68, H. C. R. 104, H. C. R. 105, H. C. R. 106, H. C. R. 107 and H. C. R. 108 were each reported by the Clerk, and adopted.

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

In the absence of objection, S. C. R. 12, S. C. R. 16, S. C. R. 18, S. C. R. 20, S. C. R. 24, S. C. R. 25, S. C. R. 30, S. C. R. 32, S. C. R. 33, S. C. R. 39, S. C. R. 40, S. C. R. 41, S. C. R. 42, S. C. R. 50 and S. C. R. 51 were considered en masse, and adopted.

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

### **Conference Committee Report Availability**

At 2:23 p.m., the Clerk announced that the report of the Committee of Conference on **H. B. 4097**, To prohibit nonpublic funding sources for election administration and related expenses without prior written approval by the State Election Commission, would be available in the Clerk's Office.

### **Special Calendar**

#### **Third Reading**

**Com. Sub. for S. B. 231**, Relating generally to broadband connectivity; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

At the request of Delegate Summers, and by unanimous consent, the bill was placed at the foot of all bills.

**Com. Sub. for S. B. 441**, Providing confidentiality of video and other records of correctional juvenile facilities; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 624**), and there were—yeas 90, nays none, absent and not voting 10, with the absent and not voting being as follows:

Absent and Not Voting: Foster, Graves, Griffith, Longanacre, Lovejoy, Martin, Skaff, Walker, Westfall and Zukoff.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 441) passed.

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

**Com. Sub. for S. B. 441** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15A-4-8a, relating to the confidentiality of video, incident reports, or investigation reports of a correctional or juvenile facility; providing that the commissioner’s agents, representatives, or other designees may view any video, incident report, or investigation report of a correctional or juvenile facility; permitting the disclosure of video, incident reports, or investigation reports to law enforcement under certain conditions; requiring the law enforcement agency to treat the records as confidential pursuant to §49-5-101(a); permitting the disclosure of such items in a civil or administrative proceeding upon and appropriate order; providing that release of records from a juvenile facility related to an employee grievance shall be in accordance with §49-5-101; permitting the viewing of facility video to any licensed state attorney investigating a potential claim against the division; preventing the disclosure to any licensed state attorney unless a protective order is entered; and extending the confidentiality provisions of this section to any person receiving copies of the video, incident report, or investigation report.”

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

**Com. Sub. for S. B. 468**, Creating Unborn Child with Down Syndrome Protection and Education Act; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

An amendment was recommended by the Committee on the Judiciary, on page 1, by striking everything after the clause and inserting in lieu thereof the following:

**“ARTICLE 2Q. UNBORN CHILD WITH A DISABILITY  
PROTECTION AND EDUCATION ACT.**

**§16-2Q-1. Abortion may not be performed because of a  
disability, except in a medical emergency.**

(a) As used in this article:

‘Abortion’ means the same as that term is defined in §16-2F-2  
of this code.

‘Attempt to perform or induce an abortion’ means the same as  
that term is defined in §16-2M-2 of this code.

‘Because of a disability’ means on account of the presence or  
presumed presence of a disability or diagnosis in a fetus including,  
but not limited to, chromosomal disorders or morphological  
malformations occurring as the result of atypical gene expressions.

‘Commissioner’ means the Commissioner of the Bureau for  
Public Health.

‘Licensed medical professional’ means a person licensed under  
Chapter 30 of this code practicing within his or her scope of  
practice.

‘Medical emergency’ means the same as that term is defined in  
§16-2I-1 of this code.

‘Nonmedically viable fetus’ means the same as that term is  
defined in §16-2M-2 of this code.

‘Reasonable medical judgment’ means the same as that term is  
defined in §16-2M-2 of this code.

(b) Except in a medical emergency or a nonmedically viable  
fetus, a licensed medical professional may not perform or attempt  
to perform or induce an abortion, unless the patient acknowledges  
that the abortion is not being sought because of a disability. The  
licensed medical professional shall document these facts in the  
patient’s chart and report such with the commissioner.



(c) Except in a medical emergency or a nonmedically viable fetus, a licensed medical professional may not intentionally perform or attempt to perform or induce an abortion of a fetus, if the abortion is being sought because of a disability.

(d) (1) If a licensed medical professional performs or induces an abortion on a fetus, the licensed medical professional shall, within 15 days of the procedure, cause to be filed with the commissioner, on a form supplied by the commissioner, a report containing the following information:

(A) Date the abortion was performed;

(B) Specific method of abortion used;

(C) A statement from the patient confirming that the reason for the abortion was not because of a disability;

(D) Probable health consequences of the abortion to the patient;

(E) Whether a medical emergency existed; and

(F) Whether the fetus was a nonmedically viable fetus.

(2) The licensed medical professional shall sign the form as his or her attestation under oath that the information stated is true and correct to the best of his or her knowledge.

(3) Reports required and submitted under this section may not contain the name of the patient upon whom the abortion was performed or any other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who obtained or sought to obtain an abortion.

(g) A licensed medical professional that administers, or causes to be administered, a test for a disability or diagnosis to a fetus shall provide the patient with educational information made available by the bureau as provided in this section, within a reasonable time, if the test result confirms the presence of a disability.

(h) The Bureau for Public Health shall make the following available through the bureau's publicly accessible internet website:

(1) Up-to-date, evidence-based information about any in-utero disability or diagnosis that has been peer reviewed by medical experts and any national disability rights organizations. The information provided shall include the following:

(A) Physical, developmental, educational, and psychosocial outcomes;

(B) Life expectancy;

(C) Clinical course;

(D) Intellectual and functional development;

(E) Treatment options; and

(F) Any other information the bureau deems necessary;

(2) Contact information regarding first call programs and support services, including the following:

(A) Information hotlines specific to any in-utero fetal disabilities or conditions;

(B) Relevant resource centers or clearinghouses;

(C) Information about adoption specific to disabilities;

(D) National and local disability rights organizations; and

(E) Education and support programs.

(i) The information provided in accordance with this section shall conform to the applicable standard or standards provided in the Enhanced National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care as adopted by the United States Department of Health and Human Services and published in the Federal Register on September 24, 2013.

(j) A licensed medical professional who intentionally or recklessly performs or induces an abortion in violation of this section is considered to have acted outside the scope of practice

permitted by law or otherwise in breach of the standard of care owed to a patient, and is subject to discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice.

(k) A person, not subject to subsection (f) of this section, who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have engaged in the unauthorized practice of medicine in violation of §30-3-13 of this code, and upon conviction, subject to the penalties contained in that section.

(l) A penalty may not be assessed against any patient upon whom an abortion is performed or induced or attempted to be performed or induced.”

Delegate Hansen moved to amend the amendment, on page 2, section 1, line 18, following the words “being sought” by inserting the word “solely”;

And,

On page 2, section 1, line 23, following the words “being sought” by inserting the word “solely”;

And,

On page 2, section 1, line 30 following the words “was not” by inserting the word “solely”.

Delegate Keaton requested to be excused from voting under the provisions of House Rule 49.

The Speaker ruled that the Delegate was a member of a class of persons possibly to be affected and directed the Member to vote on the amendment and the passage of the bill.

The question before the House being the adoption of the amendment to the amendment, the same was put and did not prevail.

Delegates Zukoff and Fleischauer moved to amend the amendment on page 2, section 1, line 21 of the section, following the words “Except in a medical emergency” by inserting the following: “or rape or incest”.

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

The yeas and nays having been ordered, they were taken (**Roll No. 625**), and there were—yeas 23, nays 74, absent and not voting 3, with the yeas and the absent and not voting being as follows:

Yeas: Barach, Capito, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Miller, Pethtel, Pushkin, Reed, Rowe, Skaff, Smith, Storch, Thompson, Williams, Young and Zukoff.

Absent and Not Voting: Brown, Lovejoy and Walker.

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

Delegate Young moved to amend the amendment on page 1, section 1, line 6, by striking out the words “or diagnosis”.

The question before the House being the adoption of the amendment to the amendment, the same was put and did not prevail.

The amendment recommended by the Committee on the Judiciary was then adopted.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 626**), and there were—yeas 81, nays 17, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Barach, Diserio, Doyle, Ellington, Fleischauer, Fluharty, Garcia, Hansen, Hornbuckle, Pethtel, Pushkin, Reed, Rowe, Smith, Thompson, Williams and Zukoff.

Absent and Not Voting: Walker and Young.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 468) passed.

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

**Com. Sub. for S. B. 468** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-2Q-1, relating to restricting abortion; defining terms; requiring licensed medical professional to provide certain information; requiring Department of Health and Human Resources to make certain information available on website; prohibiting abortion because of a disability; providing exceptions; requiring commissioner to create forms; providing for professional sanctions; and providing criminal penalties.”

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

### **Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, without amendment, and had changed the effective date, to take effect from passage, of

**H. B. 4566**, Creating the Economic Enhancement Grant Fund.

Delegate Summers moved that the bill be made effective from passage.

On this question, the yeas and nays were taken (**Roll No. 627**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Diserio, Householder, Riley, Thompson, Walker and Young.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4566) takes effect from its passage.

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

At 3:56 p.m., on motion of Delegate Summers, the House of Delegates recessed until 4:25 p.m.

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### **Afternoon Session**

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The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

### **Special Calendar**

#### **Third Reading**

- continued -

**Com. Sub. for S. B. 533**, Relating to funding for health sciences and medical schools in state; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

An amendment was recommended by the Committee on Finance.

Whereupon,

Delegate Householder asked and obtained unanimous consent that the committee amendment and title amendment be withdrawn.

On motion of Delegate Householder, the bill was amended on page two, following the article heading, by striking out §33-3-14e in its entirety and inserting in lieu thereof the following:

**“§33-3-14e. Use of insurance premium tax proceeds to support health sciences and medical schools.**

(a) The Legislature recognizes that the schools of medicine, dentistry, nursing, and related programs of the Health Sciences Center of West Virginia University School of Medicine; the Medical School at Marshall University; and the West Virginia School of Osteopathic Medicine, each provide critical, medical, and related health educational and service opportunities for the significant benefit of the residents of the State of West Virginia. The Legislature finds and declares that it should dedicate a portion of the insurance tax proceeds credited to the general fund as contemplated by §33-3-14(c) of this code and §33-3-14a of this code to provide additional dedicated funds to the base of appropriation support for these schools.

(b) Effective July 1, 2022, to support these schools, and in addition to the base appropriations to these schools, the Governor shall include appropriations in each annual budget bill submitted to the Legislature from the amounts sent to the credit of the General Revenue Fund pursuant to §33-3-14(c) of this code and §33-3-14a of this code, as follows:

(1) To the schools of medicine, dentistry, nursing, and related programs of the Health Sciences Center of West Virginia University, \$14 million;

(2) To the School of Medicine at Marshall University, \$5,500,000; and

(3) To the West Virginia School of Osteopathic Medicine, \$3,900,000.

(c) These funds shall be dedicated quarterly from the collection of the insurance premium tax in the months of July, October, February, and April of each fiscal year. Each school as set forth in subsection (b) of this section shall receive their dedicated funds at the rate of one quarter of the full amount in each of those months.

(d) Nothing in this section shall be construed to limit or reduce the amount of total appropriations to schools of medicine, dentistry, nursing, and related programs of the Health Sciences Center of West Virginia University, the Medical School at

Marshall University, and the West Virginia School of Osteopathic Medicine to the amounts contemplated by this section.”

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 628**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Hamrick, Hornbuckle, Longanacre, Summers and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 533) passed.

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

**Com. Sub. for S. B. 533** – “A Bill amend and reenact §11-19-2 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-19-13; and to amend said code by adding thereto a new section, designated §33-3-14e, all relating to funding for health sciences and medical schools in this state; eliminating the direction of proceeds of the soda tax into special medical school fund; providing for the eventual elimination of the tax; providing for a sunset date; directing a portion of insurance premium tax to health sciences and medical schools in this state; setting out findings; providing for specific amounts to be directed to Health Sciences Center at West Virginia University, Marshall University School of Medicine, and West Virginia school of Osteopathic Medicine; providing for effective dates, providing for quarterly distribution for dedicated fund; and providing that the additional dedicated amounts directed from premium tax in addition to the base appropriations to these schools shall not limit or reduce total appropriation to the health sciences and medical schools.”



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

**Com. Sub. for S. B. 536**, Relating generally to controlled substance criminal offenses; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

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

**“CHAPTER 60A. UNIFORM CONTROLLED  
SUBSTANCES ACT.**

**ARTICLE 4. OFFENSES AND PENALTIES.**

**§60A-4-401. Prohibited acts; penalties**

(a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance.

Any person who violates this subsection with respect to:

(i) A controlled substance classified in Schedule I or II, which is a narcotic drug or which is methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than 15 years, or fined not more than \$25,000, or both fined and imprisoned: *Provided*, That any person who violates this section knowing that the controlled substance classified in Schedule II is fentanyl, either alone or in combination with any other substance shall be fined not more than \$50,000, or be imprisoned in a state correctional facility for not less than 3 nor more than 15 years, or both fined and imprisoned;

(ii) Any other controlled substance classified in Schedule I, II, or III is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year

nor more than five years, or fined not more than \$15,000, or both fined and imprisoned;

(iii) A substance classified in Schedule IV is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than \$10,000, or both fined and imprisoned;

(iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in said article apply.

(b) Except as authorized by this act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

Any person who violates this subsection with respect to:

(i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, or methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than 15 years, or fined not more than \$25,000, or both fined and imprisoned;

(ii) Any other counterfeit substance classified in Schedule I, II, or III is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not more than \$15,000, or both fined and imprisoned;

(iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than \$10,000, or both fined and imprisoned;

(iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in said article apply.

(c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this act. Any person who violates this subsection is guilty of a misdemeanor, and disposition may be made under §60A-4-407 of this code, subject to the limitations specified in said section, or upon conviction thereof, the person may be confined in jail not less than 90 days nor more than six months, or fined not more than \$1,000, or both fined and confined: *Provided*, That notwithstanding any other provision of this act to the contrary, any first offense for possession of synthetic cannabinoids as defined by §60A-1-101(d)(32) of this code; 3,4-methylenedioxypyrovalerone (MPVD) and 3,4-methylenedioxypyrovalerone and/or mephedrone as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall be disposed of under §60A-4-407 of this code.

(d) It is unlawful for any person knowingly or intentionally:

(1) To create, distribute, deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or

(2) To create, possess, sell, or otherwise transfer any equipment with the intent that the equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance, or the container or label of a counterfeit substance or an imitation controlled substance.

(3) Any person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail

for not less than six months nor more than one year, or fined not more than \$5,000, or both fined and confined. Any person 18 years old or more who violates subdivision (1) of this subsection and distributes or delivers an imitation controlled substance to a minor child who is at least three years younger than that person is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than \$10,000, or both fined and imprisoned.

(4) The provisions of subdivision (1) of this subsection shall not apply to a practitioner who administers or dispenses a placebo.

(e) It is unlawful for any person knowingly or intentionally:

(1) To adulterate another controlled substance using fentanyl as an adulterant;

(2) To create a counterfeit substance or imitation controlled substance using fentanyl; or

(3) To cause the adulteration or counterfeiting or imitation of another controlled substance using fentanyl.

(4) Any person who violates this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than 15 years, or fined not more than \$50,000, or both fined and imprisoned.

(5) For purposes of this section:

(i) A controlled substance has been adulterated if fentanyl has been mixed or packed with it; and

(ii) Counterfeit substances and imitation controlled substances are further defined in §60A-1-101 of this code.

#### **§60A-4-409. Prohibited acts – Transportation of controlled substances into state; penalties**

(a) Except as otherwise authorized by the provisions of this code, it is unlawful for any person to transport or cause to be

transported into this state a controlled substance with the intent to deliver the same or with the intent to manufacture a controlled substance.

(b) Any person who violates this section with respect to:

(1) A controlled substance classified in Schedule I or II, which is a narcotic drug, shall be guilty of a felony and, upon conviction thereof, may be imprisoned in the state correctional facility for not less than one year nor more than 15 years, or fined not more than \$25,000, or both: Provided, That any person who violates this section knowing that the controlled substance classified in Schedule II is fentanyl, either alone or in combination with any other substance shall be fined not more than \$50,000 or imprisoned in a state correctional facility for a definite term of not less than 10 nor more than 20 years, or both fined and imprisoned.

(2) Any other controlled substance classified in Schedule I, II or III shall be guilty of a felony and, upon conviction thereof, may be imprisoned in the state correctional facility for not less than one year nor more than 10 years, or fined not more than \$15,000, or both: *Provided*, That for the substance marijuana, as scheduled in subdivision (24) subsection (d), §60A-2-204 of this code, the penalty, upon conviction of a violation of this subsection, shall be that set forth in subdivision (3) of this subsection.

(3) A substance classified in Schedule IV shall be guilty of a felony and, upon conviction thereof, may be imprisoned in the state correctional facility for not less than one year nor more than five years, or fined not more than \$10,000, or both;

(4) A substance classified in Schedule V shall be guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than \$5,000, or both: *Provided*, That for offenses relating to any substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in said article apply.

(c) Notwithstanding the provisions of subsection (b) of this section, any person violating or causing a violation of subsection

(a) of this section involving one kilogram or more of heroin, five kilograms or more of cocaine or cocaine base, 100 grams or more of phencyclidine, 10 grams or more of lysergic acid diethylamide, or 50 grams or more of methamphetamine or 500 grams of a substance or material containing a measurable amount of methamphetamine, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than 30 years.

(d) Notwithstanding the provisions of subsection (b) of this section, any person violating or causing a violation of subsection (a) of this section involving 100 but fewer than 1,000 grams of heroin, not less than 500 but fewer than 5,000 grams of cocaine or cocaine base, not less than ten but fewer than 99 grams of phencyclidine, not less than one but fewer than 10 grams of lysergic acid diethylamide, or not less than five but fewer than 50 grams of methamphetamine or not less than 50 grams but fewer than 500 grams of a substance or material containing a measurable amount of methamphetamine, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than 20 years.

(e) Notwithstanding the provisions of subsection (b) of this section, any person violating or attempting to violate the provisions of subsection (a) of this section involving not less than 10 grams nor more than 100 grams of heroin, not less than 50 grams nor more than 500 grams of cocaine or cocaine base, not less than two grams nor more than 10 grams of phencyclidine, not less than 200 micrograms nor more than one gram of lysergic acid diethylamide, or not less than 499 milligrams nor more than five grams of methamphetamine or not less than 20 grams nor more than 50 grams of a substance or material containing a measurable amount of methamphetamine is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than 15 years.

(f) The offense established by this section shall be in addition to and a separate and distinct offense from any other offense set forth in this code.

**~~§60A-4-415. Unlawful manufacture, delivery, transport into state, or possession of fentanyl; aggravated transportation of fentanyl into state; penalties.~~**

~~(a) For purposes of this section,~~

~~(1) ‘Controlled substance’ shall have the same meaning as provided in subsection (c), section one hundred one, article one of this chapter.~~

~~(2) ‘Fentanyl’ refers to the substance identified in subdivision (9), subsection (c), section two hundred six, article two of this chapter and any analog or derivative thereof.~~

~~(b) Any person who violates the provisions of subsection (a), section four hundred one of this article or section four hundred nine of this article in which fentanyl is a controlled substance involved in the offense, either alone or in combination with another controlled substance, shall be guilty of a felony, and upon conviction thereof, shall be punished in accordance with the following:~~

~~(1) If the net weight of fentanyl involved in the offense is less than one gram, such person shall be imprisoned in a correctional facility not less than two nor more than ten years.~~

~~(2) If the net weight of fentanyl involved in the offense is one gram or more but less than five grams, such person shall be imprisoned in a correctional facility not less than three nor more than fifteen years.~~

~~(3) If the net weight of fentanyl involved in the offense is five grams or more, such person shall be imprisoned in a correctional facility not less than four nor more than twenty years.~~

**~~§60A-4-418. Use of a minor to commit a felony drug offense; penalties.~~**

~~Any person who knowingly and intentionally causes, aids, abets, or encourages a person under the age of 18 to distribute, dispense, manufacture, or possess with the intent to distribute a~~

controlled substance, other than marijuana, in violation or the provisions of this chapter is guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000 or imprisoned in a state correctional facility for not more than five years, or both fined and imprisoned.”

On motion of Delegate Pushkin, the Judiciary Committee amendment was amended on page 7, section 418, line 1 of the section, following the words “Any person” by inserting the following: “over the age of 21”.

Delegate Pinson moved to amend the Judiciary Committee amendment on page 7, line 3, following the words “controlled substance” by striking the following “, other than marijuana,”.

### **Speaker Pro Tempore Howell in the Chair**

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

The yeas and nays having been ordered, they were taken (**Roll No. 629**), and there were—yeas 58, nays 38, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Anderson, Barach, Barrett, Bates, Bridges, Capito, Dean, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Graves, Hansen, Hornbuckle, Horst, J. Kelly, Maynor, Miller, Nestor, Pritt, Pushkin, Queen, Reed, Reynolds, Riley, Rowe, Skaff, Smith, Steele, Storch, Thompson, Westfall, Williams, Young, Zatezalo and Zukoff.

Absent and Not Voting: Cooper, Haynes, Kessinger and Walker.

So, a majority of the members present having voted in the affirmative, the amendment to the amendment was adopted.

### **MR. SPEAKER, DELEGATE HANSHAW, IN THE CHAIR**

The Committee on the Judiciary amendment, as amended, was then adopted.



The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 630**), and there were—yeas 95, nays 2, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Hornbuckle and Pushkin.

Absent and Not Voting: Cooper, Kessinger and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 536) passed.

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

**S. B. 548**, Authorizing Workforce WV employers to obtain employment classifications and work locations; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

An amendment was recommended by the Committee on Government Organization, and adopted, on page 1, by striking everything following the enacting clause and inserting in lieu thereof the following:

#### **“ARTICLE 10. GENERAL PROVISIONS.**

##### **§21A-10-11. Reporting requirements and required information; use of information; libel and slander actions prohibited.**

(a) Each employer, including labor organizations as defined in subsection (i) of this section, shall, quarterly, submit certified reports on or before the last day of the month next following the calendar quarter, on forms to be prescribed by the commissioner. The reports shall contain:

(1) The employer's assigned unemployment compensation registration number, the employer's name, and the address at which the employer's payroll records are maintained;

(2) Each employee's Social Security account number, name, and the gross wages paid to each employee, ~~which shall include the first \$12,000 of remuneration and all amounts in excess of that amount, notwithstanding §21-1A-28(b)(1) of this code~~ including any remunerations below and above the threshold wage described by §21A-1A-28 of this code;

(3) The total gross wages paid within the quarter for employment, which includes money wages and the cash value of other remuneration, ~~and shall include the first \$12,000 of remuneration paid to each employee and all amounts in excess of that amount, notwithstanding §21-1A-28(b)(1) of this code~~ including any remunerations below and above the threshold wage described by §21A-1A-28 of this code;

(4) Each employee's job title and the county in which the majority of the employee's job duties are performed; and

~~(4)~~ (5) Other information that is reasonably connected with the administration of this chapter.

(b) Information obtained may not be published or be open to public inspection to reveal the identity of the employing unit or the individual.

(c) Notwithstanding the provisions of subsection (b) of this section, the commissioner may provide information obtained to the following governmental entities for purposes consistent with state and federal laws:

(1) The United States Department of Agriculture;

(2) The state agency responsible for enforcement of the Medicaid program under Title XIX of the Social Security Act;

(3) The United States Department of Health and Human Services or any state or federal program operating and approved

under Title I, Title II, Title X, Title XIV or Title XVI of the Social Security Act;

(4) Those agencies of state government responsible for economic and community development; early childhood, primary, secondary, postsecondary, and vocational education; the West Virginia P-20 longitudinal data system established pursuant to §18B-1D-10 of this code; and vocational rehabilitation, employment, and training, including, but not limited to, the administration of the Perkins Act and the Workforce Innovation and Opportunity Act;

(5) The Tax Division, but only for the purposes of collection and enforcement;

(6) The Division of Labor for purposes of enforcing the wage bond pursuant to the provisions of §21-5-14 of this code;

(7) The contractors licensing board for the purpose of enforcing the contractors licensing provisions pursuant to §30-42-1 *et seq.* of this code;

(8) Any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices;

(9) Any claimant for benefits or any other interested party to the extent necessary for the proper presentation or defense of a claim; and

(10) The Insurance Commissioner for purposes of its Workers Compensation regulatory duties.

(d) The agencies or organizations which receive information under subsection (c) of this section shall agree that the information shall remain confidential as not to reveal the identity of the employing unit or the individual consistent with the provisions of this chapter.

(e) The commissioner may, before furnishing any information permitted under this section, require that those who request the information shall reimburse WorkForce West Virginia for any cost associated for furnishing the information.

(f) The commissioner may refuse to provide any information requested under this section if the agency or organization making the request does not certify that it will comply with the state and federal law protecting the confidentiality of the information.

(g) A person who violates the confidentiality provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$20 nor more than \$200 or confined in a county or regional jail not longer than 90 days, or both.

(h) An action for slander or libel, either criminal or civil, may not be predicated upon information furnished by any employer or any employee to the commissioner in connection with the administration of any of the provisions of this chapter.

(i) For purposes of subsection (a) of this section, the term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. It includes any entity, also known as a hiring hall, which is used by the organization and an employer to carry out requirements described in 29 U. S. C. §158(f)(3) of an agreement between the organization and the employer.”

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 631**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Hansen, Kessinger and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 548) passed.

An amendment to the title of the bill was recommended by the Committee on Government Organization, and adopted, amending the title to read as follows:

**S. B. 548** - “A Bill to amend and reenact §21A-10-11 of the Code of West Virginia, 1931, as amended, relating to authorizing WorkForce West Virginia to obtain information regarding employment classifications and work locations from employers; clarifying that the financial information required by the reports described by §21A-10-11 include all remunerations above and below the threshold wage as described by §21A-1A-28.”

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

**Com. Sub. for S. B. 552**, Relating to tax sale process; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

An amendment was recommended by the Committee on the Judiciary, and adopted, on page 32, section 4, line 5, after the first use of the word “of” by deleting the word “three” and in lieu thereof inserting the word “two”.

On motion of Delegate Capito, the bill was amended on page 25, §11A-3-53, line 8, by inserting a new paragraph, as follows:

“If at any within 180 days following the approval of the sale by the Auditor, the sheriff, clerk of the county commission, assessor or Auditor determines that the tax lien on the subject property should be cancelled or dismissed, the Auditor shall issue a certificate of cancellation on the tax lien and shall cause the money paid on the day of the sale to be refunded.”

And,

On page 30, §11A-3-69, line 8, after the number “29” by inserting “, §11A-3-30 and §11A-3-31”.

And,

On pages 37 and 38 by striking §16-18-30 in its entirety.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 632**), and there were—yeas 96, nays 2, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Jennings and Sypolt.

Absent and Not Voting: Cooper and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 552) passed.

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

**Com. Sub. for S. B. 552** – “A Bill to repeal §11A-2-18 of the Code of West Virginia, 1931, as amended; to repeal §11A-3-5, §11A-3-5a, §11A-3-5b, §11A-3-6, §11A-3-7, §11A-3-14, §11A-3-15, §11A-3-16, §11A-3-17, §11A-3-18, §11A-3-19, §11A-3-20, §11A-3-21, §11A-3-22, §11A-3-23, §11A-3-24, §11A-3-25, §11A-3-26, §11A-3-27, §11A-3-28, §11A-3-29, §11A-3-30, and §11A-3-31 of said code; to amend and reenact §11A-1-8 of said code; to amend and reenact §11A-2-14 of said code; to amend and reenact §11A-3-1, §11A-3-2, §11A-3-4, §11A-3-8, §11A-3-9, §11A-3-10, §11A-3-11, §11A-3-12, §11A-3-13, §11A-3-32, §11A-3-39, §11A-3-42, §11A-3-44, §11A-3-45, §11A-3-46, §11A-3-48, §11A-3-50, §11A-3-52, §11A-3-53, §11A-3-54, §11A-3-55, §11A-3-56, §11A-3-66, and §11A-3-69 of said code; to amend and reenact §11A-4-3 and §11A-4-4 of said code; to amend and reenact §16-18-3 of said code; to amend and reenact §22-15A-30 of said code; to amend and reenact §31-18E-9 of said code; and to amend

and reenact §31-21-11 of said code, all relating to delinquent and dilapidated property and the process for the collection of delinquent real estate taxes and sales of tax liens and property; modifying the method by which notice is provided regarding the payment of property taxes; requiring a sheriff to accept credit cards as a form of payment for property taxes; allowing a sheriff to offer discounts on tax liability to taxpayers that pay with a credit card; modifying the deadline by which a sheriff must present delinquent lists to its county commission; modifying the deadline that a county commission certifies a delinquent list to the auditor; modifying the form of certain notice provided by the sheriff regarding delinquent taxes; repealing provisions related to the annual sheriff's sale; modifying provisions related to the annual sheriff's sale to be related to certification to the Auditor; providing that a sheriff provide a redemption receipt if property is redeemed prior to certification to the auditor; directing a portion of the redemption fee to the Courthouse Facilities Improvement Fund; modifying the policy related to the sale of tax liens; modifying the process by which a sheriff provides its second notice of delinquent real estate; modifying the timing and payment of redemption for delinquent properties prior to certification to the auditor; modifying dates for auditor to certify list of lands to be sold; providing any property not redeemed to the sheriff is to be certified to the auditor; providing that the sheriff prepare a list of all the tax liens on delinquent real estate redeemed prior to certification or certified to the auditor; providing that the sheriff account for the proceeds from redemptions prior to certification; providing a sheriff may modify its redemption and certification list within 30 days after the publication of such list; providing for the publication of such list; requiring sheriffs keep separate accounts for redemption moneys; modifying the deposit and disposition of certain funds; modifying certain fees related to redemption; identifying lands subject to sale by the deputy commissioner; relating to the obligation that the auditor certify and deliver a list of lands subject to sale by the deputy commissioner; addressing annual auctions held by the deputy commissioner and the publication of notice of public auctions held by the deputy commissioner; relating to auditor's sale of delinquent and nonentered land; relating to moving certain obligations from the deputy commissioner to the auditor; relating

to the requirements that a purchaser must satisfy before he or she can secure a deed; relating to the sale of certain delinquent lands subject to sale and certain entities right of first refusal therein; relating to the receipt to purchaser for purchase price at auditor's sale; relating to the purchaser's obligation to secure deed to delinquent property; relating to refund to purchaser for property determined to be nonexistent; relating to the notice to redeem provided to a person entitled to redeem delinquent property; relating to redemption of delinquent property; modifying fees for redemption; clarifying effect of repeal of certain code; directing portion of fees for specific purpose; providing for certain delinquent taxpayers to redeem in installment payments; modifying the procedure for and duration of right to set aside deed; modifying definition of blighted property; modifying the Reclamation of Abandoned and Dilapidated Properties Program; relating to the right of certain entities to purchase delinquent properties; modifying compensation due deputy commissioner; modifying the reclamation of abandoned and dilapidated properties program; requiring certain periodic reports; providing the department of environmental protection with the right to enter into certain statewide contracts; modifying certain entities rights to acquire tax delinquent properties; and modifying certain obligations of the West Virginia Land Stewardship Corporation land bank program."

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

### **Conference Committee Report Availability**

At 5:57 p.m., the Clerk announced that the report of the Committee of Conference on **Com. Sub. for S. B. 334**, Authorizing miscellaneous agencies and boards to promulgate rules, would be available in the Clerk's Office.

### **Special Calendar**

#### **Third Reading**

- continued -



**Com. Sub. for S. B. 568**, Relating to health insurance loss ratio information; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

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

**“ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

**§33-16-3c. Loss ratio.**

If an insurer considers a loss ratio at the time of renewal of a policy, the insurer shall, upon request of an insured, provide the loss ratio and the components of the loss ratio calculation to the insured no more than 90 days but no less than 60 days before the renewal date of the policy. For purposes of this section, ‘loss ratio’ means the total losses paid out in medical claims divided by the total earned premiums.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS, AND HEALTH SERVICE CORPORATIONS.**

**§33-24-6a. Loss ratio.**

If a corporation utilizes a group’s loss ratio as a rating factor at the time of renewal of a policy, plan, or contract, the corporation shall, upon request of an insured or subscriber, provide the loss ratio and the components of the loss ratio calculation to the insured or subscriber no more than 90 days but no less than 60 days before the renewal date of the policy, plan, or contract. For purposes of this section, ‘loss ratio’ means the total losses paid out in medical claims divided by the total earned premiums: *Provided*, That that the requirements of this section do not apply to a dental service corporation as that term is defined in this article.

**ARTICLE 25. HEALTH CARE CORPORATIONS.**

**§33-25-10a. Loss ratio.**

If a corporation considers a loss ratio at the time of renewal of a policy, plan, or contract, the corporation shall, upon request of a subscriber, provide the loss ratio and the components of the loss ratio calculation to the subscriber no more than 90 days but no less than 60 days before the renewal date of the policy, plan, or contract. For purposes of this section, ‘loss ratio’ means the total losses paid out in medical claims divided by the total earned premiums.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.****§33-25A-7b. Loss ratio.**

If a health maintenance organization considers a loss ratio at the time of renewal of a policy, plan, or contract, the health maintenance organization shall, upon request of a subscriber, provide the loss ratio and the components of the loss ratio calculation to the subscriber no more than 90 days but no less than 60 days before the renewal date of the policy, plan, or contract. For purposes of this section, ‘loss ratio’ means the total losses paid out in medical claims divided by the total earned premiums. For purposes of this section, “subscriber” does not include a subscriber or beneficiary of any policy, plan, or contract approved by the Bureau of Medical Services of the Department of Health and Human Resources and entered into by a health maintenance organization with Medicaid or the Children’s Health Insurance Program.”

On motion of Delegates Westfall and Storch, the amendment was amended, on page 1, section §33-16-3c, line 5, and on page 2, section §33-25-10a, line 5 by inserting after the word “premiums”:

Medical claims do not include dental only or vision only coverage.

And,

On page 2, section §33-25A-7b, line 6, by inserting after the word “premiums”:

“: *Provided, However, that medical claims do not include dental only or vision only coverage.*”

The Committee on the Judiciary amendment, as amended, was then adopted.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 633**), and there were—yeas 93, nays none, absent and not voting 7, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Cooper, Householder, J. Kelly, Linville, Summers and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 568) passed.

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

**Com. Sub. for S. B. 582**, Creating WV Workforce Resiliency Act; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

An amendment was recommended by the Committee on Government Organization, and adopted, on page 5, section 2, line 9, by striking, after the word “managerial” the word “or” and inserting in lieu thereof the word “and”; and,

To amend the bill on page 5, section 2, line 10, by striking after the word “and” the forward slash and the word “or”

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 634**), and there were—yeas 93, nays 2, absent and not voting 5, with the nays and the absent and not voting being as follows:

Nays: Kimes and Paynter.

Absent and Not Voting: Bridges, Cooper, Householder, Summers and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 582) passed.

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

**Com. Sub. for S. B. 588**, Relating to WV Rails to Trails Program; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

On motion of Delegate Steele, the bill was amended on page 5, section 9, line 29, by striking the word “who” and inserting the word “which” in lieu thereof.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 635**), and there were—yeas 92, nays 2, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Keaton and Young.

Absent and Not Voting: Bridges, Cooper, Fluharty, Linville, Summers and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 588) passed.

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

**Com. Sub. for S. B. 590**, Clarifying that tenancy includes persons who reside in sober living home; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

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

**“ARTICLE 6. LANDLORD AND TENANT.**

**§37-6-5a. Recovery residences.**

(a) The purpose of this section is to create one pilot program in Cabell County to study the uniqueness of recovery residences as they relate to landlord-tenant law and determine an equitable resolution when circumstances arise which bring about an unanticipated cessation of an individual’s participation in a recovery residence’s program.

(b) For the purposes of this section:

(1) ‘Recovery residence’ has the meaning ascribed in §16-59-1(4) of this code.

(2) ‘Residence agreement’ means an agreement between an individual residing in a recovery residence and the recovery residence.

(3) ‘Resident’ means a person residing in and receiving services from a recovery residence.

(c) A recovery residence in the pilot county may immediately discharge a resident without filing a petition for summary relief for wrongful occupation of residential rental property for any of the following reasons:

(1) The use, possession, or distribution of alcohol, any controlled substance, or prescription medication for which the resident does not have a valid prescription;

(2) Sexual misconduct;

(3) Any crime of violence against a person or threat of crime of violence against a person;

(4) Any conduct which jeopardizes the safety of another resident; or

(5) A violation of a written residence agreement entered into at the onset of the resident's admittance into the recovery residence.

(d) If a recovery residence in the pilot county seeks to discharge a resident for a reason not enumerated in subdivisions (1) through (5), subsection (c) of this section, the resident is entitled to the due process and protections afforded a "tenant" as that term is defined in §37-6A-1 of this code; the recovery residence shall be treated as a "landlord" as that term is defined in §37-6A-1 of this code; and the recovery residence shall be required to proceed against the resident under §55-3A-1 of this code with the filing of a petition for summary relief seeking removal of the resident for wrongful occupation of residential rental property.

(e) If a resident is discharged, evicted, or otherwise removed from a recovery residence in the pilot county prior to the expiration of the time period for which he or she has previously paid rent or any other fee for residency or services, the recovery residence shall issue a refund of the rent or fee to the discharged resident in an amount prorated, on a per diem basis, to account for the remainder of that time period.

(f) If requested by the resident, a recovery residence in the pilot county shall first apply any refund required by subsection (e) of this section to costs related to placing the resident in a higher level care facility or transferring the resident to another recovery residence: *Provided*, That if the resident does not request to be placed in a higher level care facility or does not request to be transferred to another recovery residence, within 72 hours of a resident's discharge, eviction, or removal, the recovery residence shall issue any refund due to a resident: *Provided, however*, That if the rent or fee moneys were paid by a third party on behalf of the resident, any refund required by subsection (e) of this section shall

be issued directly to the third-party payor within 72 hours of a resident's discharge, eviction, or removal.

(g) If a resident was transported by the recovery residence in the pilot county from any location outside the state of West Virginia and is discharged, evicted, or otherwise removed from the recovery residence, the recovery residence shall provide transportation to the location from which the resident was initially transported to the discharged, evicted, or otherwise removed resident, at the expense of the recovery residence.

(h) If the resident is discharged, evicted, or otherwise removed prior to the expiration of the time period for which he or she has previously paid rent or any other fee for residency or service, the recovery residence in the pilot county shall report non-identifying resident information regarding the reason for the early discharge, eviction, or removal of the resident to the West Virginia Department of Health and Human Resources, Office of Drug Control Policy.

## **ARTICLE 6A. RESIDENTIAL RENTAL SECURITY DEPOSITS.**

### **§37-6A-5. Landlord's noncompliance.**

(a) If a landlord fails to comply with any of the provisions of this article, and ~~such~~ the noncompliance is willful or not in good faith, the tenant is entitled to a judgment for:

(1) The amount of any unreturned security deposit; and

(2) Damages for annoyance or inconvenience resulting from the landlord's nonconformance equal to one and a half times the amount wrongfully withheld, unless the tenant owes rent to the landlord, in which case, the court shall order an amount equal to any amount awarded to the tenant pursuant to this subsection to be credited against any rent due to the landlord: *Provided, That if an individual is residing in a recovery residence in the pilot county established under the provisions of §37-6-5a, the recovery residence is required to comply with the provisions of this article,*

and if the recovery residence's noncompliance is willful or not in good faith, the court shall also award reasonable attorney's fees.

(b) Jurisdiction for any civil action brought pursuant to this article shall be in magistrate ~~court~~ or circuit court in the county where the residential rental premises or units are located.

(c) This section does not limit rights or remedies available to a landlord or tenant under any other law.

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

### **ARTICLE 3A. REMEDIES FOR WRONGFUL OCCUPATION OF RESIDENTIAL RENTAL PROPERTY.**

#### **§55-3A-1. Petition for summary relief for wrongful occupation of residential rental property.**

(a) A person desiring to remove a tenant, including a resident of a recovery residence in the pilot county established under the provisions of §37-6-5a who is discharged for a reason other than those enumerated in §37-6-5a(c)(1) through (5) of this code, from residential rental property may apply for ~~such~~ relief to the magistrate ~~court~~ or the circuit court of the county in which ~~such~~ the property is located, by verified petition, setting forth the following:

(1) That he or she is the owner or agent of the owner and as such has a right to recover possession of the property;

(2) A brief description of the property sufficient to identify it;

(3) That the tenant is wrongfully occupying ~~such~~ the property in that the tenant is in arrears in the payment of rent, has breached a warranty or a leasehold covenant, or has deliberately or negligently damaged the property or knowingly permitted another person to do so, and describing such arrearage, breach, or act or omission; and

(4) A prayer for possession of the property.



(b) Previous to the filing of the petition the person shall request from the court the time and place at which the petitioner shall be heard. The court shall fix a time for ~~such the~~ hearing, which time shall not be less than five nor more than 10 judicial days following ~~such the~~ request.

(c) Immediately upon being apprised of the time and place for the hearing, the petitioner shall ~~cause~~ have a notice of the ~~same to be hearing~~ served upon the tenant in accordance with the provisions of Rule 4 of the West Virginia Rules of Civil Procedure or by certified mail, return receipt requested. ~~Such~~ The notice shall inform the tenant that any defense to the petition ~~must~~ shall be submitted in writing to the petitioner within five days of the receipt by the tenant of the notice, and in no case later than the fifth day next preceding the date of hearing. Upon receipt of the return of service or the return receipt as the case may be, evidencing service upon the tenant, the petitioner shall file with the court his or her petition and such proof of service.”

On motion of Delegate Capito, the amendment was amended, on page 4, section 1, line 3, by striking “(4)” after the word “through” and inserting in lieu thereof “(5)”.

The Committee on the Judiciary amendment, as amended, was then adopted.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 636**), and there were—yeas 72, nays 25, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Barach, Diserio, Doyle, Espinosa, Evans, Fast, Fleischauer, Fluharty, Griffith, Hanna, Hansen, Holstein, Hornbuckle, J. Jeffries, Keaton, Kessinger, Pritt, Pushkin, Rowe, Skaff, Summers, Thompson, Williams, Young and Zukoff.

Absent and Not Voting: Bridges, Cooper and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 590) passed.

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

**Com. Sub. for S. B. 590** – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §37-6-5a; to amend and reenact §37-6A-5 of said code; and to amend and reenact §55-3A-1 of said code, all relating generally to residents of recovery residences; creating one pilot program in Cabell County relating to recovery residences as they relate to landlord-tenant law; defining terms; providing that a resident of a recovery residence in the pilot county may be immediately discharged in certain circumstances; establishing procedures for removing recovery resident in the pilot county; establishing refund process for fees for residency or services paid to a recovery residence in the pilot county; requiring return transportation be provided to an individual transported to a recovery residence in the pilot county from outside the state of West Virginia; requiring the reporting of certain information to West Virginia Department of Health and Human Resources; requiring award of reasonable attorney’s fees against recovery residence in the pilot county in certain instances; and requiring recovery residence in the pilot county file a petition for summary relief for wrongful occupation of residential rental property in certain circumstances.”

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

**Com. Sub. for S. B. 610**, Relating to duties, powers and responsibilities of DOT Secretary; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 637**), and there were—yeas 97, nays none,

absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Cooper and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 610) passed.

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

**Com. Sub. for S. B. 611**, Removing cap on bidder's contract bond; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

An amendment was recommended by the Committee on Government Organization, on page 1, by striking everything after the enacting clause and inserting in lieu thereof the following:

**“ARTICLE 4. STATE ROAD SYSTEM.**

**§17-4-20. Bidder's bond required; return or forfeiture of bond.**

(a) In any case where a contract for work and materials shall be let as a result of competitive bidding, the successful bidder shall, ~~promptly and~~ within 20 days after notice of award, execute a formal contract to be approved as to its form, terms, and conditions by the commissioner, and shall also execute and deliver to the commissioner a good and sufficient surety or collateral bond, payable to the State of West Virginia, to be approved by the commissioner, in such amount as the commissioner may require, but not to exceed 110 percent of the contract price, conditioned that such the contractor shall well and truly perform his the contract. ~~and~~ The commissioner shall have authority to grant a surety or collateral bond requirement required under this section below 50 percent of the contract price below the requirements of this section, as determined by objective criteria determined by the commissioner. Any contractor or bidder that is adversely affected by the commissioner's ruling under this section shall have the right

to appeal said ruling to the Kanawha County Circuit Court to determine if the setting of said bonding requirement is appropriate based upon objective criteria as the court may determine. Said appeal shall be heard subject to a *de novo* review.

(b) The contractor shall pay in full to the persons entitled thereto for all material, gas, oil, repairs, supplies, tires, equipment, rental charges for equipment and charges for the use of equipment, and labor used by ~~him in and about~~ the contractor in the performance of such contract, or which reasonably appeared, at the time of delivery or performance, would be substantially consumed in and about the performance of ~~such~~ the contract. ~~An action either at law or in equity, A legal action~~ may be maintained upon ~~such~~ the bond for breach thereof by any person for whose benefit the ~~same~~ bond was executed or by his or her assignee.

(c) The bidder who has the contract awarded to him or her and who fails within 20 days after notice of the award to execute the required contract and bond shall forfeit such check or bond, ~~and the check or bond which~~ shall be taken and considered as liquidated damages and not as a penalty for failure of such bidder to execute ~~such~~ the contract and bond.

(d) Upon the execution of ~~such~~ the contract and bond by the successful bidder, his or her check or bond shall be ~~returned~~ released to him or her. The checks or bonds of the unsuccessful bidders shall be ~~returned~~ released to them promptly after the bids are opened and the contract awarded to the successful bidder.

(e) A duplicate copy of such contract and bond shall be furnished by the Commissioner of the Division of Highways, in ~~loose leaf form~~ electronic or paper form as may be required, to the ~~clerk of the county court~~ county clerk of the county in which such contract is to be performed. ~~and it shall be~~ It is the duty of the county clerk to bind and preserve the same in his or her office and index the same in the name of the commissioner and of the contractor.”

On motion of Delegate Steele, the amendment was amended, on page 1, section 20, beginning on line 8 and continuing through

line 14, by striking all the new text beginning with the words “The commissioner shall...” and inserting in lieu thereof, the following:

“The commissioner may determine individual contractor surety or collateral bond amounts based upon objective criteria set by the commissioner, and any final decision that adversely affects a contractor shall be a contested case subject to appeal under Chapter 29A of this code.”

The Committee on Government Organization amendment, as amended, was then adopted.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 638**), and there were—yeas 94, nays 2, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Foster and Riley.

Absent and Not Voting: Bridges, Cooper, Pack and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 611) passed.

**S. B. 617**, Relating to qualifications for members of boards, commissions, and other entities; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

On motion of Delegate Steele, the bill was amended on page 16, section 12, lines 1 through 12, by removing the provisions of §10-1-12, including the chapter heading and the article heading, in their entirety from the bill; and;

To amend the bill beginning on page 23 and continuing through page 24, section 2, lines 1 through 25, by removing the provisions of §16-5Z-2, including the chapter heading and the article heading, in their entirety from the bill, and;

To amend the bill beginning on page 24 and continuing through page 25, section 3, lines 1 through 29, by removing the provisions of §16-52-3, including the chapter heading and the article heading, in their entirety from the bill, and;

To amend the bill beginning on page 31 and continuing through page 33, section 2, lines 1 through 51, by removing the provisions of §17-16B-2, including the chapter heading and the article heading, in their entirety from the bill, and

To amend the bill beginning on page 48 and continuing through page 51, section 3, lines 1 through 64, by removing the provisions of §31G-1-3, including the chapter heading and the article heading, in their entirety from the bill.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 639**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Barrett, Bridges, Cooper, Longanacre and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 617) passed.

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

**S. B. 617** – “A Bill to amend and reenact §5-6-11a of the Code of West Virginia, 1931, as amended; to amend and reenact §5-11-5 of said code; to amend and reenact §5A-8-15 of said code; to amend and reenact §5B-2I-7 of said code; to amend and reenact §6C-3-1 of said code; to amend and reenact §11-13J-4a of said code; to amend and reenact §16-4C-5 of said code; to amend and reenact §17-4A-3 of said code; to amend and reenact §17-16A-3 of said code; to amend and reenact §17-16C-4 of said code; to amend and reenact §18-2-1 of said code; to amend and reenact §18-11-1 of said code; to amend and reenact §18B-1B-2 of said code; to

amend and reenact §22C-3-4 of said code; to amend and reenact §29-21-3b of said code; to amend §29-22-4 of said code; to amend and reenact §30-38-6 of said code; and to amend and reenact §30-42-4 of said code, all relating to qualifications for members of boards, commissions, and other entities; reducing number of members of board of directors of nonprofit corporation operating and maintaining Clay Center for the Arts; revising qualifications for members of Human Rights Commission; establishing qualifications for members of Records Management and Preservation Board; revising qualifications for membership on Tourism Advisory Council; updating number of members of Public Employees Grievance Board who may be appointed from each congressional district; revising number of members of Neighborhood Investment Program Advisory Board from each congressional district; revising number of members of Emergency Medical Services Advisory Council appointed from any one congressional district; revising membership of Complete Streets Advisory Board; establishing number of appointed members of Parkways Authority and recognizing reduction in number of congressional districts; establishing qualifications for appointed members of Public Transit Advisory Council; revising qualifications for appointment to West Virginia Board of Education; revising requirements for appointed members of Board of Governors; Altering composition of Higher Education Policy Commission; making technical changes to qualifications for appointment to Solid Waste Management Board; modifying membership of Indigent Defense Commission; providing for qualifications for appointment to State Lottery Commission; revising qualifications for appointment to Real Estate Appraiser Licensing and Certification Board; and revising qualifications for appointment to Contractor Licensing Board.”

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

**Com. Sub. for S. B. 653**, Relating to public higher education governance; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

An amendment was recommended by the Committee on Education, and adopted, on page 1, after the enacting clause by striking out the remainder of the bill and inserting in lieu thereof the following:

**“ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.**

**§18B-3C-8. Legislative findings and intent; statewide network of independently accredited community and technical colleges; operations and administration.**

(a) *Legislative findings.* —

~~(1) The Legislature has enacted legislation, beginning with Enrolled Senate Bill No. 653, passed during the two thousand regular session, and continuing with Enrolled Senate Bill No. 703, passed during the two thousand one regular session, Enrolled House Bill No. 2224, passed during the two thousand three regular session, and Enrolled Senate Bill No. 448, passed during the two thousand four regular session, the purpose of which is to strengthen the state’s community and technical colleges, clarify their core mission and establish essential conditions to be met, and ensure the most effective delivery of services to business, industry, and West Virginia citizens in every region of the state~~

(2) (1) The primary goal of the Legislature is to create a statewide network of independently accredited community and technical colleges that focuses on technical education, workforce training, and lifelong learning for the Twenty first Century ensure the most effective delivery of services to business, industry, and West Virginia citizens in every region of the state, consistent with the goals, objectives, priorities, and essential conditions established in articles one, one d and three e of this chapter §§18B-1-1 et seq., 18B-1D-1, et seq., and 18B-3C-1 et seq. of this code.

~~(3)~~(2) A necessary precedent to accomplishing the legislative goal is to change the way that leaders at all levels of education, including institutional governing boards, view community and technical colleges. Specifically, that the mission of community and



technical colleges is different from that of traditional four-year colleges in what they seek to accomplish and how they can achieve it effectively and that the state cannot compete successfully in today's information-driven, technology-based economy if community and technical colleges continue to be viewed as add-ons or afterthoughts attached to the baccalaureate institutions.

(b) *Legislative intent.* —

(1) Therefore, it is the intent of the Legislature that the statewide network of independently-accredited community and technical colleges as a whole and each independent community and technical college individually provide the following types of services as part of the core institutional mission:

(A) Career and technical education certificate, associate of applied science, and selected associate of science degree programs for students seeking immediate employment, individual entrepreneurship skills, occupational development, skill enhancement, and career mobility;

(B) Transfer education associate of arts and associate of science degree programs for students whose educational goal is to transfer into a baccalaureate degree program with particular emphasis on reaching beyond traditional college-age students to unserved or underserved adult populations;

(C) Developmental/remedial education courses, tutorials, skills development labs, and other services for students who need to improve their skills in mathematics, English, reading, study skills, computers, and other basic skill areas;

(D) Workforce development education contracted with business and industry to train or retrain employees;

(E) Continuing development assistance and education credit and noncredit courses for professional and self-development, certification and licensure, and literacy training; and

(F) Community service workshops, lectures, seminars, clinics, concerts, theatrical performances, and other noncredit activities to

meet the cultural, civic, and personal interests and needs of the community the institution serves.

(2) It is further the intent of the Legislature that each community and technical college focus special attention on programmatic delivery of their core mission services to unserved and underserved populations to achieve established state objectives. These include the following as highest priorities:

(A) Increasing the number of adults age ~~twenty-five~~ 25 and above who participate in post-secondary education;

(B) Developing technical programs that meet the documented occupational needs of West Virginia's employers;

(C) Providing workforce development programs by implementing the Adult Career Pathways Model, which provides opportunities for the following:

(i) Adults to earn certifications through the completion of skill-sets;

(ii) Ordered progression from skill-sets and certifications to one-year certificate programs and progression from one-year certificate degrees to Associate of Applied Science Degree programs, and

(iii) Students to exit at any stage of completion in order to enter employment with the option of continuing the pathway progression at a later time and/or on a part-time basis.

(D) Offering programs in various time frames other than the traditional semester delivery model and at different locations, including work sites, convenient to working adults;

(E) Providing technical programs in modules or "chunks," defined in competencies required for employment and tied to certification and licensing requirements.

(F) Entering into collaborative programs that recognize high-quality training programs provided through labor unions,

registered apprenticeships, and industry-sponsored training programs with the goal of enabling more adults to earn a college credential;

(G) Developing innovative approaches to improve the basic and functional literacy rates of West Virginians in all regions of the state;

(H) Developing “bridge programs” for disadvantaged youth and adults to enable them to acquire the skills necessary to be successful in education and training programs that lead to high-skills, high-wage jobs; and

(I) Providing access to postsecondary education through the delivery of developmental education for those individuals academically under-prepared for college-level work.

(c) In fulfillment of the purposes and intent defined in subsections (a) and (b) of this section, there is continued a statewide network of independently accredited community and technical colleges serving every region of the state. Each free-standing and independent community and technical college is strongly encouraged to serve as a higher education center for its region by brokering with other colleges, universities, and providers, in-state and out-of-state, both public and private, to afford the most coordinated access to needed programs and services by students, employers, and other clients, to achieve the goals, objectives, and essential conditions established in ~~articles one, one-d, and three-e of this chapter~~ §18B-1-1 et seq., §18B-1D-1 et seq., and §18B-3C-1 et seq. of this code, and to ensure the most efficient use of scarce resources.

*(d) Statewide network of independently accredited community and technical colleges.—*

~~(1) By July 1, 2009, each governing board of a community and technical college which became independent on July 1, 2008, shall make a determination by majority vote of the board whether to keep the current name for its respective institution or to select a new name. If a governing board chooses to select a new name, any~~

~~reference in this code to that institution by a name in use prior to July 1, 2009, means the institution under the name designated by its board of governors~~

(2) The statewide network of independently accredited community and technical colleges is comprised of the following independent state institutions of higher education under the jurisdiction of the council:

(A)(1) *Blue Ridge Community and Technical College.* —

Blue Ridge Community and Technical College is an independently accredited state institution of higher education. The president and the governing board of the community and technical college are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to ~~section three of this article~~ §18B-3C-3 of this code.

(B)(2) ~~Bridgement~~ *BridgeValley Community and Technical College.* —

(i)(A) ~~Bridgement~~ *BridgeValley* Community and Technical College is an independently accredited state institution of higher education which may maintain an association with West Virginia University Institute of Technology, a division of West Virginia University, or directly with West Virginia University, subject to the provisions of ~~section twelve of this article~~ §18B-3C-12 of this code. The president and the governing board of the community and technical college are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to ~~section three of this article~~ §18B-3C-3 of this code.

(ii)(B) West Virginia University Institute of Technology may continue associate degree programs in areas of particular institutional strength which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall

be negotiated between the governing boards of the community and technical college and West Virginia University Institute of Technology or directly with West Virginia University, as appropriate. The final contract may not be implemented until approved by the council except that any contract between the community and technical college and West Virginia University Institute of Technology or West Virginia University related to program delivery under the terms of this section in effect on July 1, 2008, shall continue in effect until July 1, 2009, unless amended or revoked before that date by mutual agreement of the contract parties with approval by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

~~(iii)~~(C) *Dual credit course delivery agreements.* —

~~(H)~~(i) Nothing in this article alters or abrogates any agreement in place on the effective date of this section between West Virginia University Institute of Technology and ~~Bridgemont~~ BridgeValley Community and Technical College relating to delivery of dual credit courses as defined in ~~section two, article one of this chapter~~ §18B-1-2 of this code;

~~(H)~~(ii) The community and technical college may deliver technical courses that are part of a certificate or associate degree program as early entrance or dual credit courses for high school students; and

~~(H)~~(iii) Subject to an agreement between the baccalaureate institution and the community and technical college, the latter may deliver early entrance and dual credit courses as defined in ~~section two, article one of this chapter~~ §18B-1-2 of this code to students in high schools which are not served by the baccalaureate institution.

~~(C)~~(3) *Eastern West Virginia Community and Technical College.* —

Eastern West Virginia Community and Technical College is ~~free-standing state institution of higher education seeking independent accreditation an independently accredited state institution of higher education.~~ The president and the governing board of Eastern Community and Technical College are responsible for ~~achieving~~ maintaining independent accreditation and adhering to the essential conditions pursuant to ~~section three of this article~~ §18B-3C-3 of this code.

~~(D)~~(4) *Mountwest Community and Technical College. —*

~~(i)~~(A) Mountwest Community and Technical College is an independently accredited state institution of higher education which may maintain an association with Marshall University subject to the provisions of ~~section twelve of this article~~ §18B-3C-12 of this code. The president and the governing board of the community and technical college are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to ~~section three of this article~~ §18B-3C-3 of this code.

~~(ii)~~(B) Marshall University may continue associate degree programs in areas of particular institutional strength which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with Mountwest Community and Technical College. The terms of the contract shall be negotiated between the governing boards of the community and technical college and Marshall University. The final contract may not be implemented until approved by the council except that any contract between the community and technical college and Marshall University related to program delivery under the terms of this section in effect on July 1, 2008, shall continue in effect until July 1, 2009, unless amended or revoked before that date by mutual agreement of the contract parties with approval by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the

program shall thereafter be delivered by Mountwest Community and Technical College.

~~(iii)~~(C) *Dual credit course delivery agreements.* —

~~(H)~~(i) Nothing in this article alters or abrogates any agreement in place on the effective date of this section between Marshall University and Mountwest Community and Technical College relating to delivery of dual credit courses as defined in ~~section two, article one of this chapter~~ §18B-2-1 of this code;

~~(H)~~(ii) The community and technical college may deliver technical courses that are part of a certificate or associate degree program as early entrance or dual credit courses for high school students; and

~~(H)~~(iii) Subject to an agreement between the baccalaureate institution and the community and technical college, the latter may deliver early entrance and dual credit courses as defined in ~~section two, article one of this chapter~~ §18B-2-1 of this code to students in high schools which are not served by the baccalaureate institution.

~~(E)~~(5) *New River Community and Technical College.* —

~~(i)~~(A) New River Community and Technical College is an independently accredited state institution of higher education which may maintain an association with Bluefield State College subject to the provisions of ~~section twelve of this article~~ §18B-3C-12 of this code. The community and technical college is headquartered in or near Beckley and incorporates the campuses of Greenbrier Community College Center of New River Community and Technical College and Nicholas Community College Center of New River Community and Technical College.

~~(ii)~~(B) The president and the governing board of New River Community and Technical College are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to ~~section three of this article~~ §18B-3C-3 of this code.

~~(iii)~~(C) Bluefield State College may continue associate degree programs in areas of particular institutional strength which are

closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided through direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the governing boards of the community and technical college and Bluefield State College. The final contract may not be implemented until approved by the council except that any contract between the community and technical college and Bluefield State College related to program delivery under the terms of this section in effect on July 1, 2008, shall continue in effect until July 1, 2009, unless amended or revoked before that date by mutual agreement of the contract parties with approval by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by New River Community and Technical College.

~~(iv)~~(D) Bluefield State College may continue the associate of science degree in nursing which is an existing nationally accredited associate degree program in an area of particular institutional strength and which is closely articulated to the baccalaureate program and mission. The program is of a high-cost nature and can best be provided through direct administration by a baccalaureate institution. This program may not be transferred to New River Community and Technical College or any other community and technical college as long as the program maintains national accreditation and is seamlessly coordinated into the baccalaureate program at the institution.

~~(v)~~(E) New River Community and Technical College participates in the planning and development of a unified effort involving multiple providers to meet the documented education and work force development needs in the region. Nothing in this subdivision prohibits or limits any existing, or the continuation of any existing, affiliation between Mountain State University, West



Virginia University Institute of Technology and West Virginia University. The objective is to assure students and employers in the area that there is coordination and efficient use of resources among the separate programs and facilities, existing and planned, in the Beckley area.

(F) (6) *Pierpont Community and Technical College.* —

(i) (A) Pierpont Community and Technical College is an independent state institution of higher education seeking independent accreditation. The president and the governing board of Pierpont Community and Technical College, assisted by the president and governing board of Fairmont State University, are responsible for the community and technical college achieving independent accreditation and adhering to the essential conditions pursuant to sections three and thirteen of this article.

(ii) (B) Fairmont State University may continue associate degree programs in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of Fairmont State University. The final contract may not be implemented until approved by the council ~~except that any contract between the community and technical college and Fairmont State University related to program delivery under the terms of this section in effect on July 1, 2008, shall continue in effect until July 1, 2009, unless amended or revoked before that date by mutual agreement of the contract parties with approval by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council.~~ Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the

program shall thereafter be delivered by the community and technical college.

(C) Pursuant to the provisions of this subdivision, Fairmont State University shall apply to the council for approval to transfer of the Aviation Maintenance Program from Pierpont Community and Technical College to Fairmont State University. The transfer shall be completed in compliance with all accrediting bodies on or before July 1, 2023 and shall be maintained for a minimum of three years. Fairmont State University may not discontinue the aviation maintenance technology program or the Aviation Professional Flight Program until three years after providing notice to the council, commission and the Legislative Oversight Commission on Education Accountability.

~~(iii)~~(D) *Dual credit course delivery agreements.* —

~~(H)~~ (i) Nothing in this article alters or abrogates any agreement in place on the effective date of this section between Fairmont State University and Pierpont Community and Technical College relating to delivery of dual credit courses as defined in ~~section two, article one of this chapter~~ §18B-1-2 of this code;

~~(H)~~(ii) The community and technical college may deliver technical courses that are part of a certificate or associate degree program as early entrance or dual credit courses for high school students; and

~~(H)~~(iii) Subject to an agreement between the baccalaureate institution and the community and technical college, the latter may deliver early entrance and dual credit courses as defined in section two, article one of this chapter to students in high schools which are not served by the baccalaureate institution.

~~(G)~~(7) *Southern West Virginia Community and Technical College.* — Southern West Virginia Community and Technical College is an independently-accredited, ~~free-standing~~ state institution of higher education. The president and the governing board of Southern West Virginia Community and Technical College are responsible for maintaining independent accreditation

and adhering to the essential conditions pursuant to ~~section three of this article~~ §18B-3C-3 of this code.

~~(H)(8)~~ *West Virginia Northern Community and Technical College*. — West Virginia Northern Community and Technical College is an independently-accredited, ~~free-standing~~ state institution of higher education. The president and the governing board of the community and technical college are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to ~~section three of this article~~ §18B-3C-3 of this code.

~~(I) Kanawha Valley Community and Technical College. —~~

~~(i) Kanawha Valley State Community and Technical College is an independently accredited state institution of higher education which may maintain an association with West Virginia State University subject to the provisions of section twelve of this article. The president and the governing board of the community and technical college are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to section three of this article.~~

~~(ii) West Virginia State University may continue associate degree programs in areas of particular institutional strength which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the governing boards of the community and technical college and West Virginia State University. The final contract may not be implemented until approved by the council except that any contract between the community and technical college and West Virginia State University related to program delivery under the terms of this section in effect on July 1, 2008, shall continue in effect until July 1, 2009, unless amended or revoked before that date by mutual agreement of the contract parties with approval by the council. Such a program shall be evaluated according to the benchmarks~~

~~and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.~~

~~(iii) Dual credit course delivery agreements. —~~

~~(I) Nothing in this article alters or abrogates any agreement in place on the effective date of this section between West Virginia State University and Kanawha Valley Community and Technical College relating to delivery of dual credit courses as defined in section two, article one of this chapter;~~

~~(II) The community and technical college may deliver technical courses that are part of a certificate or associate degree program as early entrance or dual credit courses for high school students; and~~

~~(III) Subject to an agreement between the baccalaureate institution and the community and technical college, the latter may deliver early entrance and dual credit courses as defined in section two, article one of this chapter to students in high schools which are not served by the baccalaureate institution~~

~~(J)(9) West Virginia University at Parkersburg. —~~

~~(i)(A) West Virginia University at Parkersburg is an independently accredited state institution of higher education which may maintain an association with West Virginia University subject to the provisions of section twelve of this article §18B-3C-12 of this code. The president and the governing board of the community and technical college are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to section three of this article §18B-3C-3 of this code.~~

~~(ii)(B) Any contract between the community and technical college and West Virginia University related to program delivery under the authority of the council or related to delivery of baccalaureate programs in effect on July 1, 2008 shall continue in~~

effect unless amended or revoked by mutual agreement of the contract parties with approval by the council.

~~(iii)~~(C) In recognition of the unique and essential part West Virginia University at Parkersburg plays in providing education services in its region, the community and technical college may continue delivering baccalaureate degree programs offered at the institution on the effective date of this section, may implement additional baccalaureate programs with the approval of the commission, and is strongly encouraged:

~~(i)~~(i) To continue ~~and~~ to expand its role as a higher education center pursuant to subsection (c) of this section; and

~~(ii)~~(ii) To broker from West Virginia University and other higher education institutions, as appropriate, additional baccalaureate level degree programs the community and technical college determines are needed in its service region. ~~and~~

~~(D)~~(D) Any baccalaureate degree programs offered at the community and technical college shall be delivered under the authority of the commission. The program shall be evaluated according to the benchmarks and indicators for baccalaureate education developed by the commission.”

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 640)**, and there were—yeas 90, nays 3, absent and not voting 7, with the nays and the absent and not voting being as follows:

Nays: Barrett, Nestor and Paynter.

Absent and Not Voting: Bridges, Cooper, Longanacre, McGeehan, Statler, Steele and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 653) passed.

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

**Com. Sub. for S. B. 653** – “A Bill to amend and reenact §18B-3C-8 of the Code of West Virginia, 1931, as amended, all relating to higher education governance; requiring Fairmont State University to apply to the Council for Community and Technical College Education for approval to transfer the Aviation Maintenance program from Pierpont Community and Technical College to Fairmont State University; providing a date for transfer to be completed; requiring compliance with accrediting bodies and minimum time period for maintenance of the program; providing notice requirements of discontinuation of certain related programs; updating certain state institution of higher education names; deleting obsolete language; and making technical changes.”

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

On this question, the yeas and nays were taken (**Roll No. 641**), and there were—yeas 93, nays 1, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Barrett.

Absent and Not Voting: Bridges, Cooper, Longanacre, Statler, Steele and Walker.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 653) takes effect from its passage.

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

**Com. Sub. for S. B. 656**, Providing tax credit for certain corporations with child-care facilities for employees; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

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

**“ARTICLE 21. PERSONAL INCOME TAX**

**§11-21-97. Tax credit for employers providing child care for employees.**

(a) Definitions — As used in this section, the term:

(1) ‘Commissioner’ or ‘Tax Commissioner’ are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia, or his or her delegate.

(2) ‘Cost of operation’ means reasonable direct operational costs incurred by an employer as a result of providing employer provided or employer sponsored child care facilities: *Provided*, That the term cost of operation shall exclude the cost of any property that is qualified child care property.

(3) ‘Department’ or ‘Tax Department’ means the West Virginia State Tax Department.

(4) ‘Employer’ means any employer upon whom an income tax is imposed by this article.

(5) ‘Employer provided’ refers to child care offered on the premises of the employer.

(6) ‘Premises of the employer’ refers to any location within the State of West Virginia and located on the workplace premises of the employer providing the child care or one of the employers providing the child care in the event that the child care property is owned jointly or severally by the taxpayer and one or more unaffiliated employers: *Provided*, That if such workplace premises are impracticable or otherwise unsuitable for the on-site location of such child care facility, as determined by the commissioner, such facility may be located within a reasonable distance of the premises of the employer.

(7) ‘Qualified child care property’ means all real property, other than land, and tangible personal property purchased or acquired on or after July 1, 2022, or which property is first placed in service on or after July 1, 2022, for use exclusively in the construction, expansion, improvement, or operation of an employer provided child care facility, but only if:

(A) The children who use the facility are primarily children of employees of:

(i) The taxpayer and other employers in the event that the child care property is owned jointly or severally by the taxpayer and one or more employers; or

(ii) A corporation that is a member of the taxpayer’s ‘affiliated group’ within the meaning of section 1504(a) of the Internal Revenue Code; and

(B) The taxpayer has not previously claimed any tax credit for the cost of operation for such qualified child care property placed in service prior to taxable years beginning on or after January 1, 2022.

Qualified child care property includes, but is not limited to, amounts expended on building, improvements, and building improvements and furniture, fixtures, and equipment directly related to the operation of child care property as defined in this section.

(8) ‘Recapture amount’ means, with respect to property as to which a recapture event has occurred, an amount equal to the applicable recapture percentage of the aggregate credits claimed under subsection (d) of this Section for all taxable years preceding the recapture year, whether or not such credits were used.

(9) ‘Recapture event’ means any disposition of qualified child care property by the taxpayer, or any other event or circumstance under which property ceases to be qualified child care property with respect to the taxpayer, except for:

(A) Any transfer by reason of death;



(B) Any transfer between spouses or incident to divorce;

(C) Any transaction to which Section 381(a) of the Internal Revenue Code applies;

(D) Any change in the form of conducting the taxpayer's trade or business so long as the property is retained in such trade or business as qualified child care property and the taxpayer retains a substantial interest in such trade or business; or

(E) Any accident or casualty.

(10) 'Recapture percentage' refers to the applicable percentage set forth in the following table:

If the recapture event occurs within-The recapture percentage is:

Five full years after the qualified child care property is placed in service.....100

The sixth full year after the qualified child care property is placed in service.....90

The seventh full year after the qualified child care property is placed in service.....80

The eighth full year after the qualified child care property is placed in service.....70

The ninth full year after the qualified child care property is placed in service.....60

The tenth full year after the qualified child care property is placed in service.....50

The eleventh full year after the qualified child care property

|                                                                      |           |
|----------------------------------------------------------------------|-----------|
| <u>is placed in service.....</u>                                     | <u>40</u> |
| <u>The twelfth full year after the qualified child care property</u> |           |
| <u>is placed in service.....</u>                                     | <u>30</u> |
| <u>The thirteenth full year after the qualified child care</u>       |           |
| <u>property is placed in service.....</u>                            | <u>20</u> |
| <u>The fourteenth full year after the qualified child care</u>       |           |
| <u>property is placed in service.....</u>                            | <u>10</u> |
| <u>Any period after the close of the fourteenth full year after</u>  |           |
| <u>the qualified child care property is placed in</u>                |           |
| <u>service.....</u>                                                  | <u>0</u>  |

(11) ‘Recapture year’ means the taxable year in which a recapture event occurs with respect to qualified child care property.

(b) *Credit for Capital Investment in Child Care Property* — A taxpayer shall be allowed a credit against the tax imposed under this article for the taxable year in which the taxpayer first places in service qualified child care property and for each of the ensuing four taxable years following such taxable year. The aggregate amount of the credit shall equal 50 percent of the cost of all qualified child care property purchased or acquired by the taxpayer and first placed in service during a taxable year, and such credit may be claimed at a rate of 20 percent per year over a period of five taxable years. In the case of a qualified child care property jointly owned by two or more unaffiliated employers, each employer’s credit is limited to that employer’s respective investment in the qualified child care property.

(c) *Limitations on Capital Investment Credit* — The tax credit allowable under subsection (b) of this Section shall be subject to the following conditions and limitations:

(1) Any such credit claimed in any taxable year but not used in such taxable year may be carried forward for three years from the

close of such taxable year. The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for the credit in any succeeding taxpayer;

(2) In no event shall the amount of any such tax credit allowed under subsection (b) of this section, when combined with any such tax credit allowed under subsection (e) of this section, including any carryover of such credits from a prior taxable year, exceed 100 percent of the taxpayer's income tax liability as determined without regard to any other credits; and

(3) For every year in which a taxpayer claims such credit, the taxpayer shall attach a schedule to the taxpayer's West Virginia income tax return setting forth the following information with respect to such tax credit:

(A) A description of the child care facility;

(B) The amount of qualified child care property acquired during the taxable year and the cost of such property;

(C) The amount of tax credit claimed for the taxable year;

(D) The amount of qualified child care property acquired in prior taxable years and the cost of such property;

(E) Any tax credit utilized by the taxpayer in prior taxable years;

(F) The amount of tax credit carried over from prior years;

(G) The amount of tax credit utilized by the taxpayer in the current taxable year;

(H) The amount of tax credit to be carried forward to subsequent tax years; and

(I) A description of any recapture event occurring during the taxable year, a calculation of the resulting reduction in tax credits allowable for the recapture year and future taxable years, and a calculation of the resulting increase in tax for the recapture year.

(d) *Recapture of Credit* — If a recapture event occurs with respect to qualified child care property:

(1) The credit otherwise allowable under subsection (b) of this section with respect to such property for the recapture year and all subsequent taxable years shall be reduced by the applicable recapture percentage; and

(2) All credits previously claimed with respect to such property under subsection (b) of this Section shall be recaptured as follows:

(A) Any carryover attributable to such credits pursuant to subdivision (1) of subsection (c) of this section shall be reduced, but not below zero, by the recapture amount;

(B) The tax credit otherwise allowable pursuant to subsection (b) of this section for the recapture year, if any, as reduced pursuant to subdivision (1) of this subsection, shall be further reduced, but not below zero, by the excess of the recapture amount over the amount taken into account pursuant to paragraph (A) of this subdivision; and

(C) The tax imposed pursuant to this article for the recapture year shall be increased by the excess of the recapture amount over the amounts taken into account pursuant to paragraphs (A) and (B) of this subdivision, as applicable.

(e) *Credit for Operating Costs* — In addition to the tax credit provided under subsection (b) of this Section, a tax credit against the tax imposed under this article shall be granted to an employer who provides or sponsors child care for employees. The amount of the tax credit shall be equal to 50% percent of the cost of operation to the employer less any amounts paid for by employees during a taxable year.

(f) *Limitations on Credit for Operating Costs* — The tax credit allowed under subsection (e) of this Section shall be subject to the following conditions and limitations:

(1) Such credit shall when combined with the credit allowed under subsection (b) shall not exceed 100 percent of the amount of

the taxpayer's income tax liability for the taxable year as determined without regard to any other credits;

(2) Any such credit claimed but not used in any taxable year may be carried forward for five years from the close of the taxable year in which the cost of operation was incurred; and

(3) The employer shall certify to the department the names of the employees, the name of the child care provider, and such other information as may be required by the department to ensure that credits are granted only to employers who provide or sponsor approved child care pursuant to this Section.

(g) 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 section and to implement the intent of the Legislature. The Tax Commissioner may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code.

## **ARTICLE 24. CORPORATION NET INCOME TAX.**

### **§11-24-44. Tax credit for employers providing child care for employees.**

(a) Definitions — As used in this section, the term:

(1) 'Commissioner' or 'Tax Commissioner' are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia, or his or her delegate;

(2) 'Cost of operation' means reasonable direct operational costs incurred by an employer as a result of providing employer provided or employer sponsored child care facilities; provided, however, that the term cost of operation shall exclude the cost of any property that is qualified child care property.

(3) 'Department' or 'Tax Department' means the West Virginia State Tax Department.

(4) ‘Employer’ means any employer upon whom an income tax is imposed by this article or any employer organized as a nonprofit corporation under Internal Revenue Code § 501(c)(3) or § 501(c)(6) that is exempt from the tax imposed by this article pursuant to §11-24-5.

(5) ‘Employer provided’ refers to child care offered on the premises of the employer.

(6) ‘Premises of the employer’ refers to any location within the State of West Virginia and located on the workplace premises of the employer providing the child care or one of the employers providing the child care in the event that the child care property is owned jointly or severally by the taxpayer and one or more unaffiliated employers; provided, however, that if such workplace premises are impracticable or otherwise unsuitable for the on-site location of such child care facility, as determined by the commissioner, such facility may be located within a reasonable distance of the premises of the employer.

(7) ‘Qualified child care property’ means all real property, other than land, and tangible personal property purchased or acquired on or after July 1, 2022, or which property is first placed in service on or after July 1, 2022, for use exclusively in the construction, expansion, improvement, or operation of an employer provided child care facility, but only if:

(A) The children who use the facility are primarily children of employees of:

(i) The taxpayer and other employers in the event that the child care property is owned jointly or severally by the taxpayer and one or more employers; or

(ii) A corporation that is a member of the taxpayer’s ‘affiliated group’ within the meaning of Section 1504(a) of the Internal Revenue Code; and

(B) The taxpayer has not previously claimed any tax credit for the cost of operation for such qualified child care property placed

in service prior to taxable years beginning on or after January 1, 2022.

Qualified child care property includes, but is not limited to, amounts expended on building, improvements, and building improvements and furniture, fixtures, and equipment directly related to the operation of child care property as defined in this section.

(8) 'Recapture amount' means, with respect to property as to which a recapture event has occurred, an amount equal to the applicable recapture percentage of the aggregate credits claimed under subsection (d) of this section for all taxable years preceding the recapture year, whether or not such credits were used.

(9) 'Recapture event' refers to any disposition of qualified child care property by the taxpayer, or any other event or circumstance under which property ceases to be qualified child care property with respect to the taxpayer, except for:

(A) Any transfer by reason of death;

(B) Any transfer between spouses or incident to divorce;

(C) Any transaction to which Section 381(a) of the Internal Revenue Code applies;

(D) Any change in the form of conducting the taxpayer's trade or business so long as the property is retained in such trade or business as qualified child care property and the taxpayer retains a substantial interest in such trade or business; or

(E) Any accident or casualty.

(10) 'Recapture percentage' refers to the applicable percentage set forth in the following table:

If the recapture event occurs within-  
The recapture percentage is:

Five full years after the qualified child care property is

|                                                                                                                                         |            |
|-----------------------------------------------------------------------------------------------------------------------------------------|------------|
| <u>placed in service.....</u>                                                                                                           | <u>100</u> |
| <u>The sixth full year after the qualified child care property is<br/>placed in service.....</u>                                        | <u>90</u>  |
| <u>The seventh full year after the qualified child care property<br/>is placed in service.....</u>                                      | <u>80</u>  |
| <u>The eighth full year after the qualified child care property is<br/>placed in service.....</u>                                       | <u>70</u>  |
| <u>The ninth full year after the qualified child care property is<br/>placed in service.....</u>                                        | <u>60</u>  |
| <u>The tenth full year after the qualified child care property is<br/>placed in service.....</u>                                        | <u>50</u>  |
| <u>The eleventh full year after the qualified child care property<br/>is placed in service.....</u>                                     | <u>40</u>  |
| <u>The twelfth full year after the qualified child care property<br/>is placed in service.....</u>                                      | <u>30</u>  |
| <u>The thirteenth full year after the qualified child care<br/>property is placed in service.....</u>                                   | <u>20</u>  |
| <u>The fourteenth full year after the qualified child care<br/>property is placed in service.....</u>                                   | <u>10</u>  |
| <u>Any period after the close of the fourteenth full year after<br/>the qualified child care property is placed in<br/>service.....</u> | <u>0</u>   |



(11) ‘Recapture year’ means the taxable year in which a recapture event occurs with respect to qualified child care property.

(b) Credit for Capital Investment in Child Care Property — A taxpayer shall be allowed a credit against the tax imposed under this article for the taxable year in which the taxpayer first places in service qualified child care property and for each of the ensuing four taxable years following such taxable year. The aggregate amount of the credit shall equal 50 percent of the cost of all qualified child care property purchased or acquired by the taxpayer and first placed in service during a taxable year, and such credit may be claimed at a rate of 20 percent per year over a period of five taxable years. In the case of a qualified child care property jointly owned by two or more unaffiliated employers, each employer’s credit is limited to that employer’s respective investment in the qualified child care property.

(c) Limitations on Capital Investment Credit — The tax credit allowable under subsection (b) of this section shall be subject to the following conditions and limitations:

(1) Any such credit claimed in any taxable year but not used in such taxable year may be carried forward for three years from the close of such taxable year. The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for the credit in any succeeding taxpayer;

(2) In no event shall the amount of any such tax credit allowed under subsection (b) of this section, when combined with any such tax credit allowed under subsection (e) of this section, including any carryover of such credits from a prior taxable year, exceed 100 percent of the taxpayer’s income tax liability as determined without regard to any other credits; and

(3) For every year in which a taxpayer claims such credit, the taxpayer shall attach a schedule to the taxpayer’s West Virginia income tax return setting forth the following information with respect to such tax credit:

(A) A description of the child care facility;

(B) The amount of qualified child care property acquired during the taxable year and the cost of such property;

(C) The amount of tax credit claimed for the taxable year;

(D) The amount of qualified child care property acquired in prior taxable years and the cost of such property;

(E) Any tax credit utilized by the taxpayer in prior taxable years;

(F) The amount of tax credit carried over from prior years;

(G) The amount of tax credit utilized by the taxpayer in the current taxable year;

(H) The amount of tax credit to be carried forward to subsequent tax years; and

(I) A description of any recapture event occurring during the taxable year, a calculation of the resulting reduction in tax credits allowable for the recapture year and future taxable years, and a calculation of the resulting increase in tax for the recapture year.

(d) *Recapture of Credit* — If a recapture event occurs with respect to qualified child care property:

(1) The credit otherwise allowable under subsection (b) of this section with respect to such property for the recapture year and all subsequent taxable years shall be reduced by the applicable recapture percentage; and

(2) All credits previously claimed with respect to such property under subsection (b) of this Section shall be recaptured as follows:

(A) Any carryover attributable to such credits pursuant to subdivision (1) of subsection (c) of this section shall be reduced, but not below zero, by the recapture amount;

(B) The tax credit otherwise allowable pursuant to subsection (b) of this section for the recapture year, if any, as reduced pursuant to subdivision (1) of this subsection, shall be further reduced, but

not below zero, by the excess of the recapture amount over the amount taken into account pursuant to paragraph (A) of this subdivision; and

(C) The tax imposed pursuant to this article for the recapture year shall be increased by the excess of the recapture amount over the amounts taken into account pursuant to paragraphs (A) and (B) of this subdivision, as applicable.

(e) *Credit for Operating Costs* — In addition to the tax credit provided under subsection (b) of this Section, a tax credit against the tax imposed under this article shall be granted to an employer who provides or sponsors child care for employees. The amount of the tax credit shall be equal to 50 percent of the cost of operation to the employer less any amounts paid for by employees during a taxable year.

(f) *Limitations on Credit for Operating Costs* — The tax credit allowed under subsection (e) of this Section shall be subject to the following conditions and limitations:

(1) Such credit shall when combined with the credit allowed under subsection (b) shall not exceed 100 percent of the amount of the taxpayer's income tax liability for the taxable year as determined without regard to any other credits;

(2) Any such credit claimed but not used in any taxable year may be carried forward for five years from the close of the taxable year in which the cost of operation was incurred; and

(3) The employer shall certify to the department the names of the employees, the name of the child care provider, and such other information as may be required by the department to ensure that credits are granted only to employers who provide or sponsor approved child care pursuant to this Section.

(g) *Transferrable Credit Available to Non-Profit Corporations* – In the case of non-profit corporations organized under Internal Revenue Code §501(c)(3) or §501(c)(6), which are exempt from tax under this article pursuant to §11-24-5 of this code, a credit in the amount calculated under the provisions of this section shall be

available as a transferrable credit that may be transferred, sold or assigned to any other taxpayer to be applied against the tax owed under this article. Pursuant to rules promulgated by the Tax Department, a non-profit corporation applicant shall provide a schedule to the Tax Department with all information required under §11-24-44(c)(3) of this code. The Tax Department shall within 90 days certify the amount of transferrable credit available to be transferred, sold or assigned to another taxpayer. Any transferee, purchaser, or assignee of non-profit corporation credits certified to a non-profit corporation under this section takes the transferred, purchased, or assigned credits subject to any limitations placed on the amount of credit taken in a given year by §11-24-44(b), §11-24-44(c), §11-24-44(e) and §11-24-44(f) of this code.

(h) 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 section and to implement the intent of the Legislature. The Tax Commissioner may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code.”

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 642**), and there were—yeas 92, nays 2, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Gearheart and J. Jeffries.

Absent and Not Voting: Bridges, Burkhammer, Cooper, Longanacre, Pinson and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 656) passed.

An amendment to the title of the bill was recommended by the Committee on Finance, and adopted, amending the title to read as follows:

**Com. Sub. for S. B. 656** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-97; and to amend said code by adding thereto a new section §11-24-44, all relating to providing a tax credit against the state corporate net income tax and the state personal income tax for expenditures related to the establishment and operation of employer-provided or sponsored child-care facilities; defining terms; providing for rulemaking; setting the amount of the credit; providing for limitation of the credit; providing for transferrable credit available to non-profit corporations; and providing for a recapture process.”

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

**S. B. 685**, Relating to WV Real Estate License Act; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

An amendment was recommended by the Committee on Government Organization, and adopted, amending the bill on page 1, by striking everything following the enacting clause and inserting in lieu thereof the following:

**“ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.**

**§30-40-4. Definitions.**

Unless the context ~~in which~~ used clearly requires a different meaning, as used in this article:

(a) ‘Applicant’ means any person who is making application to the commission for a license.

(b) ‘Associate broker’ means any person who qualifies for a broker’s license, but who is employed or engaged by a licensed broker to engage in any activity regulated by this article, in the name of and under the direct supervision of the licensed broker.

~~(e)~~ ‘Broker’ means any person who for compensation or with the intention or expectation of receiving or collecting compensation:

(1) Lists, sells, purchases, exchanges, options, rents, manages, leases, or auctions any interest in real estate; or

(2) Directs or assists in the procuring of a prospect calculated or intended to result in a real estate transaction; or

(3) Advertises or holds himself or herself out as engaged in, negotiates, or attempts to negotiate, or offers to engage in any activity enumerated in subdivision (1) of this subsection.

~~(d)~~—‘Commission’ means the West Virginia Real Estate Commission as established §30-40-6 of this code.

~~(e)~~—‘Compensation’ means fee, commission, salary, or other valuable consideration, in the form of money or otherwise.

~~(d)~~—‘Designated broker’ means a person holding a broker’s license who has been appointed by a partnership, association, corporation, or other form of business organization engaged in the real estate brokerage business, to be responsible for the acts of the business and to whom the partners, members, or board of directors have delegated full authority to conduct the real estate brokerage activities of the business organization.

~~(g)~~—‘Distance education’ means courses of instruction in which instruction takes place through media where the teacher and student are separated by distance and sometimes by time.

‘Entity’ means a business, company, corporation, limited liability company, association, or partnership.

~~(h)~~—‘Inactive’ means a licensee who is not authorized to conduct any real estate business and is not required to comply with any continuing education requirements.

~~(i)~~ ‘License’ means a license to act as a broker, associate broker, or salesperson.

~~(j)~~ ‘Licensee’ means a person holding a license.

~~(k)~~ ‘Member’ means a commissioner of the Real Estate Commission.

~~(l)~~ ‘Real estate’ means any interest or estate in land, and anything permanently affixed to land.

~~(m)~~ ‘Salesperson’ means a person employed or engaged by or on behalf of a broker to do or deal in any activity included in this article, in the name of and under the direct supervision of a broker, other than an associate broker. Provided, That for the purposes of receiving compensation, a salesperson may designate an entity to receive any compensation payable to the salesperson, including, but not limited to, a limited liability corporation or an S-corporation.”

The bill was then read a third time.

Delegate Thompson requested to be excused from voting under the provisions of House Rule 49.

The Speaker ruled that the Delegate was a member of a class of persons possibly to be affected and directed the Member to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 643**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Burkhammer, Cooper, Garcia, Pinson and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 685) passed.

An amendment to the title of the bill was recommended by the Committee on Government Organization, and adopted, amending the title to read as follows:

**S. B. 685** - “A Bill to amend and reenact §30-40-4 of the Code of West Virginia, 1931, as amended, relating to West Virginia Real

Estate License Act; amending definitions; permitting a salesperson to designate an entity to receive compensation.”

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

**S. B. 686**, Clarifying use of notes and bonds of WV Housing Development Fund; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

An amendment was recommended by the Committee on Finance, and adopted, amending the bill on page 11, following section 6, by striking the section heading and inserting in lieu thereof:

**“§31-18-9. Borrowing of money.”**

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 644**), and there were—yeas 93, nays none, absent and not voting 7, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Cooper, Garcia, Maynard, Steele, Summers and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 686) passed.

An amendment to the title of the bill was recommended by the Committee on Finance, and adopted, amending the title to read as follows:

**S. B. 686** - “A Bill to amend and reenact §31-18-6 and §31-18-9 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Housing Development Fund; providing certain limits on loans made or purchased with the proceeds of notes or bonds of the Housing Development Fund; and authorizing the Housing Development Fund to allocate a portion of its state ceiling



allocation to political subdivisions or city or county housing authorities authorized to issue bonds or notes for qualified residential rental projects under certain circumstances.”

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

On this question, the yeas and nays were taken (**Roll No. 645**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Cooper, Garcia and Walker.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 686) takes effect from its passage.

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

**S. B. 693**, Clarifying meeting voting requirements for political party executive committees; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 646**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Burkhammer, Cooper and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 693) passed.

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

**S. B. 711**, Establishing alternative educational opportunities for elective course credit; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

An amendment was recommended by the Committee on Education, and adopted, on page 4, section §18-2-7f, line 85, after the word “Denial”, by deleting the words “and Appeal Process”.

And,

On page 4, section §18-2-7f, line 88, after the word “board” and the period, by deleting the next sentence in its entirety.

And,

On page 4, section §18-2-7f, line 91, following the word “application” by deleting the word “appeal”.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 647**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Cooper and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 711) passed.

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

**S. B. 711** – “A Bill to amend and reenact §18-2-7f of the Code of West Virginia, 1931, as amended, relating to establishing alternative educational opportunities for elective course credit; requiring the state board to establish, develop, and maintain a program whereby students can earn elective course credit for extended learning opportunities that take place outside of the traditional classroom setting; specifying minimum entities eligible to provide extended learning opportunity programs; requiring individuals or entities seeking certification as an eligible extended learning opportunity program to successfully complete an application process; imposing requirements on extended learning opportunity providers pertaining to compliance with applicable

federal and state health and safety laws and regulations, compliance with standards and safeguards provided by the West Virginia Board of Education, background checks for key personnel or instructional staff, and proof of insurance; addressing the denial of a program application; providing for monitoring, evaluation, and inspection of approved programs; allowing extension of approval or disqualification for violation of state law or state board policies; allowing appeal of disqualification; requiring the county boards of education to adopt an alternative educational opportunities policy that facilitates implementation and participation; requiring parental or legal guardian approval for participation of student under 18; allowing students transferring schools to request acceptance of elective course credits awarded for program completion; addressing transportation to and from an approved program; allowing auditing of approved programs at any time and disqualification for not meeting certain provisions; and requiring report to the Legislative Oversight Commission on Education Accountability with respect to the implementation of extended learning opportunity programs.”

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

**S. B. 726**, Relating to pre-trial diversion agreements and deferred prosecution agreements; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

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

**“ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

**§61-11-22. Pretrial diversion agreements; conditions; drug court programs.**

(a) A prosecuting attorney of any county of this state or a person acting as a special prosecutor may enter into a pretrial

diversion agreement with a person ~~under investigation or~~ charged with an offense against the State of West Virginia, when he or she considers it to be in the interests of justice. The agreement is to be in writing and is to be executed in the presence of the person's attorney, unless the person has executed a waiver of counsel.

(b) Any agreement entered into pursuant to the provisions of subsection (a) of this section may not exceed 24 months in duration. The duration of the agreement must be specified in the agreement. The terms of any agreement entered into pursuant to the provisions of this section may include conditions similar to those set forth in §62-12-9 of this code relating to conditions of probation. The agreement may require supervision by a probation officer of the circuit court, with the consent of the court. An agreement entered into pursuant to this section must include a provision that the applicable statute of limitations be tolled for the period of the agreement.

(c) A person who has entered into an agreement for pretrial diversion with a prosecuting attorney and who has successfully complied with the terms of the agreement is not subject to prosecution for the offense or offenses described in the agreement or for the underlying conduct or transaction constituting the offense or offenses described in the agreement, unless the agreement includes a provision that upon compliance the person agrees to plead guilty or nolo contendere to a specific related offense, with or without a specific sentencing recommendation by the prosecuting attorney.

(d) No person charged with a violation of the provisions of §17C-5-2 of this code may participate in a pretrial diversion program: *Provided*, That a court may defer proceedings in accordance with §17C-5-2b of this code. ~~No person charged with a violation of the provisions of section twenty-eight, article two of this chapter may participate in a pretrial diversion program unless the program is part of a community corrections program approved pursuant to the provisions of article eleven c, chapter sixty two of this code. No person indicted for a felony crime of violence against the person where the alleged victim is a family or household member as defined in section two hundred three, article twenty-~~

~~seven, chapter forty-eight of this code or indicted for a violation of the provisions of sections three, four or seven, article eight b of this chapter is eligible to participate in a pretrial diversion program. No defendant charged with a violation of the provisions of section twenty-eight, article two of this chapter or subsections (b) or (c), section nine, article two of this chapter where the alleged victim is a family or household member is eligible for pretrial diversion programs if he or she has a prior conviction for the offense charged or if he or she has previously been granted a period of pretrial diversion pursuant to this section for the offense charged. Notwithstanding any provision of this code to the contrary, defendants charged with violations of the provisions of section twenty-eight, article two, chapter sixty-one of this code or the provisions of subsection (b) or (c), section nine, article two of said chapter where the alleged victim is a family or household member as defined by the provisions of section two hundred three, article twenty-seven, chapter forty-eight of this code are ineligible for participation in a pretrial diversion program before July 1, 2002, and before the community corrections subcommittee of the Governor's Committee on Crime, Delinquency and Correction established pursuant to the provisions of section two, article eleven c, chapter sixty-two of this code, in consultation with the working group of the subcommittee, has approved guidelines for a safe and effective program for diverting defendants charged with domestic violence.~~

~~(e) The provisions of section twenty-five of this article are inapplicable to defendants participating in pretrial diversion programs who are charged with a violation of the provisions of section twenty-eight, article two, chapter sixty-one of this code. The community corrections subcommittee of the Governor's Committee on Crime, Delinquency and Correction established pursuant to the provisions of section two, article eleven c, chapter sixty-two of this code shall, upon approving any program of pretrial diversion for persons charged with violations of the provisions of section twenty-eight, article two, chapter sixty-one of this code, establish and maintain a central registry of the participants in the programs which may be accessed by judicial officers and court personnel.~~

(e) No person is eligible for pretrial diversion programs if charged with:

(1) A felony crime of violence against the person where the alleged victim is a family or household member as defined in §48-27-203 of this code;

(2) A violation of §61-8-12 of this code or a felony violation of the provisions of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code;

(3) A violation of §61-2-9a(a) of this code;

(4) A violation of §61-2-9d of this code;

(5) A violation of § 61-2-28 of this code; or

(6) A violation of §61-2-9 of this code where the alleged victim is a family or household member as defined in §48-27-203 of this code.

### **§61-11-22a. Deferred adjudication.**

(a) Upon the entry of a guilty plea to a felony or misdemeanor before a circuit or magistrate court of this state entered in compliance with the provisions of Rule 11 of the West Virginia Rules of Criminal Procedure ~~44~~ or Rule 10 of the West Virginia Rules of Criminal Procedure for Magistrate Courts and applicable judicial decisions, the court may, upon motion, defer acceptance of the guilty plea and defer further adjudication thereon and release the defendant upon such terms and conditions as the court deems just and necessary. Terms and conditions may include, but are not limited to, periods of incarceration, drug and alcohol treatment, counseling and participation in programs offered under ~~articles eleven a, eleven b and eleven c, chapter sixty two~~ §62-11A-1 *et seq.*, §62-11B-1 *et seq.*, and §62-11C-1 *et seq.* of this code.

(b) If the offense to which the plea of guilty is entered is a felony, the circuit court may defer adjudication for a period not to exceed three years. If the offense to which the plea of guilty is

entered is a misdemeanor, the court may defer adjudication for a period not to exceed two years.

(c) Unless otherwise specified by this section, a person is ineligible for a deferred adjudication program if he or she is charged with;

(1) A felony crime of violence against the person where the alleged victim is a family or household member as defined in §48-27-203 of this code;

(2) A violation of §61-8-12 of this code or a felony violation of the provisions of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code;

(3) A violation of §61-2-9a(a) of this code;

(4) A violation of §61-2-9d of this code;

(5) A violation of §61-2-28 prosecuted under the provisions of subsections (c) or (d) of that section; or

(6) A violation of §61-2-9(a) of this code, or a violation of §61-2-9(b) or §61-2-9(c) of this code prosecuted under the provisions of subsection (d) of that section, where the alleged victim is a family or household member as defined in §48-27-203 of this code.

(7) A violation of §61-2-9(b) or §61-2-9(c) of this code or §61-2-28(a) or §61-2-28(b) of this code where a weapon was used in the commission of the crime, the defendant has a prior conviction of any of the offenses listed in subsection (c) of this section, the defendant has a prior felony conviction, or the defendant has previously entered into a prior pre-trial diversion or deferred adjudication of crimes where the alleged victim is a family or household member as defined in §48-27-203 of this code.

(d) A person charged under §61-2-9a, §61-2-9d, or §61-2-9(a) of this code who has not previously been convicted of any of the offenses set forth in subsection (c) of this section, who has no prior felony conviction, and who has not previously entered into a prior pre-trial diversion or deferred adjudication of crimes where the

alleged victim is a family or household member as defined in §48-27-203 of this code, is eligible to participate in a deferred adjudication program: *Provided*, That the person is not eligible for dismissal upon successful completion of the deferred period.

(e)(1) A person charged with a first offense violation of §61-2-28(a) or §61-2-28(b) of this code or a violation of §61-2-9(b) or §61-2-9(c) of this code where the alleged victim is a family or household member as defined in §48-27-203 is eligible for deferred adjudication if agreed to by the state and the defendant: *Provided*, That, for purposes of this section, “first offense violation” means the person would not, due to any prior charges or convictions, be subject to the enhancement provisions set forth in §61-2-9(d) or §61-2-28(c) or §61-2-28(d);

(2) In addition to terms and conditions authorized in subsection (a) of this section, a person participating in a deferred adjudication program pursuant to this subsection may be required to participate in compliance hearings and batterer intervention programs licensed under §48-26-402 of this code;

(3) Notwithstanding the provisions of subsection (b) of this section, a deferral under this subsection shall be for a period of not less than 18 months nor more than three years; and

(4) A person may not participate in more than one deferred adjudication pursuant to this subsection.

~~(e)~~ (f) If the defendant complies with the court-imposed terms and conditions he or she shall be permitted to withdraw his or her plea of guilty and the matter dismissed or, as may be agreed upon by the court and the parties, enter a plea of guilty or no contest to a lesser offense.

~~(d)~~ (g) In the event the defendant is alleged to have violated the terms and conditions imposed upon him or her by the court during the period of deferral the prosecuting attorney may file a motion to accept the defendant’s plea of guilty and, following notice, a hearing shall be held on the matter.



(e) (h) In the event the court determines that there is reasonable cause to believe that the defendant violated the terms and conditions imposed at the time the plea was entered, the court may accept the defendant's plea to the original offense and impose a sentence in the court's discretion in accordance with the statutory penalty of the offense to which the plea of guilty was entered or impose such other terms and conditions as the court deems appropriate.

(f) (i) The procedures set forth in this section are separate and distinct from that set forth in Rule 11(a)(2) of the West Virginia Rules of Criminal Procedure 11(a)(2)."

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 648**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Cooper and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 726) passed.

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

**Com. Sub. for S. B. 138**, Relating to Board of Medicine composition; on third reading, having been moved to the foot of the Special Calendar by the Committee on Rules, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 649**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Cooper, Hardy, Maynard and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 138) passed.

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

**Com. Sub. for S. B. 247**, Relating to certified community behavioral health clinics; on third reading, having been moved to the foot of the Special Calendar by the Committee on Rules, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 650**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Cooper, Maynard and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 247) passed.

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

Having been postponed in earlier proceedings, the House returned to consideration of **Com. Sub. for S. B. 231**, Relating generally to broadband connectivity.

There being no amendments, the bill was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 651**), and there were—yeas 93, nays 3, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Criss, Gearheart and Householder.

Absent and Not Voting: Bridges, Cooper, Maynard and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 231) passed.

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

At 7:01 p.m., on motion of Delegate Summers, the House of Delegates recessed until 7:30 p.m.

\* \* \* \* \*

### Evening Session

\* \* \* \* \*

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

In the absence of objection, **Com. Sub. for S. B. 611**, Removing cap on bidder's contract bond, still being in possession of the Clerk, was taken up for further consideration.

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

**Com. Sub. for S. B. 611** – "A Bill to amend and reenact §17-4-20 of the Code of West Virginia, 1931, as amended, relating to contract bidder's surety or collateral bond; modifying cap on contract bidder's surety or collateral bond; authorizing Commissioner of Highways to determine bond amounts based on objective criteria; setting forth that any final decision would be considered a contested case subject to appeal; and updating outdated language."

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

### **Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4008**, Relating to Higher Education Policy Commission funding formula.

Delegate Kessinger moved that the House concur in the following amendment of the bill by the Senate:

On page one, after the enacting clause by inserting the following:

#### **“ARTICLE 1. GOVERNANCE.**

##### **§18B-1-1F. STATE COLLEGE AND UNIVERSITY EXEMPTION STATUS.**

(a) The Legislature finds that:

(1) Efficiencies, entrepreneurialism, and the effectiveness of governing boards in fulfilling certain goals can be incentivized through the accountability and autonomy associated with exemption status for state colleges and universities based on meeting certain criteria; and

(2) Leading higher education authorities in the nation identify common, key performance indicators as an important measure of institutional effectiveness, including, but not limited to, enrollment benchmarks, fiscal benchmarks, and student success benchmarks.

(b) The following definitions apply to terms used in this section:

(1) ‘Administratively exempted schools’ means state colleges and universities:

(A) That achieve and maintain three out of five of the following:

(i) Graduation rates: A three-year average graduation rate of not less than 45 percent;

(ii) Retention rates: A three-year average retention rate of not less than 60 percent; and

(iii) Credit head count enrollment: A three-year credit head count enrollment increase, or a decrease of not more than five percent over the same period;

(iv) Days of cash reserved: A three-year average of not less than 50 days cash reserved; and

(v) Composite Financial Index: A Composite Financial Index of not less than one as reported in the college and university's audited financial statements; or

(B) Whose governing board requests a review by the chancellor of any special circumstances and the commission grants administratively exempted status based on those special circumstances as verified by the chancellor after his or her review.

(2) 'Composite Financial Index' means the benchmarking tool used by the Higher Learning Commission as a financial indicator and developed specifically for the higher education industry and is a combination of several different ratios, each of which is comprised of data that, when analyzed further, can provide insight into an institution's financial health and inform decision-making processes;

(3) 'Credit headcount enrollment' means the total number of unique students, but not counting dual-enrolled high school students, who enrolled in credit-bearing classes during the fall, spring, and summer terms in a given academic year at a specific institution;

(4) 'Days of cash reserved' means the audited end of fiscal year cash balance, multiplied by 365, and then divided by the audited total expenses less depreciation, and less other post employment benefit and pension liability expenses;

(5) 'Graduation rates' means the proportion of first time in college students who obtain a bachelor's degree within six years, as further defined by and reported to the commission;

(6) 'Retention rates' means the proportion of first-time, fall term, full-time freshmen students who are in continuing enrollment in the fall term of the next succeeding year; and

(7) 'State college and university' shall have the same meaning as provided in §18B-1-2 of this code.

(c) Any state college and university may apply to the commission for designation as an administratively exempted school. The commission shall make its determination as to whether to grant or deny exemption designation based on the definition of administratively exempted school. The commission shall propose rules for legislative approval pursuant to §29A-3A-1 *et seq.* of this code to implement the provisions of this section and that addresses loss of an administratively exempted designation. The rule shall at least include the following:

(1) After the first year an administratively exempted school fails to meet three of the five criteria under the definition of administratively exempted schools, the commission may advise the institution on strategies that may be implemented in order to meet three of the five criteria before the following year;

(2) An institution may not lose its designation as an administratively exempted school until it has failed to meet three of the five criteria under the definition of administratively exempted schools for two consecutive years;

(3) If an institution is administratively exempt based on special circumstances, the commission may revoke the administratively exempted status of a state college and university if it determines that the special circumstance that the state college and university's administratively exempted status is based on no longer exists; and

(4) The commission shall provide notice to the institution at least 30 days before revoking the institution's administratively exempted status.

(d) Notwithstanding any other provision of this code to the contrary:

(1) West Virginia University, including West Virginia University Potomac State College and West Virginia University Institute of Technology; Marshall University; and the West Virginia School of Osteopathic Medicine, which are statutorily exempted schools under §18B-1-2 of this code, are institutions of unique characteristics and their continuing inclusion as a statutorily exempted school is confirmed; and

(2) No other state institution of higher education maintains exempted school status pursuant to any other provision of this code except any exempted school status designated by the commission pursuant to this section: Provided, That notwithstanding any provision of this section to the contrary, any college or university shall be exempt from the requirement that the commission approve the establishment of new four-year programs on their own campuses for programs incentivized within the funding formula established in §18B-1B-4 of this code if the state appropriation to that school is less than 40 percent of their operating expenses for three consecutive years.

(e) Notwithstanding any other provision of this code to the contrary, any state college and university that applies and is designated by the commission as an administratively exempted school is exempt from the following:

(1) The required approval of capital projects to ensure that capital projects and facility needs are managed effectively pursuant to §18B-1B-4(a)(10) of this code;

(2) The development and approval of institutional mission definitions pursuant to §18B-1B-4(a)(34) of this code;

(3) The program approval required pursuant to §18B-1B-4(a)(35) of this code;

(4) The rules providing guidance to the governing boards in filling vacancies in the office of the president pursuant to §18B-1B-6(d) of this code;

(5) The commission's rule governing and controlling acquisitions and purchases pursuant to §18B-5-4 of this code, upon adoption by the board of governors of said school of its own rule governing and controlling acquisitions and purchases pursuant to §18B-5-4 of this code, following the procedures for adoption of rules provided for in this code;

(6) The required approval of capital improvement projects exceeding \$3 million pursuant to §18B-19-6 of this code;

(7) The required approval of lease-purchase agreements for capital improvements and equipment of \$1.5 million or greater pursuant to §18B-19-11 of this code; and

(8) The required approval of real estate transactions, lease purchase, and new building construction exceeding \$1 million pursuant to §18B-19-13 of this code.

(g) Not later than the January interims of each year, the commission shall submit a report to the Legislative Oversight Commission on Education Accountability relating to the administratively exempted schools eligibility criteria established by this section, providing the data for each of the three preceding years, as available, and the three-year average thereof, for each of the state institutions of higher education under its jurisdiction. The commission shall share the report with the institutions.”

And,

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

**Com. Sub. for H. B. 4008** – “A Bill to amend and reenact §18B-1-1f of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-1B-4 of said code, all relating to powers and duties of the Higher Education Policy Commission generally; establishing additional criteria for a state college or university to be considered exempt from the requirement that the commission approve the establishment of new programs on their own campuses for programs incentivized within the funding formula established herein; directing the Higher Education Policy Commission, in conjunction with the West Virginia Council for Community and



Technical College Education, to propose rules to establish a funding formula model governing its appropriation request to the Legislature regarding distribution of general revenue to the state's institutions of higher education; setting forth parameters for the formula and minimum requirements for the rule; revising and removing certain related commission powers and duties; requiring interim chancellor to meet all criteria required of the chancellor; clarifying the commission and council's responsibilities, in conjunction with the West Virginia Network, to support systemwide technology needs; revising provisions for rulemaking regarding transfers of credits and obtaining academic credit or advanced placement standing based on experience; authorizing commission to promulgate rules, and exercise powers and duties, governing student loans, scholarships, state aid as provided in Chapter 18C of the code; removing requirements to provide education about certain disease; and making non-substantive technical cleanup corrections and clarifying changes.”

Delegate Rowe arose to inquire of the Chair regarding the germaneness of the amendment.

The Speaker ruled that the amendment was germane.

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

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 652**), and there were—yeas 97, nays 1, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Paynter.

Absent and Not Voting: Summers and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4008) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4020**, Relating to reorganizing the Department of Health and Human Resources.

Delegate Kessinger moved that the House concur in the following amendment of the bill by the Senate:

On page four, section one, lines forty-seven through fifty, by striking out all of subsection (e) and inserting a new subsection (e) to read as follows:

“(e) The West Virginia Educational Broadcasting Authority provided in §10-5-1 *et seq.* of this code is continued as a separate independent agency within the Department of Arts, Culture, and History, which shall provide administrative support for the authority.”

Delegate Rowe arose to inquire of the Chair regarding the germaneness of the amendment.

The Speaker replied and indicated that the language in the amendment was in a bill that had completed legislative action.

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

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 653**), and there were—yeas 94, nays 4, absent and not voting 2, with the yeas and the absent and not voting being as follows:

Nays: Kimes, Paynter, Rowe and G. Ward.

Absent and Not Voting: Summers and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4020) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4492**, Creating the Division of Multimodal Transportation.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“CHAPTER 17. ROADS AND HIGHWAYS.**

**ARTICLE 16B. PUBLIC PORT AUTHORITY.**

**§17-16B-1. Creation of authority.**

[Repealed].

**§17-16B-2. Board of directors — Members, officers, qualifications, terms, oath, compensation, quorum and delegation of power.**

[Repealed].

**§17-16B-3. Executive director; appointment; powers and duties; compensation.**

[Repealed].

**§17-16B-5. Definitions.**

[Repealed].

**§17-16B-6. Powers and duties of authority.**

[Repealed].

**§17-16B-7. Special West Virginia public port authority operations fund.**

[Repealed].

**§17-16B-7a. Special Railroad and Intermodal Enhancement Fund; purposes.**

[Repealed].

**§17-16B-7b. Study of feasibility intermodal facility at Prichard, West Virginia.**

[Repealed].

**§17-16B-8. Designation of local port authority districts, powers and duties; plan for development.**

[Repealed].

**§17-16B-9. Construction and operation of facilities by private enterprise; leasing of facilities by port authority.**

[Repealed].

**§17-16B-10. Foreign trade zones; free trade zones; ports of entry and customs zones.**

[Repealed].

**§17-16B-11. Study of feasibility of establishment of export trading company.**

[Repealed].

**§17-16B-12. Division of tourist trains and transportation; duties.**

[Repealed].

**§17-16B-13. Disclaimer of any liability of state of West Virginia.**

[Repealed].

**§17-16B-14. Prohibition on funds inuring to the benefit of or being distributable to directors, employees, officers or private persons; prohibition against certain financial interests; criminal penalties.**

[Repealed].

**§17-16B-15. Port revenue bonds — Generally.**

[Repealed].

**§17-16B-16. Public port revenue bonds — Trust agreements.**

[Repealed].

**§17-16B-17. Tolls, rents, fees, charges and revenues.**

[Repealed].

**§17-16B-18. Trust funds.**

[Repealed].

**§17-16B-19. Remedies.**

[Repealed].

**§17-16B-20. Exemption from taxes.**

[Repealed].

**§17-16B-21. Preliminary expenses.**

[Repealed].

**§17-16B-22. Public port revenue refunding bonds — Generally.**

[Repealed].

## **ARTICLE 16C. DIVISION OF PUBLIC TRANSIT.**

### **§17-16C-1. Creation of division.**

[Repealed].

### **§17-16C-2. Designation of department.**

[Repealed].

### **§17-16C-3. Powers and duties of the division.**

[Repealed].

### **§17-16C-5. Assistance of other state agencies.**

[Repealed].

## **ARTICLE 16F. WEST VIRGINIA DIVISION OF MULTIMODAL TRANSPORTATION FACILITIES.**

### **§17-16F-1. Legislative findings and creation of division.**

(a) The Legislature finds and declares that there is a need to streamline the execution and implementation of the state's multimodal transportation goals and reduce related costs by consolidating existing multimodal authorities to a single division, known as the West Virginia Division of Multimodal Transportation Facilities, under the Secretary of Transportation pursuant to the provisions of chapter 5F of this code. The Department of Transportation, through the West Virginia Division of Multimodal Transportation Facilities, is designated as the agency of this state responsible for administering all federal and state programs related to public ports, railroads, aeronautics, airports, and air navigation facilities.

(b) On July 1, 2022, the Public Port Authority, the West Virginia State Rail Authority, Division of Public Transit, and the West Virginia State Aeronautics Commission are reestablished, reconstituted, and continued as the West Virginia Division of

Multimodal Transportation Facilities, an agency of the state. The purpose of the division is to administer all federal and state programs related to public ports, railroad transportation and commerce, public transit, aeronautics, airports, and air navigation facilities in the State of West Virginia, and thereby to encourage and facilitate growth and economic development opportunities utilizing such transport facilities. The powers and duties heretofore imposed upon the Public Port Authority, the West Virginia State Rail Authority, Division of Public Transit, and the West Virginia State Aeronautics Commission are transferred to and imposed upon the West Virginia Division of Multimodal Transportation Facilities in the manner prescribed by this article.

(c) It is the intent of this article to consolidate into the West Virginia Division of Multimodal Transportation Facilities those entities and employees performing functions which will be facilitated by their consolidation. The Department of Transportation shall provide appropriate office locations necessary to fulfill the functions of the division.

(d) On the effective date of this article, all real property interests, vehicles, equipment contracts or agreements, interests under any existing insurance policy, and records belonging to the Public Port Authority, the West Virginia State Rail Authority, the Division of Public Transit, and the West Virginia State Aeronautics Commission shall be transferred to the West Virginia Division of Multimodal Transportation Facilities. Any state funds, special revenue funds, and all accounts created for the benefit or use of the Public Port Authority, the West Virginia State Rail Authority, the Division of Public Transit, and the West Virginia State Aeronautics Commission are transferred to the West Virginia Division of Multimodal Transportation Facilities in accordance with the provisions of this article.

#### **§17-16F-2. Secretary's Powers and duties.**

The Secretary of the Department of Transportation or his or her designee shall be the chief operating officer of the division who shall:

(1) Administer the operations of the division, consistent with the provisions of this article, by allocating the functions, activities, and personnel of the division among the various sections;

(2) Coordinate with the Secretary of the Department of Economic Development and any other applicable departments or agencies to facilitate economic development utilizing transportation facilities;

(3) Supervise payrolls and audit payrolls, reports, or transactions for conformity with the provisions of this article;

(4) Plan, evaluate, administer, and implement multimodal transportation programs and policies in the state as set forth in this article;

(5) Utilize professional staff within the Department of Transportation to assist in the operations of the division and authorize reimbursement therefor;

(6) Assist the Governor in multimodal transportation matters; and

(7) Make a report by June 30, and every year thereafter, to the Governor and all other special or periodic reports as may be required and post all reports on its website. Reports to the Legislature are not required; however, upon request of any member or committee, a report must be provided and may be provided electronically. Paper copies of any report shall be provided upon request.

### **§17-16F-3. Definitions.**

As used in this article, unless the context indicates another or different meaning or intent:

‘Aeronautics’ means the art and science of flight, including, but not limited to, transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants, and accessories, including the repair, packing, and maintenance of parachutes; and the design, establishment,



construction, extension, operation, improvement, repair, or maintenance of airports or other air navigation facilities.

‘Aircraft’ means any contrivance now known, or hereafter invented, used, or designed for navigation of or flight in the air whether manned or unmanned.

‘Air navigation’ means the operation or navigation of aircraft in the air space over this state or upon any airport within this state.

‘Air navigation facility’ means any facility other than one owned or controlled by the federal government used in, available for use in, or designed for use in aid of air navigation, including airports, and any structures, mechanisms, lights, beacons, markers, communications system, or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe taking off, air navigation, and landing of aircraft or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

‘Airport’ means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

‘Bond’ means a revenue bond or rate issued by the division to effectuate the intents and purposes of this article.

‘Commissioner’ means the chief operating officer and administrative head of the Multimodal Division, when such person is appointed by the Secretary of Transportation.

‘Commuter rail’ means a transit mode that is an electric or diesel propelled railway for urban passenger train service consisting of local short distance travel operating between a central city and adjacent suburbs. Service must be operated on a regular basis by or under contract with a transit operator for the purpose of transporting passengers within urbanized areas or between urbanized areas and outlying areas. The rail service, using either locomotive-hauled or self-propelled railroad passenger cars, is

generally characterized by multi-trip tickets, specific station-to-station fares, or railroad employment practices and usually has only one or two stations in the central business district. It does not include heavy rail, rapid transit, light rail, or streetcar transit service. Intercity rail service is excluded except for that portion of service operated by or under contract with a public transit agency for predominantly commuter services. Only the predominantly commuter service portion of an intercity route is eligible for inclusion when determining commuter rail route miles.

‘Development plan’ means a document which details the overall strategy of the division for the proper planning and sustainable development of an area and consists of a written statement and accompanying maps.

‘Division’ means the West Virginia Division of Multimodal Transportation Facilities.

‘Heavy rail’ means a transit mode that is an electric railway with the capacity for a heavy volume of traffic. It is characterized by high speed and rapid acceleration passenger rail cars operating singly or in multicar trains on fixed rails, separate rights-of-way from which all other vehicular and foot traffic are excluded, sophisticated signaling and high platform loading.

‘Income’ means and includes all money accruing to the division or part thereof from any source.

‘Intermodal transportation’ means the successive transport of goods or passengers using more than one mode of transportation, including air, rail, ship, or roadway.

‘Light rail’ means a transit mode that typically is an electric railway with a light volume traffic capacity. It is characterized by passenger rail cars operating singly or in short, usually two-car trains, on fixed rails in shared or exclusive rights-of-way, low- or high-platform loading, and vehicle power drawn from an overhead electric line via a trolley or a pantograph.

‘Multimodal transportation’ means the consideration or connection of various modes of transportation, including air, rail, ship, or roadway.

‘Municipality’ means any county, city, town, village, or other political subdivision of this state.

‘Municipal’ means pertaining to a municipality.

‘Operation fund’ means the special West Virginia Public Port Operation Fund as created by §17-16F-12 of this code.

‘Operation of aircraft’ or ‘operate aircraft’ means the use, navigation, or piloting of aircraft in the airspace over this state or upon the ground within this state.

‘Owner’ means and includes all individuals, co-partnerships, associations, corporations, companies, transportation companies, public service corporations, the United States or any of its agencies or instrumentalities, common carriers by rail and railroad companies having any title or interest in any rail properties authorized to be acquired, leased, or used by this article.

‘Person’ means any individual, firm, corporation, partnership, company, foreign or domestic association, including railroads, joint stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative.

‘Port’ or ‘public port’ means ports, airports, wayports, terminals, buildings, roadways, rights-of-way, rails, rail lines, facilities for rail, water, highway or air transportation, and such structures, equipment, facilities, or improvements as are necessary.

‘Predominantly commuter services’ means that for any given trip segment (i.e., distance between two stations), more than 50 percent of the average daily ridership travels on the train at least three times a week.

‘Public port development’ or ‘public port project’ means any activities which are undertaken with respect to public ports.

‘Rail properties’ means assets or rights owned, leased, or otherwise controlled by a railroad or other person which are used, or useful, in rail transportation service: *Provided*, That rail properties do not include any properties owned, leased or otherwise controlled by a railroad not in reorganization, unless it consents to such properties’ inclusion in the particular transaction.

‘Rail service’ means both freight and passenger service.

‘Railroad’ means a common carrier by railroad as defined in Section 10102 of the Interstate Transportation Act (49 U.S.C. § 10102).

‘Railroad project’ means the initiation, acquisition, construction, maintenance, repair, equipping, or operation of rail properties or rail service, or the provisions of loans or grants to or with government agencies, or to persons for such purposes, by the division.

‘Wayport’ means an airport used primarily as a location at which passengers and cargo may be transferred between connecting flights of air carriers engaged in air commerce, but also allows passengers to initiate and terminate flights and shipments of cargo to originate and terminate at the airport or similar type facility.

‘West Virginia Commuter Rail Access Fund’ means the special West Virginia Commuter Rail Access Fund created by §17-16F-27 of this code.

‘West Virginia Railroad Maintenance Fund’ means the West Virginia Railroad Maintenance Fund created by §17-16F-17 of this code.

#### **§17-16F-4. Powers and duties of division.**

The division shall perform all acts necessary and proper to carry out the purposes of this article and is granted the following powers and duties:

(1) To promote, supervise, and support safe, adequate, and efficient transportation throughout the state;

(2) To preserve roadway, railroad, waterway, and airway facilities,

(3) To help facilitate economic development in this state utilizing transportation facilities;

(4) To meet and cooperate with similar divisions, authorities, or bodies of any of the several states contiguous with this state, whose purpose in their respective states is to establish an interstate or intermodal transportation network;

(5) To take all steps appropriate and necessary to effect siting, development, and operation of public ports, railroads, or airport facilities within the state;

(6) To employ managers, superintendents, and other sufficiently trained and qualified personnel and retain or contract with consulting engineers, financial consultants, accountants, attorneys, and other consultants and independent contractors when necessary to carry out the provisions of this article and fix their compensation or fees. All expenses are payable from the proceeds of revenue bonds or notes issued by the division, from revenues and funds appropriated for this purpose by the Legislature, or from grants from the federal government which may be used for such purpose;

(7) To make and enter into all contracts and agreements with any federal, state, county, municipal agency, or private entity and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers including, but not limited to, the power to make contracts and agreements in accordance with the provisions set forth in this article;

(8) To acquire, purchase, lease, construct, own, hold, operate, maintain, equip, use, and control, by eminent domain or other means, any land, property, rights, franchises, easements, ports, and such terminals, buildings, roadways, rights-of-way, rails and such structures, equipment, facilities, any and every kind or character of

motive powers and conveyances or appliances necessary or proper to carry goods, wares, and merchandise over, along, upon or through the railway, waterway or airway, or other conveyance of such transportation system, excluding pipelines or improvements, as are necessary or incident to carry out the provisions of this article, upon such terms and at such price as may be considered by it to be reasonable and to take title in the name of the state;

(9) To lease, sell, or otherwise dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article;

(10) To act on behalf of the state and to represent the state in the planning, financing, development, construction, and operation of any port, transit facility, railroad, or aeronautics project or any facility related to any such project, with the concurrence of the affected public agency. Other state agencies and local governmental entities in this state shall cooperate to the fullest extent the division deems appropriate to effectuate the duties of the division;

(11) To act as agent for the United States of America, or any of its agencies, departments, corporations, or instrumentalities, in any manner coming within the purposes or powers of the division;

(12) To expend funds available for the purpose of studying any proposed railroad project, which may include consulting with engineers. All expenses incurred in conducting the study and necessary engineering shall be paid from the funds established in §17-16F-17 of this code;

(13) To report annually to the Legislature by December 31 of each year the status of projects, operations, financial condition, and other necessary information relating to the statewide multimodal transportation system and activities in accordance with this article and any report may be made electronically with paper copies provided upon request to any member of the Legislature;

(14) To meet with political subdivisions of the state to assess both specific and general transportation needs of the state in terms

of transportation, as well as consider feasibility studies for the purpose of determining the best site locations for transportation centers, terminals, railroads, airports, ports and harbors, and foreign trade zones;

(15) To apply for and accept loans, grants or gifts of money, property, or service from the United States, any political subdivision, any public or private sources available, or any public or private lender or donor, to give such evidences of indebtedness as may be required and to permit the state Board of Investments to invest, as provided by this code, any funds received by the division pursuant to the provisions of this code;

(16) To make loans and grants, out of any appropriation made to the division by the Legislature or out of any funds at its disposal, to governmental agencies and persons for carrying out any multimodal transportation projects by any governmental agency or person in accordance with rules adopted under this article;

(17) To issue revenue bonds or request other appropriate state agencies to issue and administer revenue bonds to finance port, railroad, transit, or aeronautics projects;

(18) To collect reasonable fees and charges in connection with making and servicing loans, notes, bonds, obligations, commitments, and other evidence of indebtedness, and in connection with providing technical, consulting, and project assistance services; and

(19) To act, through the Department of Transportation, the division is hereby designated as the agency of this state responsible for administering all federal and state programs relating to public transportation and public transit facilities.

#### **§17-16F-5. Rules of division.**

(a) All rules promulgated by the Public Port Authority, the West Virginia State Rail Authority, the Division of Public Transit, or the West Virginia State Aeronautics Commission in effect at the time of creation of the division shall continue in full force and effect until revised or repealed by the division.

(b) The division, upon consultation with the Secretary of the Department of Transportation, may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement the purposes of this article. The division may promulgate any necessary emergency rules to implement the provisions of this article pursuant to the provisions of §29A-3-15 of this code.

#### **§17-16F-6. Advisory Boards.**

(a) The division may convene advisory boards composed of members with subject-matter expertise and experience in the various modes of transportation under the purview of the division.

(b) Any such advisory board may advise the division on issues and assist the division as requested.

(c) The Secretary of the Department of Transportation shall be the chairperson of any such advisory board: *Provided*, That the secretary may appoint a designee to act in his or her stead at meetings.

(d) The Secretary of the Department of Transportation shall not receive any compensation for serving as chairperson. Any appointed members of a board shall receive the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or substantial portion thereof engaged in the discharge of official duties. All compensation and expenses incurred shall be payable from funds applicable to the advisory board from the corresponding section within the division or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the section beyond the extent to which moneys are available from funds of the section or from such appropriations.

#### **§17-16F-7. Annual report.**

(a) The division shall prepare and file a comprehensive report annually by December 31 with the Governor and the Joint



Committee on Government and Finance setting forth the overall strategic plan for both short term and long term for goals and accomplishments of the purposes set forth in this article. Incidental to the development of a comprehensive strategic plan for multimodal transportation, the division shall analyze the intermodal shipment of products and passengers through the state, and shall be authorized to collect and analyze such information, which is maintained in the ordinary course of business by the person, firm, or corporation providing such information, pertaining to the transportation of products and passengers which has been moved by rail, water, or air to and from points within and without this state.

(b) Any such information and data supplied to the division shall be for exclusive use of the division. Such information is deemed confidential and is not subject to disclosure under the Freedom of Information Act, §29B-1-1 *et seq.* of this code. The division shall not publicly disclose this information and data to any person, firm, corporation, or agent. It is unlawful for any employee of this State to divulge or make known in any manner any information obtained pursuant to this subsection or disclose information concerning the personal or business affairs of any individual or the business of any single firm or corporation, or disclose any particulars set forth or disclosed in any report or other information provided to the division. Violation of this subsection by any employee or former employee will result in a misdemeanor, and upon conviction thereof, is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both, together with costs of prosecution.

**§17-16F-8. Financial interest in contracts prohibited; penalty.**

No employee of the division may be financially interested, directly or indirectly, in any contract of any person with the division, or in the sale of any property, real or personal, to or from the division. This section does not apply to contracts or purchases of property, real or personal, between the division and any governmental agency. Violation of this subsection by a division employee will result in a misdemeanor, and upon conviction thereof, is punishable by a fine of not more than \$1,000 or by

imprisonment for not more than one year, or by both, together with costs of prosecution.

**§17-16F-9. Public purpose of activities; property of public utilities and common carriers.**

(a) The division is authorized to acquire any lands or interests pursuant to this article. The planning, acquisition, establishment, construction, improvement, maintenance, and operation of public port, railroad, transit, airport, or air navigation facilities, whether by the state separately or jointly with any municipalities and the exercise of any other powers granted to the division are declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All lands and other property and privileges acquired and used by or on behalf of the state in the manner and for the purposes enumerated in this article are declared to be acquired and used for governmental purposes and as a matter of public necessity.

(b) The division shall take or distribute property or facilities belonging to any public utility or to a common carrier, which property or facilities are required for the proper and convenient operation of such public utility or common carrier, if provision is made for the restoration, relocation, or duplication of such property or facilities elsewhere at the cost of the division.

(c) The division shall make reasonable policies for the installation, construction, maintenance, repair, renewal, relocation, and removal of railroad or public utility facilities in, on, over or under any public port, railroad, airport, or air navigation facility project. Whenever the division determines that any such facilities installed or constructed in, on, over, or under property of the division pursuant to such policies must be relocated, the railroad or public utility owning or operating such facilities shall relocate or remove them in accordance with the order of the division. The cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location, the cost of any lands or any rights or interests in lands and the cost of any other rights acquired to accomplish such relocation or removal, may be paid by the division as a part of the cost of such project.

(d) When relocating or removing facilities, the railroad or public utility owning or operating them, and its successors or assigns, shall maintain, and operate such facilities, with the necessary appurtenances in the new location in, on, over, or under the property of the division for as long a period and upon the same terms as it had the right to maintain and operate such facilities in their former location.

(e) In the condemnation of property authorized by this section, the division shall proceed in the name of the State in the manner provided by chapter 54 of this code.

**§17-16F-10. Construction and operation of facilities by private enterprise; leasing of facilities by division.**

(a) The division shall foster and encourage the participation of private enterprise in the development of railroad, waterway, transit, and airway facilities to the fullest extent it deems practicable in the interest of limiting the necessity of construction and operation of such facilities by the division. In this respect, the division shall advertise and solicit for the construction, operation, maintenance, or a combination thereof for any facility included in the development plan in accordance to plans, specifications, policies, or guidance prepared by the division.

(b) When the division considers it advisable and practicable, it may include certain facilities in the development plan to be installed by private enterprise and leased back to the division on an installment contract or option to purchase: *Provided*, That any such lease back arrangement must be financially feasible, and any bonds or loans utilized to enter into such lease back arrangement shall be repayable in full from the expected rentals to be generated by such facility.

**§17-16F-11. Foreign trade zones; free trade zones; ports of entry and customs zones.**

The division shall develop, maintain, and operate foreign trade zones, free trade zones, ports of entry and customs zones under such terms and conditions as are or may be prescribed by federal

law, and to keep foreign trade zone status for, and to assist in the applications for foreign trade zone status of political subdivisions and eligible private corporations under federal law.

**§17-16F-12. Special West Virginia Public Port Operations Fund; West Virginia Multimodal Division Operations Fund; other funds transferred to the Division of Multimodal Transportation.**

(a) The special West Virginia Public Port Authority Operations Fund created by prior enactment of §17-16B-7 of this code, is continued and shall be known as the West Virginia Multimodal Division Fund. The moneys in the fund shall only be expended to fulfill the provisions of this article. At the end of each fiscal year, any unexpended funds in this account shall be appropriated and available for expenditure for the subsequent fiscal year.

(b) Any fund utilized for any purpose within the State Aeronautics Commission, the Division of Public Transit, the Public Port Authority, or the State Rail Authority shall be transferred to the Division of Multimodal Transportation and continued until such time when the division determines a fund is unnecessary or may be better managed by combining certain funds to best serve the interests of the division and the public.

**§17-16F-13. Additional powers and duties of division related to railroad projects.**

(a) The secretary shall appoint necessary staff to oversee and manage the facilities and operations of the state rail section. Staff are covered by the Department of Transportation merit- based personnel system and the Classification and Compensation Career Plan. The division shall facilitate railroad transportation and commerce within the state by exercising those powers of the state necessary to qualify for rail services continuation subsidies pursuant to the provisions of the federal Fixing America's Surface Transportation Act of 2015 and any future amendments and regulations from the federal government.

(b) The division shall carry out railroad projects or direct railroad projects to be carried out pursuant to a lease, sublease, or agreement with any person or governmental agency; shall make loans and grants to or with governmental agencies or to persons for railroad projects; and shall issue bonds of this state, payable solely from revenues, to pay the cost of such projects. The division will not undertake a railroad project unless it is consistent with any applicable development plans for railroad projects previously approved.

(c) The division shall establish, fund, construct, reconstruct, acquire, repair, replace, operate, and maintain railroads and railroad projects.

(d) The division shall make available the use of services of any railroad project to one or more persons, one or more governmental agencies or any combination.

(e) The division shall engage in research and development with respect to railroads.

(f) The division shall make and enter into contracts and agreements to acquire rolling stock or equipment with a value of \$1 million or less exempt from the provisions of §5A-3-1 *et seq.* of this code. The secretary may propose rules for promulgation for adoption by the Legislature in accordance with the provisions of §29A-3-1 *et seq.* of this code which set forth the methods for determining value of rolling stock or equipment to be purchased and any other rules as may be needed.

(1) Where rolling stock, equipment or trackage of the division is in need of immediate maintenance, repair, or reconstruction to avoid a cessation of its operations, economic loss, the inability to provide essential service to customers, or would otherwise be a danger to rail personnel or the public, the following requirements and procedures for entering into the contract or agreement to remedy the condition shall be in lieu of those provided in §5A-3-1 *et seq.* of this code or any pursuant promulgated legislative rule:

(A) If the cost under the contract or agreement involves an expenditure of more than \$1,000, but \$50,000 or less, the division shall award the contract to or enter into the agreement with the lowest responsible bidder based upon at least three oral bids made pursuant to the requirements of the contract or agreement; or

(B) If the cost under the contract or agreement, other than one for compensation for personal services, involves an expenditure of more than \$50,000, but \$150,000 or less, the division shall award the contract to or enter into the agreement with the lowest responsible bidder based upon at least three bids, submitted to the division in writing on letterhead stationery, made pursuant to the requirements of the contract or agreement.

(2) Notwithstanding any provision of this code to the contrary, a contract or lease for the operation of a railroad project constructed and owned by the division or an agreement for cooperation in the acquisition or construction of a railroad project authorized by this article is not subject to the provisions of §5A- 3-1 *et seq.* of this code or any promulgated legislative rule and the division shall enter into the contract or lease or the agreement pursuant to negotiation and upon such terms and conditions and for a period of time as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of the railroad project.

(3) The division may reject any bids. A bond with good and sufficient surety, approved by the division, is required of all contractors in an amount equal to at least 50 percent of the contract price, conditioned upon the faithful performance of the contract.

(g) The division shall purchase fire and extended coverage and liability insurance for any railroad project, and for any offices of the division insurance protecting the division, officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and be a member of, and to participate in, the state workers' compensation insurance.

(h) The division shall charge, alter, and collect rates, rentals and other charges for the use or services of any railroad project as provided in this article.

(i) The division may purchase railroad tracks being abandoned by any common carrier.

(j) The division shall acquire rail properties both within and not within the jurisdiction of the Surface Transportation Board and rail properties within the purview of the federal Fixing America's Surface Transportation Act of 2015, any amendments to it, and any other relevant federal legislation.

(k) The division shall assume the agreements and contracts currently in effect for the State Rail Authority and may enter into agreements with owners of rail properties for the acquisition of rail properties or use, or both, of rail properties upon the terms, conditions, rates, or rentals that can best effectuate the purposes of this article.

(l) The division shall acquire rail properties and other property of a railroad in concert with another state or states as is necessary to ensure continued rail service in this state.

(m) The division shall provide in the state plan for the equitable distribution of federal rail service continuation subsidies among state, local, and regional transportation authorities.

(n) The division shall maintain adequate programs of investigation, research, promotion, and development in connection with the purposes of the division and to provide for public participation.

(o) The division shall provide satisfactory assurances on behalf of the state that fiscal control and fund accounting procedures will be adopted by the state necessary to assure proper disbursement of and accounting for federal funds paid to the state as rail service continuation subsidies.

(p) The division shall comply with the regulations of the Secretary of Transportation of the United States Department of Transportation affecting federal rail service continuation programs.

(q) The division shall maximize federal assistance to the state under Title IV of the federal Regional Rail Reorganization Act of 1973 or any current or future federal statutes and to qualify for rail service continuation subsidies pursuant to the federal Fixing America's Surface Transportation Act of 2015 or any future federal statutes.

**§17-16F-14. Additional authority regarding the Maryland Area Regional Commuter.**

(a) The division shall coordinate all activities with the Maryland Transit Administration for the operation of the commuter rail operation between Maryland, the Washington, D.C. metropolitan area, and West Virginia. Any payments of track access fees pursuant to the agreement shall be paid from the fund created in §17-16F-27 of this code as provided by appropriation of the Legislature.

**§17-16F-15. Rail operations; purchases.**

(a) The division may sell, transfer, or lease all, or any part of, the rail properties and other property acquired under the provisions of this article to any responsible person, firm, or corporation for continued operation of a railroad or other public purpose: *Provided*, That approval for the continued operation or other public purpose, is granted by the Surface Transportation Board of the United States, whenever approval is required. The sale, transfer, or lease shall be for a price and subject to any further terms and conditions which the division deems necessary and appropriate to this article.

(b) After acquiring any railroad lines within the state, the division shall assist any responsible person, firm, or corporation to secure, as promptly as possible, any order or certificate required by the Surface Transportation Board for the performance of railroad service. The division shall also give any assurances or guarantees



which are necessary or desirable to carry out the purposes of this article.

(c) The division shall take whatever steps are necessary to determine the absolute fee simple title ownership of all rail properties of any railroad within the state. The determination may include the status of the rail properties with respect to easements, rights-of-way, leases, reversionary rights, fee simple title ownership, and any related title matters. The division may retain attorneys, experts, or other assistants, and issue any contracts as are necessary to make the title determination.

(d) All rail properties offered for sale by any railway corporation within the state after the enactment date of this article shall be offered first for sale to the state.

(e) The division shall cooperate with other states when purchasing rail properties within this state. The division shall also acquire railroad rights in other states and rail properties lying in other states to carry out the intentions and purposes of this article. In carrying out the powers and duties conferred by this article, the division shall enter into general contractual arrangements, including joint purchasing and leasing of rail properties with other states.

(f) In weighing the varied interests of the residents of this state, the division shall consider the individual interest of any county or municipality expressing a desire to acquire a portion, or all, of the abandoned real estate located within its jurisdiction. The division may acquire the abandoned property for subsequent conveyance to the county or municipality.

(g) The division may utilize federal funds, grants, gifts, or donations which are available and any sums that are appropriated in carrying out the purposes of this article. The division may also apply for discretionary or other funds available under the provisions of the federal Regional Rail Reorganization Act of 1973 or any current or future federal programs.

(h) The division may apply for an acquisition and modernization loan, or a guarantee of a loan, pursuant to the federal Regional Rail Reorganization Act of 1973, or any other federal programs, within the limit of funds appropriated for those purposes.

(i) The division may purchase any railroad rolling stock, equipment, and machinery necessary for the operation and maintenance of any rail properties purchased by it on behalf of the state, with any funds made available for this purpose. The division may also acquire and have available a pool of equipment and machinery which may be utilized by the operators of the rail properties for the purpose of track maintenance and other related railroad activities upon terms and conditions determined appropriate. Notwithstanding any the provisions of this code to the contrary, the division and the Commissioner of the Division of Highways may enter into contracts or agreements for the lease or purchase and maintenance of any vehicles required for its purposes.

(j) The division may contract for the rebuilding or relocation of any rail properties acquired pursuant to this article, within the provisions of the federal Regional Rail Reorganization Act of 1973 or any current or future federal statutes, or any other applicable legislation. The division may also spend any sums appropriated, as well as any other available funds, for the modernization, rebuilding, and relocation of any rail properties owned by the state or by a private carrier. The division shall do any maintenance on any rail properties owned by the state as is necessary in the public interest.

(k) The division may contract with any domestic or foreign person, firm, corporation, agency, or government to provide, maintain, or improve rail transportation service on the rail properties acquired by the state under this article.

(l) Whenever the division determines that any rail properties acquired by the state are no longer needed for railroad purposes, it shall, with the permission of the Governor, permanently or temporarily transfer the rail properties to any other state department or agency or political subdivision of the state, which

shall utilize the properties for a public purpose. Whenever more than one department or agency or political subdivision wishes to utilize the property, the division shall resolve such a conflict and make a prompt determination of the reasonable and proper order of priority, taking into consideration any applicable state plans, policies, or objectives. If no state department or agency or political subdivision wants the properties, the division may sell them.

#### **§17-16F-16. Railroad Maintenance Fund.**

The Railroad Maintenance Fund heretofore created is hereby continued and shall be administered by the division. Expenditures are authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the provisions of §11B-2-1 *et seq.* of this code. Any balance remaining in the special revenue account at the end of any state fiscal year does not revert to the General Revenue Fund but remains in the special revenue account and shall be used solely in a manner consistent with the state rail portions of this article. All costs and expenses incurred pursuant to this article for state rail, including administrative, shall be paid from those funds. The division may expend, out of any funds available for the purpose, such moneys as are necessary for the study of any proposed railroad project and may use its engineering and other forces, including consulting engineers for the purpose of effecting such study. All such expenses incurred by such study and engineering shall be paid from the Railroad Maintenance Fund.

#### **§17-16F-17. Division empowered to issue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.**

(a) The division, with approval of the secretary, may raise the cost of one or more railroad projects or parts of railroad projects by the issuance of railroad maintenance revenue bonds and notes of the state in such principal amount as the division deems necessary, but the aggregate amount of all issues of bonds and notes outstanding at one time for all projects authorized hereunder may

not exceed that amount capable of being serviced by revenues received from such projects.

(b) The division, with approval of the secretary, may issue renewal notes, issue bonds to pay the notes and whenever it deems refunding expedient, refund any bonds by the issuance of railroad maintenance revenue refunding bonds of the state, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds then outstanding and partly for any other authorized purpose. The refunding bonds shall be sold, and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded. Except as may otherwise be expressly provided by the division, every issue of its bonds or notes pursuant to this section are obligations of the division payable out of the revenues of the State Rail Section, which are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. Such pledge is valid and binding from the time the pledge is made, and the revenue so pledged and thereafter received by the division is immediately subject to the lien of such pledge without any physical delivery or further act and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the division irrespective of whether the parties have notice.

(c) All bonds and notes have and are declared to have all the qualities of negotiable instruments.

(d) The bonds and notes authorized by the division, with approval of the secretary, shall bear the date and shall mature at such time, in the case of any note or any renewals not exceeding five years from the date of issue of the original note, and in the case of any bond not exceeding 50 years from the date of issue, as the authorization may provide. The bonds and notes shall bear interest at a rate, be in denominations, be in the form, either coupon or registered, carry registration privileges, be payable in a medium of payment, at place and be subject to any terms of redemption that the division may authorize. The bonds and notes shall be sold by the division at public or private sale, at or not less than the price

the division determines. The bonds and notes shall be executed by the commissioner. The official seal of, or a facsimile, shall be affixed or printed and attested, manually or by facsimile signature, by the commissioner, which may be made by facsimile or electronic signature. Any coupons attached shall bear the signature, facsimile signature, or electronic signature of the commissioner. In case the commissioner whose signature, a facsimile signature, or an electronic signature, appears on any bonds, notes or coupons ceases to be commissioner before delivery of the bonds or notes, the signature, facsimile or electronic signature is nevertheless sufficient for all purposes the same as if he or she had remained in their respective positions until delivery and in case the seal of the commissioner has been changed after a facsimile has been imprinted on such bonds or notes the facsimile seal will continue to be sufficient for all purposes.

(e) Any authorization of any bonds or notes or any issue shall contain provisions, subject to agreements with bondholders or noteholders as may then exist, as part of the contract with the holders, as to pledging all or any part of the revenues of the State Rail Section to secure the payment of the bonds or notes or of any issue; the use and disposition of revenues of the State Rail Section; a covenant to fix, alter and collect rates, rentals and other charges so that pledged revenues will be sufficient to pay the costs of operation, maintenance and repairs, pay principal of and interest on bonds or notes secured by the pledge of such revenues and provide any reserves that may be required by the applicable authorization or trust agreement; the setting aside of reserve funds, sinking funds or replacement and improvement funds and the regulation and disposition; the crediting of the proceeds of the sale of bonds or notes to and among the funds referred to or provided for in the authorization of issuance of the bonds or notes; the use, lease, sale or other disposition of any railroad project or any other assets of the division; limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging such proceeds to secure the payment of the bonds or notes or of any issue; notes issued in anticipation of the issuance of bonds, the agreement of the commissioner to do all things necessary for the authorization, issuance and sale of such bonds in such amounts that may be

necessary for the timely retirement of the notes; limitations on the issuance of additional bonds or notes; the terms upon which additional bonds or notes may be issued and secured; the refunding of outstanding bonds or notes; the procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent and the manner in which such consent may be given; limitations on the amount of moneys to be expended by the division for operating, administrative or other expenses of the division; securing any bonds or notes by a trust agreement; and any other matters, of like or different character, which in any way affect the security or protection of the bonds or notes.

(f) No person executing the bonds or notes is liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance.

**§17-16F-18. Trustee for bondholders; contents of trust agreement.**

(a) In the discretion of the commissioner, any railroad maintenance bonds or notes or railroad maintenance refunding bonds issued by them under this article may be secured by a trust agreement between the commissioner and a corporate trustee, which trustee may be any trust company or banking institution having the powers of a trust company within or without this state.

(b) Any such trust agreement shall pledge or assign revenues of the State Rail Section to be received, but shall not convey or mortgage any railroad project in whole or in part. Any such trust agreement or any authorization providing for the issuance of such bonds or notes may contain such provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as are reasonable and proper and not in violation of law, including covenants setting forth the duties of the division in relation to the acquisition of property, the construction, improvement, maintenance, repair, operation, and insurance of the railroad project in connection with which such bonds or notes are authorized, the rentals or other charges to be imposed for the use or services of any railroad project, the custody, safeguarding, and

application of all moneys and provisions for the employment of consulting engineers in connection with the construction or operation of such railroad project. Any banking institution or trust company incorporated under the laws of this state which may act as depository of the proceeds of bonds or notes or of revenues shall furnish such indemnifying bonds or pledge such securities as are required by the division. Any such trust agreement may set forth the rights and remedies of the bondholders and noteholders and of the trustee and may restrict individual rights of action by bondholders and noteholders as customarily provided in trust agreements or trust indentures securing similar bonds. Such trust agreement may contain such other provisions as the commissioner deems reasonable and proper for the security of the bondholders or noteholders. All expenses incurred in carrying out the provisions of any trust agreement may be treated as a part of the cost of the operation of the railroad project. Any trust agreement or authorization of the issuance of railroad maintenance revenue bonds may provide the method whereby the general administrative overhead expenses of the division shall be allocated among the several projects acquired or constructed by it as a factor of the operating expenses of each such project.

#### **§17-16F-19. Legal remedies of bondholders and trustees.**

Any holder of railroad maintenance revenue bonds issued under the authority of this article or any of the appertaining coupons and the trustee under any trust agreement, except to the extent the rights given by this article may be restricted by the applicable authorization or trust agreement, may by civil action, mandamus, or other proceedings, protect and enforce any rights granted under the laws of this state or granted under this article, by the trust agreement or by the authorization of issuance of bonds, and may enforce and compel the performance of all duties required by this article, or by the trust agreement or authorization, to be performed by the commissioner, division or any employee, including the fixing, charging and collecting of sufficient rentals or other charges.

**§17-16F-20. Bonds and notes not debt of state, county, municipality, or of any political subdivision; expenses incurred pursuant to article.**

(a) Railroad maintenance revenue bonds and notes and railroad maintenance revenue refunding bonds issued under authority of this article and any coupons in connection therewith do not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality, or any other political subdivision of this state, and the holders or owners have no right to have taxes levied by the Legislature or taxing authority of any county, municipality, or any other political subdivision of this state for the payment of the principal or interest, but such bonds and notes are payable solely from the revenues and funds pledged for their payment as authorized by this article unless the notes are issued in anticipation of the issuance of bonds or the bonds are refunded by refunding bonds issued under authority of this article, which bonds or refunding bonds are payable solely from revenues and funds pledged for their payment as authorized by this article. All bonds and notes shall contain on the face of a statement to the effect that the bonds or notes, as to both principal and interest, are not debts of the state or any county, municipality, or political subdivision, but are payable solely from revenues and funds pledged for their payment.

(b) All expenses incurred in carrying out the provisions of this article are payable solely from funds provided under authority of this article. The division is not authorized to incur indebtedness or liability on behalf of or payable by the state or any county, municipality, or political subdivision.

**§17-16F-21. Use of funds by division; restrictions.**

All moneys, properties and assets acquired by the division, whether as proceeds from the sale of railroad maintenance revenue bonds or as revenues or other source which are attributable to a railroad project or purpose, shall be held by it in trust for the purposes of carrying out his or her powers and duties, and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys may at no time be commingled with other



public funds. Such moneys, except as otherwise provided in any authorization of the issuance of railroad maintenance revenue bonds or in any trust agreement securing the same, or except when invested pursuant to §17-16F-23 of this code, shall be kept in appropriate depositories and secured as provided and required by law. The authorization of the issuance of bonds of any issue or the trust agreement securing bonds shall provide that any person to whom, or any banking institution or trust company to which, moneys are paid shall act as trustee of such moneys and hold and apply them for the purposes hereof, subject to the conditions this article and the authorization or trust agreement provide.

**§17-16F-22. Investment of funds by division.**

Funds of the State Rail Section in excess of current needs, except as otherwise provided in any authorization for the issuance of railroad maintenance revenue bonds or in any trust agreement securing the same, may be invested by the West Virginia Investment Management Board as authorized to invest under §12-6-1 *et seq.* of this code. Income from all such investments of moneys in any fund shall be credited to such funds as the commissioner determines, subject to the provisions of any authorization or trust agreement and such investments may be sold at such times as the commissioner, determines.

**§17-16F-23. Rentals and other revenues from railroad projects; contracts and leases of division; cooperation of other governmental agencies; bonds of such agencies.**

(a) The division shall charge, alter, and collect rates, rentals, or other charges for the use or services of any project, and contract in the manner provided by this section with one or more persons, one or more governmental agencies, or a combination, desiring the use or services, and fix the terms, conditions, rates, rentals, or other charges for use or services. The rentals or other charges are not subject to supervision, or regulation by any other division, authority, department, commission, board, bureau, or agency of the state, and the contract may provide for acquisition by a person or governmental agency of all or any part of a railroad project for consideration payable over the period of the contract or otherwise

as the division in its sole discretion determines to be appropriate, but subject to the provisions of any authorized issue of railroad maintenance revenue bonds or notes or railroad maintenance revenue refunding bonds of the division or any trust agreement securing the same. Any governmental agency which has power to construct, operate, and maintain railroad projects may enter into a contract or lease with the division whereby the use or services of any railroad project of the division will be made available to such governmental agency and pay for such use or services such rentals or other charges as may be agreed to by such governmental agency and the division.

(b) Any governmental agency or agencies shall cooperate with the division in the acquisition or construction of a railroad project and shall enter into such agreements with the division when necessary, facilitating cooperation and safeguarding the respective interests of the parties, which agreements shall provide for such contributions by the parties in such proportion as may be agreed upon and such other terms as may be mutually satisfactory to the parties, including without limitation the authorization of the construction of the project by one of the parties acting as agent for all of the parties and the ownership and control of the project by the division to the extent necessary or appropriate for purposes of the issuance of railroad maintenance revenue bonds by the commissioner. Any governmental agency may provide contributions as is required under the agreements by the appropriation of money or, if authorized by a favorable vote of the electors to issue bonds or notes or levy taxes or assessments and issue notes or bonds in anticipation of the collection, by the issuance of bonds or notes or by the levying of taxes or assessments and the issuance of bonds or notes in anticipation of the collection, and by the payment of such appropriated money or the proceeds of such bonds or notes to the division pursuant to such agreements.

(c) Any governmental agency, pursuant to a favorable vote of the electors in an election held for the purpose of issuing bonds to provide funds to acquire, construct or equip, or provide real estate and interests in real estate for a railroad project, whether or not the governmental agency at the time of such election had the authority

to pay the proceeds from such bonds or notes issued in anticipation to the division as provided in this section, may issue such bonds or notes in anticipation of the issuance and pay the proceeds to the division in accordance with an agreement between such governmental agency and the division: *Provided*, That the legislative authority of the governmental agency finds and determines that the railroad project to be acquired or constructed by the division in cooperation with such governmental agency will serve the same public purpose and meet substantially the same public need as the facility otherwise proposed to be acquired or constructed by the governmental agency with the proceeds of such bonds or notes.

**§17-16F-24. Maintenance, operation, and repair of projects; reports to Governor and Legislature.**

(a) Each railroad project, when constructed and placed in operation, shall be maintained, and kept in good condition by the division. Each project shall be operated by the division's employees pursuant to a contract or lease with a governmental agency or person. All public or private property damaged or destroyed while carrying out the provisions of this article shall be restored or repaired to its original condition, or as nearly as practicable or adequate compensation made out of funds provided in accordance with the provisions of this article.

(b) As soon as possible after the close of each fiscal year, the authority shall make an annual report of its activities for the preceding fiscal year to the Governor and the Joint Committee on Government and Finance. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the preceding fiscal year. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operations of its projects. Any report under this section may be made electronically and paper copies may be provided upon request.

**§17-16F-25. Railroad maintenance bonds lawful investments.**

By the provisions of §12-6-1 et seq. of this code, notwithstanding any code section to the contrary, all railroad maintenance revenue bonds issued pursuant to this article are lawful investments for the West Virginia Investment Management Board and are also lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, insurance companies, including domestic for life and domestic not for life insurance companies.

**§17-16F-26. West Virginia Commuter Rail Access Fund.**

There is continued a special fund in the State Treasury known as the West Virginia Commuter Rail Access Fund. The fund shall be administered by the division and shall consist of appropriations by the Legislature. Subject to legislative appropriation, the division shall administer the fund to pay track access fees pursuant to agreement as required by this article. Balances in the fund at the end of any fiscal year shall not expire but shall be expended for those purposes in ensuing fiscal years.

**§17-16F-27. State rail plan required.**

(a) The division shall establish, administer, and coordinate a state plan for rail transportation and local rail services. In establishing and updating the plan, the division may request input from freight and rail passenger associations.

(b) The plan shall, at a minimum, comply with the provisions of the laws and regulations of the United States relating to capturing and administering federal moneys for rail transportation, local rail services, and intermodal facilities as deemed necessary by the division.

**§17-16F-28. Additional powers and duties of division related to aeronautics, airports, and air navigation projects.**

(a) The secretary shall appoint necessary staff to oversee and manage the facilities and operations of the aeronautics section.

Staff are covered by the Department of Transportation merit based system and the Career, Classification, and Compensation Plan. The division shall encourage, foster, and assist in the development of aeronautics in this state and encourage the establishment of airports and air navigation facilities. The division shall cooperate with and assist the federal government, the municipalities of this state, and other persons in the development of aeronautics and shall act to coordinate the aeronautical activities of these bodies and persons. Municipalities are authorized to cooperate with the division in developing aeronautics and aeronautics facilities in this state. The division is given the power and authority to make such policies as it may consider necessary and advisable for the public safety, governing the designing, laying out, locating, building, equipping, and operating of all airports and the conduct of all other phases of aeronautics.

**§17-16F-29. State financial assistance for county, municipal and regional airports.**

The division, out of any appropriation funds made by the Legislature or any funds at its disposal, may make funds available by grant or otherwise to counties, municipalities, and regional airport authorities, created under the provisions of chapter 8 of this code, for the planning, acquisition, construction, improvement, maintenance, or operation of airports owned or operated or to be owned or operated by such counties, municipalities, or regional airport authorities. Acceptance of any moneys by any such county, municipality, or regional airport authority, shall constitute consent by the recipient that a reasonable use of such airport may be made, upon request of the division, by the United States, the state, or any of their respective agencies, including the National Guard of West Virginia for State purposes related or incidental to aeronautics. Such financial assistance may be furnished in connection with federal or other financial aid for the same purpose.

**§17-16F-30. Financial aid.**

(a) The division shall cooperate with the United States, and any agency or department, in the planning, acquisition, construction, improvement, maintenance, and operation of airports and other air

navigation facilities in this state and may accept federal aid either outright or by way of matching, in whole or in part, as required, and when funds for matching are available to the division, comply with the provisions of the laws and regulations of the United States for the expenditure of federal moneys upon such airports and other air navigation facilities.

(b) The division may accept, receive, and receipt for federal moneys and other moneys, either public or private, for and on behalf of this state, or any municipality, for the planning, acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether such work is to be done by the state or by such municipality, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by the laws, rules, or regulations of the United States. The division shall be designated as the agency of the state and shall act as agent of any municipality upon the request of such municipality, in accepting, receiving, and receipting for such moneys on its behalf for airports or other air navigation facility purposes, and in contracting for the planning, acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed, either in whole or in part, by federal moneys. Any such municipality shall enter an agreement with the division prescribing the terms and conditions of such agency in accordance with federal laws and regulations and with this article. Such moneys paid by the United States shall be retained by the state or said municipalities under such terms and conditions as may be imposed by the United States in making such grants.

(c) All contracts for the planning, acquisition, construction, improvement, maintenance, and operation of airports, or other air navigation facilities made by the division, either as the agent of the State or as the agent of any municipality, shall be made pursuant to the laws of this state: *Provided*, That where the planning, acquisition, construction, improvement, maintenance, and operation of any airport or other air navigation facility is financed wholly or partially with federal moneys, the division, as agent of the State or of any municipality, shall execute contracts in the

manner prescribed by the federal laws, rule, or regulations, notwithstanding State law to the contrary.

(d) All moneys accepted for disbursement by the division pursuant to this section shall be deposited in the State Treasury, and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the moneys were made available, and held by the State in trust. All such moneys are appropriated for the purposes for which the same were made available and shall be expended in accordance with federal laws and regulations and with the provisions of this article. The division shall, whether acting for this state or the agent of any municipality, when requested by the United States or any agency or department or by the state or municipality for which the money has been made available, disburse such moneys for the designated purposes, but this shall not preclude any other authorized method of disbursement.

(e) The state or municipality shall cooperate with the United States, and any agency or department, in the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities in this state and shall accept federal aid, either by way of outright grant or by matching the same, in whole or in part, as required to comply with the provisions of the laws and regulations of the United States for the expenditure of federal moneys upon such airports and other air navigation facilities.

### **§17-16F-31. Establishment and operation of state airports.**

(a) The commissioner is authorized on behalf of and in the name of the State, out of appropriations and other moneys made available for such purposes, to plan, establish, construct, maintain, and operate airports and air navigation facilities within the state. For these purposes the director may, by purchase, gift, devise, lease, condemnation, or otherwise, acquire such property, real or personal, as is necessary to permit safe and efficient operation of the airports and air navigation facilities. In like manner, the director may acquire existing airports and air navigation facilities: *Provided*, That he or she may not acquire or take over any airport

or air navigation facility owned or controlled by a municipality of this or any other state without the consent of the municipality.

(b) The commissioner may by sale, lease, or otherwise, dispose of property, airport, air navigation facility, or portion thereof or interest therein. Any disposal by lease shall be made pursuant to the terms of §8-28-7 of this code. Any disposal by sale or otherwise shall be in accordance with the laws of this state governing the disposition of other property of the state, except that in the case of disposal to any municipality or state government or the United States for aeronautical purposes incident thereto the sale or other disposal may be effected in such manner and upon such terms as the director determines are in the best interest of the state.

(c) Nothing contained in this article shall be construed to limit any right, power, or authority of the State or a municipality to regulate airport hazards by zoning.

(d) The commissioner may exercise any powers granted by this section jointly with any municipalities or agencies of the state government, with other states or their municipalities, or with the United States.

(e) In the condemnation of property authorized by this section, the director shall proceed in the name of the State in the manner provided by §54-1-1 *et seq.* of this code.

(f) The acquisition of any lands or interests therein pursuant to this article, the planning, acquisition, establishment, construction, improvement, maintenance, and operation of airports and air navigation facilities, whether by the state separately or jointly with any municipalities, and the exercise of any other powers herein granted to the director are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All lands and other property and privileges acquired and used by or on behalf of the State in the manner and for the purposes enumerated in this article shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.



**§17-16F-32. Use of state and municipal facilities and services.**

The division shall use the facilities and services of other agencies of the state and of the municipalities to the utmost extent possible, and such agencies and municipalities shall make available their facilities and services in furtherance of aeronautics in this state.

**§17-16F-33. Disposition of fees.**

All fees or other moneys collected by the division under the provisions of this article shall be paid into the State Treasury in the manner provided in §12-2-1 *et seq.* of this code, and shall be deposited in a separate account and be used and expended only to carry out the provisions of this article. The fees or other moneys so paid into the State Treasury shall constitute and be treated as an excepted fund, and all the provisions of §12-2-2 of this code, applicable to the funds excepted from the general provisions for the deposit and payment of state funds, shall be applicable to the fund derived from collections made pursuant to the provisions of this article.

**§17-16F-34. Severability.**

If any provision of this article or the application to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this article which can be given effect without the invalid provisions or application, and to this end the provisions of this article are declared to be severable.

**CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.****ARTICLE 2A. STATE AERONAUTICS COMMISSION.****§29-2A-1. Definitions.**

[Repealed].

**§29-2A-2. Short title; continuation of commission; membership and compensation; quorum.**

[Repealed].

**§29-2A-3. Powers and duties of commission.**

[Repealed].

**§29-2A-4. Organization of commission; meetings; reports; offices.**

[Repealed].

**§29-2A-5. Director of aeronautics; appointment, qualifications, compensation, powers and duties; staff.**

[Repealed].

**§29-2A-6. State financial assistance for county, municipal, and regional airports.**

[Repealed].

**§29-2A-7. Federal aid.**

[Repealed].

**§29-2A-8. Establishment and operation of state airports.**

[Repealed].

**§29-2A-10. Public purpose of activities.**

[Repealed].

**§29-2A-11. Operation of aircraft while under influence of alcohol, controlled substances or drugs; criminal penalties.**

[Repealed].

**§29-2A-11a. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.**

[Repealed].

**§29-2A-11b. Preliminary analysis of breath to determine alcoholic content of blood.**

[Repealed].

**§29-2A-11c. How blood test administered; additional test at option of person tested; use of test results; certain immunity from liability incident to administering test.**

[Repealed].

**§29-2A-11d. Interpretation and use of chemical test.**

[Repealed].

**§29-2A-11e. Right to demand test.**

[Repealed].

**§29-2A-11f. Fee for withdrawing blood sample and making urine test; payment of fees.**

[Repealed].

**§29-2A-12. Operation of aircraft at low altitude or in careless and reckless manner; penalty.**

[Repealed].

**§29-2A-13. Unauthorized taking or operation of aircraft; penalty.**

[Repealed].

**§29-2A-14. Federal license required for operation of aircraft.**

[Repealed].

**§29-2A-20. Enforcement of aeronautics laws.**

[Repealed].

**ARTICLE 18. WEST VIRGINIA STATE RAIL  
AUTHORITY.**

**§29-18-1. Short title.**

[Repealed].

**§29-18-2. Declaration of policy and responsibility; purpose and  
intent of article; findings.**

[Repealed].

**§29-18-3. Definitions.**

[Repealed].

**§29-18-4. West Virginia state rail authority continued;  
organization of authority; appointment of members; term  
of office, compensation and expenses; director of authority;  
termination date.**

[Repealed].

**§29-18-4a. Supervision of West Virginia State Rail Authority;  
executive director's compensation.**

[Repealed].

**§29-18-5. Authority may construct, maintain, etc., railroad  
maintenance projects.**

[Repealed].

**§29-18-6. Powers, duties and responsibilities of authority  
generally.**

[Repealed].

**§29-18-7. Operations; purchases.**

[Repealed].

**§29-18-8. Creation of railroad maintenance authority fund.**

[Repealed].

**§29-18-9. Expenditure of funds for study and engineering of proposed projects.**

[Repealed].

**§29-18-10. Authority empowered to issue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.**

[Repealed].

**§29-18-11. Trustee for bondholders; contents of trust agreement.**

[Repealed].

**§29-18-12. Legal remedies of bondholders and trustees.**

[Repealed].

**§29-18-13. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.**

[Repealed].

**§29-18-14. Use of funds by authority; restrictions thereon.**

[Repealed].

**§29-18-15. Investment of funds by authority.**

[Repealed].

**§29-18-16. Rentals and other revenues from railroad projects; contracts and leases of authority; cooperation of other governmental agencies; bonds of such agencies.**

[Repealed].

**§29-18-17. Maintenance, operation and repair of projects; reports by authority to Governor and Legislature.**

[Repealed].

**§29-18-18. Railroad maintenance bonds lawful investments.**

[Repealed].

**§29-18-19. Exemption from taxation.**

[Repealed].

**§29-18-20. Acquisition of property by authority; governmental agencies authorized to convey, etc., property.**

[Repealed].

**§29-18-21. Property of public utilities and common carriers.**

[Repealed].

**§29-18-22. Financial interest in contracts prohibited; penalty.**

[Repealed].

**§29-18-23. Meetings and records of authority to be kept public.**

[Repealed].

**§29-18-24. Creation of the West Virginia Commuter Rail Access Fund.**

[Repealed].

**§29-18-25. State rail plan required.**

[Repealed].

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 654**), and there were—yeas 98, nays none,

absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Howell and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4492) passed.

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

On this question, the yeas and nays were taken (**Roll No. 655**), and there were—yeas 97, nays 1, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Paynter.

Absent and Not Voting: Howell and Walker.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4492) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4025**, Providing exemption to severance tax for severing rare earth elements and other critical minerals.

Delegate Kessinger moved that the House refuse to concur in the following amendment of the bill by the Senate, and request the Senate to recede therefrom:

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

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

**ARTICLE 1. COUNTY COMMISSIONS GENERALLY. §7-1-3UU. AMUSEMENT TAX.**

Every county commission may levy and collect an admission or amusement tax upon any public amusement or entertainment conducted within the limits of the county for private profit or gain. The tax shall be levied upon the purchaser and added to and collected by the seller with the price of admission or other charge for the amusement or entertainment. The tax may not exceed two percent of the admission price or charge, but a tax of one cent may be levied and collected in any case.

Any ordinance imposing an amusement tax shall contain reasonable rules governing the collection of the tax by the seller and the method of his or her payment and accounting therefor to the county.

An amusement tax imposed by a county commission may not be imposed within the territory of a municipal corporation that has imposed an amusement tax under §8-13-6 of this code.

**CHAPTER 11. TAXATION.**

**ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT. §11-13A-3C. IMPOSITION OF TAX ON PRIVILEGE OF SEVERING OTHER NATURAL RESOURCES.**

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use any other natural resource product or product not taxed under section three, three-a, three-b or four of this article, there is hereby levied and shall be collected from every person exercising this privilege an annual privilege tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be four percent of the gross value of the natural resource produced, as shown by the gross proceeds derived from the sale thereof by producer, except as otherwise provided in this article: *Provided*, That beginning July 1, 1993, the tax imposed



by this section shall be levied and collected at the rate of four and one-half percent, and beginning July 1, 1994, the tax imposed by this section shall be levied and collected at the rate of five percent: Provided, however, That there is an exemption from the imposition of the tax provided for in this article for five years beginning July 1, 2022, for severing, extracting, reducing to possession and producing for sale, profit or commercial use rare earth elements and critical minerals. For the purposes of this section, “rare earth elements” (also known as rare earth metals or rare earth oxides) are only yttrium, lanthanum, cerium, praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, lutetium, and scandium, and “critical minerals” are only aluminum, antimony, arsenic, barite, beryllium, bismuth, cesium, chromium, cobalt, fluorspar, gallium, germanium, graphite, hafnium, indium, iridium, lithium, magnesium, manganese, nickel, niobium, palladium, platinum, rhodium, rubidium, ruthenium, tantalum, tellurium, tin, titanium, tungsten, vanadium, zinc, and zirconium.

(c) Tax in addition to other taxes. — The tax imposed by this section shall apply to all persons severing other natural resources in this state, and shall be in addition to all other taxes imposed by law.

(d) Effective date. — This section, as amended in the year 1993, shall apply to gross proceeds derived after May 31 of such year. The language of section three of this article, as in effect on January 1, of such year, shall apply to gross proceeds derived prior to June 1 of such year and, with respect to such gross proceeds, shall be fully and completely preserved.”

And,

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

**Com. Sub. for H. B. 4025** - “A Bill to amend the Code of West Virginia, 1931, as amended by adding thereto a new section, designated §7-1-3uu; and to amend and reenact §11-13A-3c of said code, all relating to taxation; allowing county commissions to impose an amusement tax; providing for the imposition of the tax

on the privilege of severing other natural resources; providing for an exemption from the imposition of the severance tax for a period of 5 years beginning on July 1, 2022, for severing rare earth elements and critical minerals; and defining rare earth elements and critical minerals.”

Delegate Zatezalo arose and inquired of the Chair regarding two sections of code in this bill.

The Speaker replied and indicated that he agreed with the motion in regard to the germaneness standard.

On the question of adoption of the motion by Delegate Kessinger, the yeas and nays were demanded, which demand was sustained.

Having been ordered, the yeas and nays were taken (**Roll No. 656**), and there were—yeas 76, nays 21, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Brown, Doyle, Evans, Ferrell, Fleischauer, Garcia, Hansen, Hornbuckle, Hott, Jennings, D. Kelly, Lovejoy, Mandt, Nestor, Phillips, Rowan, Rowe, Sypolt, B. Ward, G. Ward and Williams.

Absent and Not Voting: J. Jeffries, Martin and Walker.

So, a majority of the members present having voted in the affirmative, the motion to refuse to concur prevailed.

Pursuant to House Rule 38, Delegate Linville moved that debate be limited to one minute per speaker and that all speakers only be able to be recognized one time on every question for the remainder of the evening.

Following inquiry, the Speaker ruled that would be a rule suspension and require a two-thirds vote.

Whereupon,

In the absence of objection, Delegate Linville withdrew the motion.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4560**, Relating generally to motor vehicle dealers, distributors, wholesalers and manufacturers.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 6A. MOTOR VEHICLE DEALERS,  
DISTRIBUTORS, WHOLESALERS, AND  
MANUFACTURERS.**

**§17A-6A-2. Governing law.**

(a) In accord with the settled public policy of this state to protect the rights of its citizens, each franchise or agreement between a manufacturer or distributor and a dealer or dealership which is located in West Virginia, or is to be performed in substantial part in West Virginia, shall be construed and governed by the laws of the State of West Virginia, regardless of the state in which it was made or executed and of any provision in the franchise or agreement to the contrary. The public policy of this state is to protect the rights of its citizens and each new motor vehicle dealer for any agreement governed by this article.

(b) The provisions of this article apply only to any franchises and agreements entered into, continued, modified, or renewed subsequent to the effective date of this article.

**§17A-6A-3. Definitions.**

For the purposes of this article, the words and phrases defined in this section have the meanings ascribed to them, except where the context clearly indicates a different meaning.

(1) 'Dealer agreement' means the franchise, agreement, or contract in writing between a manufacturer, distributor, and a new motor vehicle dealer which purports to establish the legal rights and obligations of the parties to the agreement or contract with regard to the operation and business of a new motor vehicle dealer, including, but not limited to, the purchase, lease, or sale of new motor vehicles, accessories, service, and sale of parts for motor vehicles where applicable.

(2) 'Designated family member' means the spouse, child, grandchild, parent, brother, or sister of a ~~deceased~~ new motor vehicle dealer who is entitled to inherit the ~~deceased~~ dealer's ownership interest in the new motor vehicle dealership under the terms of the dealer's will, or who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new motor vehicle dealership, or is entitled to inherit under the laws of intestate succession of this state. With respect to an incapacitated new motor vehicle dealer, the term means the person appointed by a court as the legal representative of the new motor vehicle dealer's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased new motor vehicle dealer. However, the term means only that designated successor nominated by the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or distributor, if ~~such~~ a document is filed.

(3) 'Distributor' means any person, resident, or nonresident who, in whole or in part, offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer or who maintains a factor representative, resident, or nonresident, or who controls any person, resident, or nonresident who, in whole or in part, offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer.

(4) 'Established place of business' means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning,

and other land-use regulatory ordinances and as licensed by the Division of Motor Vehicles.

(5) 'Factory branch' means an office maintained by a manufacturer or distributor for the purpose of selling or offering for sale vehicles to a distributor, wholesaler, or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives. The term includes any sales promotion organization maintained by a manufacturer or distributor which is engaged in promoting the sale of a particular make of new motor vehicles in this state to new motor vehicle dealers.

(6) 'Factory representative' means an agent or employee of a manufacturer, distributor, or factory branch retained or employed for the purpose of making or promoting the sale of new motor vehicles or for supervising or contracting with new motor vehicle dealers or proposed motor vehicle dealers.

(7) 'Good faith' means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade.

(8) 'Manufacturer' means any person who manufactures or assembles new motor vehicles; or any distributor, factory branch, or factory representative and, in the case of a school bus, truck tractor, road tractor, or truck as defined in ~~section one, article one of this chapter~~, §17A-1-1 of this code, also means a person engaged in the business of manufacturing a school bus, truck tractor, road tractor or truck, their engines, power trains, or rear axles, including when engines, power trains or rear axles are not warranted by the final manufacturer or assembler, and any distributor, factory branch, or representative.

(9) 'Motor vehicle' means that term as defined in ~~section one, article one of this chapter~~, §17A-1-1 of this code, including a motorcycle, school bus, truck tractor, road tractor, truck, or recreational vehicle, all-terrain vehicle and utility terrain vehicle as defined in subsections (c), (d), (f), (h), (l), (nn) and (vv), respectively, of in said section, but not including a farm tractor or farm equipment. The term 'motor vehicle' also includes a school

bus, truck tractor, road tractor, truck, its component parts, including, but not limited to, its engine, transmission, or rear axle manufactured for installation in a school bus, truck tractor, road tractor, or truck.

(10) 'New motor vehicle' means a motor vehicle which is in the possession of the manufacturer, distributor, or wholesaler, or has been sold only to a new motor vehicle dealer and on which the original title has not been issued from the new motor vehicle dealer.

(11) 'New motor vehicle dealer' means a person who holds a dealer agreement granted by a manufacturer or distributor for the sale of its motor vehicles, who is engaged in the business of purchasing, selling, leasing, exchanging, or dealing in new motor vehicles, service of said vehicles, warranty work, and sale of parts who has an established place of business in this state and is licensed by the Division of Motor Vehicles.

(12) 'The operation and business of a new motor vehicle dealer or dealership' includes selling, leasing, exchanging, or otherwise conveying a new motor vehicle at retail and performing warranty and recall work for a motor vehicle: *Provided*, That the provisions of this subdivision do not apply to over the air updates.

~~(12)~~ (13) 'Person' means a natural person, partnership, corporation, association, trust, estate, or other legal entity.

~~(13)~~ (14) 'Proposed new motor vehicle dealer' means a person who has an application pending for a new dealer agreement with a manufacturer or distributor. 'Proposed motor vehicle dealer' does not include a person whose dealer agreement is being renewed or continued.

~~(14)~~ (15) 'Relevant market area' means the area located within a 20 air mile radius around an existing same line-make new motor vehicle dealership: *Provided*, That a 15 mile relevant market area as it existed prior to the effective date of this statute shall apply to any proposed new motor vehicle dealership as to which a manufacturer or distributor and the proposed new motor vehicle dealer have executed on or before the effective date of this statute

a written agreement, including a letter of intent, performance agreement, or commitment letter concerning the establishment of the proposed new motor vehicle dealership.

**§17A-6A-5. Circumstances not constituting good cause.**

Notwithstanding any agreement, the following alone does not constitute good cause for the termination, cancellation, nonrenewal, or discontinuance of a dealer agreement under ~~subdivision (d), subsection (1), section four of this article: §17A-6A-4 of this code.~~

~~(a)~~ (1) A change in ownership of the new motor vehicle dealer's dealership. This ~~subdivision~~ section does not authorize any change in ownership which would have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent which may not be unreasonably or untimely withheld.

~~(b)~~ (2) The refusal of the new motor vehicle dealer to purchase or accept delivery of any new motor vehicle parts, accessories, or any other commodity or services not ordered by the new motor vehicle dealer.

~~(c)~~ (3) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a dealer agreement for the sale of another make or line of new motor vehicles, or that the new motor vehicle dealer has established another make or line of new motor vehicles in the same dealership facilities as those of the manufacturer or distributor: *Provided*, That the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the dealer agreement and with any reasonable facilities' requirements of the manufacturer or distributor.

~~(d)~~ (4) The fact that the new motor vehicle dealer designates as an executive manager or sells or transfers ownership of the

dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealer's spouse, son, or daughter: *Provided*, That the sale or transfer shall not have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent, which may not be unreasonably or untimely withheld or refused in a manner inconsistent with §17A-6A-11 of this code.

~~(e)~~ (5) This section does not apply to any voluntary agreement entered into after a disagreement or civil action has arisen for which the dealer has accepted separate and valuable consideration. Any prospective agreement is void as a matter of law.

#### **§17A-6A-8a. Compensation to dealers for service rendered.**

~~(4)~~ (a) Every motor vehicle manufacturer, distributor, or wholesaler, factory branch or distributor branch, or officer, agent, or representative thereof, shall:

~~(a)~~ (1) Specify in writing to each of its motor vehicle dealers, the dealer's obligation for delivery, preparation, warranty, and factory recall services on its products;

~~(b)~~ (2) Compensate the motor vehicle dealer for warranty and factory recall service required of the dealer by the manufacturer, distributor or wholesaler, factory branch or distributor branch or officer, agent, or representative thereof;

~~(e)~~ (3) Provide the dealer the schedule of compensation, which shall be reasonable, to be paid the dealer for parts, work, and service, including reasonable and adequate allowances for diagnostic time necessary for a qualified technician to perform the service, in connection with warranty and recall services and the time allowance for the performance of the diagnosis, work, and service. If a disagreement arises between the manufacturer, distributor, or wholesaler, factory branch or distributor branch and the new motor vehicle dealer about the time allowance for the performance of the diagnosis, work, or service, the new motor vehicle dealer shall submit a written request for modification of the



time allowance. A manufacturer, distributor, or wholesaler, factory branch or distributor branch shall not unreasonably deny a written request submitted by a new motor vehicle dealer for modification of a time allowance for a specific warranty repair, or a request submitted by a new motor vehicle dealer for an additional time allowance for either diagnostic or repair work on a specific vehicle covered under warranty, provided the request includes any information and documentation reasonably required by the manufacturer, distributor, or wholesaler, factory branch or distributor branch to assess the merits of the request; and

(4) Provide compensation to a new motor vehicle dealer for assistance requested by a customer whose vehicle was subjected to an over the air or remote change, repair, or update to any part, system, accessory, or function by the vehicle manufacturer or distributor and performed at the dealership to satisfy the customer.

~~(2)~~ (b) In no event may:

~~(a)~~ (1) The schedule of compensation fail to compensate the dealers for the diagnosis, work, and services they are required to perform in connection with the dealer's delivery and preparation obligations, or fail to adequately and fairly compensate the dealers for labor time or rate, parts, and other expenses incurred by the dealer to perform under and comply with manufacturer's warranty agreements and factory recalls;

~~(b)~~ (2) Any manufacturer, distributor or wholesaler, or representative thereof, pay its dealers an amount of money for warranty or recall work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty and nonrecall work of the like kind; and

~~(c)~~ (3) Any manufacturer, distributor or wholesaler, or representative thereof, compensate for warranty and recall work based on a flat-rate figure that is less than what the dealer charges for retail work.

~~(3)~~ (c) It is a violation of this section for any manufacturer, distributor, wholesaler, or representative to require any dealer to

pay in any manner, surcharges, limited allocation, audits, charge backs, or other retaliation if the dealer seeks to recover its nonwarranty retail rate for warranty and recall work.

~~(4)~~ (d) The retail rate charged by the dealer for parts is established by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty customer-paid service repair orders that contain warranty-like parts or 90 consecutive days of nonwarranty customer-paid service repair orders that contain warranty-like parts covering repairs made no more than 180 days before the submission and declaring the average percentage markup. A dealer may decide to submit a single set of repair orders for the purpose of calculating both the labor rate and parts mark-up, or submit separate sets of repair orders for a labor rate and parts mark-up calculation.

~~(5)~~ (e) The retail rate customarily charged by the dealer for labor rate must be established-using the same process as provided under subsection ~~(4)~~(d) of this section and declaring the average labor rate. The average labor rate must be determined by dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales. If a labor rate and parts markup rate simultaneously declared by the dealer, the dealer may use the same repair orders to complete each calculation as provided under subsection ~~(4)~~(d) of this section. A reasonable allowance for labor for diagnostic time shall be either included in the manufacturer's labor time allowance or listed as a separate compensable item. A dealer may request additional time allowance for either diagnostic or repair time for a specific repair, which request shall not be unreasonably denied by the manufacturer.

~~(6)~~ (f) In calculating the retail rate customarily charged by the dealer for parts and labor, the following work may not be included in the calculation:

~~(a)~~ (1) Repairs for manufacturer or distributor special events, specials, or promotional discounts for ~~retain~~ customer repairs;

~~(b)~~ (2) Parts sold at wholesale;

~~(e)~~ (3) Routine maintenance not covered under any retail customer warranty, including bulbs, batteries, fluids, filters, and belts not provided in the course of repairs;

~~(d)~~ (4) Nuts, bolts, fasteners, and similar items that do not have an individual part number;

~~(e)~~ (5) Tires; and

~~(f)~~ (6) Vehicle reconditioning.

~~(7)~~ (g) The average of the parts markup rates and labor rate is presumed to be reasonable and must go into effect 30 days following the manufacturer's approval. A manufacturer or distributor ~~may~~ must approve or rebut the presumption by demonstrating that the submitted parts markup rate or labor rate is: (1) fraudulent or inaccurate; (2) not established in accordance with this section; or (3) the submitted parts markup rate or labor rate is unreasonable in light of the practices of all other same line-make franchised motor vehicle dealers in an economically similar area of the state offering the same line-make vehicles, not later than 30 days after submission. If the average parts markup rate or average labor rate is rebutted, or both disputed by the manufacturer or distributor, the manufacturer or distributor shall provide written notice to the new motor vehicle dealer stating the specific reasons for the rebuttal, providing a full explanation of the reasons for the allegation, and providing a copy of all calculations used by the manufacturer or distributor in determining the manufacturer or distributor's position if the manufacturer's or distributor's objection is based on the accuracy or reasonableness of the new motor vehicle dealer's rate submission, propose an adjustment of the average percentage parts markup or labor rate based on that rebuttal not later than 30 days after submission. If the new motor vehicle dealer does not agree with the manufacturer's proposed average percentage parts markup or labor rate, the new motor vehicle dealer may file a civil action in the circuit court for the county in which it operates not later than 90 days after receipt of that proposal by the manufacturer or distributor. In the event a civil action is filed, the manufacturer or distributor has the burden of proof to establish by a preponderance of the evidence that the new

motor vehicle dealer's submitted parts markup rate or labor rate was fraudulent, inaccurate, not established in accordance with this section, or is unreasonable in light of the practices of all other same line-make franchised motor vehicle dealers in an economically similar area of the state offering the same line-make vehicles.

(8) (h) Each manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the vehicle dealer's declaration of hourly labor rates and parts as stated in subsections ~~(4), (5) and (6)~~ (d), (e) and (f) of this section and may not obligate any vehicle dealer to engage in unduly burdensome or time-consuming documentation of rates or parts, including obligating vehicle dealers to engage in transaction-by-transaction or part-by-part calculations.

~~(9)~~ (i) A dealer or manufacturer may demand that the average parts markup or average labor rate be calculated using the process provided under subsections ~~(4) and (5)~~ (d) and (e) of this section; however, the demand for the average parts markup may not be made within 12 months of the last parts markup declaration and the demand for the average labor rate may not be made within 12 months of the last labor rate declaration. If a parts markup or labor rate is demanded by the dealer or manufacturer, the dealer shall determine the repair orders to be included in the calculation under subsections ~~(4) and (5)~~ (d) and (e) of this section.

~~(10)~~ (j) As it applies to a school bus, truck tractor, road tractor, and truck as defined in ~~section one, article one of this chapter,~~ §17A-1-1 of this code with a gross vehicle weight ~~on~~ in excess of 26,001 pounds the manufacturer, distributor and/or O. E. M. supplier shall pay the dealer its incurred actual time at the retail labor rate for retrieving a motor vehicle and returning a motor vehicle to the dealer's designated parking area. The dealer shall be paid \$50 minimum for each operation that requires the use of each electronic tool (i.e. laptop computer). The manufacturer or distributor may not reduce what is paid to a dealer for this retrieval or return time, or for the electronic tool charge. The dealer is allowed to add to a completed warranty repair order three hours for every 24 hours the manufacturer, distributor, and/or O. E. M. supplier makes the dealer stop working on a vehicle while the

manufacturer, distributor, and/or O. E. M. supplier decides how it wants the dealer to proceed with the repairs.

(11) (k) All claims made by motor vehicle dealers pursuant to ~~the~~ this section for compensation for delivery, preparation, warranty, and recall work, including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after approval and shall be approved or disapproved by the manufacturer within 30 days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. ~~No~~ A claim which has been approved and paid may not be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition or the dealer failed to reasonable substantiate the claim in accordance with the reasonable written requirements of the manufacturer or distributor in effect at the time the claim arose. No charge back may be made until the dealer has had notice and an opportunity to support the claim in question. ~~No~~ An otherwise valid reimbursement claims may not be denied once properly submitted within manufacturers' submission guidelines due to a clerical error or omission, a dealer's incidental failure to comply with a specific non-material claim processing requirement or administrative technicality, or based on a different level of technician technical certification or the dealer's failure to subscribe to any manufacturer's computerized training programs. The dealer shall have 30 days to respond to any audit by a manufacturer or distributor.

(12) (l) Notwithstanding the terms of a franchise agreement or provision of law in conflict with this section, the dealer's delivery, preparation, warranty, and recall obligations constitutes the dealer's sole responsibility for product liability as between the dealer and manufacturer and, except for a loss caused by the dealer's failure to adhere to the obligations, a loss caused by the dealer's negligence or intentional misconduct or a loss caused by the dealer's modification of a product without manufacturer authorization, the manufacturer shall reimburse the dealer for all loss incurred by the dealer, including legal fees, court costs, and

damages, as a result of the dealer having been named a party in a product liability action.

(m) When calculating the compensation that must be provided to a new motor vehicle dealer for labor and parts used to fulfill warranty and recall obligations under this section, all of the following apply:

(1) The manufacturer shall use time allowances for the diagnosis and performance of the warranty and recall work and service that are reasonable and adequate for the work or services to be performed by a qualified technician;

(2) At the request of the new motor vehicle dealer, the manufacturer shall use any retail labor rate and any retail parts markup percentage established in accordance with this section in calculating the compensation;

(3) If the manufacturer provided a part or component to the new motor vehicle dealer at no cost to use in performing repairs under a recall, campaign service action, or warranty repair, the manufacturer shall provide to the new motor vehicle dealer an amount equal to the retail parts markup for that part or component, which shall be calculated by multiplying the dealer cost for the part or component as listed in the manufacturer's price schedule by the retail parts markup percentage; and

(4) A manufacturer shall not assess penalties, surcharges, or similar costs to a new motor vehicle dealer, transfer or shift any costs to a franchisee, limit allocation of vehicles or parts to a new motor vehicle dealer, or otherwise take retaliatory action against a new motor vehicle dealer based on any new motor vehicle dealer's exercise of its rights under this section. This section does not prohibit a manufacturer or distributor from increasing the price of a vehicle or part in the ordinary course of business.

#### **§17A-6A-10. Prohibited practices.**

~~(1)~~ (a) A manufacturer or distributor may not require any new motor vehicle dealer in this state to do any of the following:

~~(a)~~ (1) Order or accept delivery of any new motor vehicle, part or accessory of the vehicle, equipment, or any other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer. This section does not prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor;

~~(b)~~ (2) Order or accept delivery of any new motor vehicle with special features, accessories, or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor;

~~(c)~~ (3) Unreasonably participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices, display decorations, brand signs and dealer identification, nondiagnostic computer equipment and displays, or other materials at the expense of the new motor vehicle dealer;

~~(d)~~ (4) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement, limit inventory, invoke sales and service warranty, or other types of audits or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor, or any manufacturer or distributor's required or designated vendor or supplier. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement is not a violation of this article;

~~(e)~~ (5) Change the capital structure or financial requirements of the new motor vehicle dealership without reasonable business justification in light of the dealer's market, historical performance and compliance with prior capital structure or financial requirements and business necessity, or the means by or through which the dealer finances the operation of the dealership if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria. The burden of proof is on the manufacturer to prove business justification by a preponderance of the evidence;

(f) (6) Refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products, provided that the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, and makes no change in the principal management of the dealer. Notwithstanding the terms of any franchise agreement, a manufacturer or distributor may not enforce any requirements, including facility or image requirements, that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, when the requirements are unreasonable considering current economic conditions and are not otherwise justified by reasonable business considerations. The burden of proving that current economic conditions or reasonable business considerations justify ~~exclusive facilities~~ such actions is on the manufacturer or distributor and must be proven by a preponderance of the evidence;

(g) (7) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, where to do so would be unreasonable. The burden is on the manufacturer or distributor to prove reasonableness by a preponderance of the evidence;

(h) (8) Prospectively assent to a waiver of trial by jury release, arbitration, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this article or require any controversy between a new motor vehicle dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of this state or the United States District Courts of the Northern or Southern Districts of West Virginia. Nothing in this article prevents a motor vehicle dealer, after a civil action is filed, from entering into any agreement of settlement, arbitration, assignment, or waiver of a trial by jury;

(i) (9) ~~To~~ Coerce or require any dealer, whether by agreement, program, incentive provision, or otherwise, to construct improvements to its facilities or to install new signs, or other franchisor image elements that replace or substantially alter those improvements, signs or franchisor image elements completed within the ~~preceding ten~~ preceding 15 years that were required



and approved by the manufacturer, factory branch, distributor or distributor branch, or one of its affiliates. If a manufacturer, factory branch, distributor or distributor branch offers incentives or other payments to a consumer or dealer paid on individual vehicle sales under a program offered after the effective date of this subdivision and available to more than one dealer in the state that are premised, wholly or in part, on dealer facility improvements or installation of franchisor image elements required by and approved by the manufacturer, factory branch, distributor or distributor branch and completed within ~~ten~~ 15 years preceding the program shall be ~~deemed~~ determined to be in compliance with the program requirements pertaining to construction of facilities or installation of signs or other franchisor image elements that would replace or substantially alter those previously constructed or installed ~~with~~ within that ~~ten~~ 15 year period. This subdivision shall not apply to a program that is in effect with more than one dealer in the state on the effective date of this subsection, nor to any renewal of such program, nor to a modification that is not a modification of a material term or condition of such program;

(j) ~~(10)~~ (10) To Condition the award, sale, transfer, relocation, or renewal of a franchise or dealer agreement or to condition sales, service, parts, or finance incentives upon site control or an agreement to renovate or make substantial improvements to a facility: *Provided*, That voluntary and noncoerced acceptance of such conditions by the dealer in writing, including, but not limited to, a written agreement for which the dealer has accepted separate and valuable consideration, does not constitute a violation; and

~~(k)~~ (11) To Enter into a contractual requirement imposed by the manufacturer, distributor, or a captive finance source as follows:

(j) (A) In this section, “captive finance source” means any financial source that provides automotive-related loans or purchases retail installment contracts or lease contracts for motor vehicles in this state and is, directly or indirectly, owned, operated, or controlled by such manufacturer, factory branch, distributor or distributor branch.

(ii) ~~(B)~~ It ~~shall be~~ is unlawful for any manufacturer, factory branch, captive finance source, distributor or distributor branch, or any field representative, officer, agent, or any representative of them, notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require any of its franchised dealers located in this state to agree to any terms, conditions, or requirements in subdivisions ~~(a) through (j)~~, (1) through (10), inclusive, of this subsection in order for any such dealer to sell to any captive finance source any retail installment contract, loan, or lease of any motor vehicles purchased or leased by any of the dealer's customers, or to be able to participate in, or otherwise, directly or indirectly, obtain the benefits of the consumer transaction incentive program payable to the consumer or the dealer and offered by or through any captive finance source as to that incentive program.

(iii) ~~(C)~~ The applicability of this section is not affected by a choice of law clause in any agreement, waiver, novation, or any other written instrument.

(iv) ~~(D)~~ It ~~shall be~~ is unlawful for a manufacturer or distributor to use any subsidiary corporation, affiliated corporation, or any other controlled corporation, partnership, association, or person to accomplish what would otherwise be illegal conduct under this section on the part of the manufacturer or distributor.

(2) ~~(b)~~ A manufacturer or distributor may not do any of the following:

~~(a)-(i)~~ (1) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the new motor vehicle dealer's market area and facilities, unless the failure is caused by acts or occurrences beyond the control of the manufacturer or distributor, or unless the failure results from an order by the new motor vehicle dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor. ~~No~~ A manufacturer or distributor may not penalize a new motor vehicle dealer for an alleged failure to meet sales quotas where the alleged failure is due to actions of the manufacturer or distributor;

~~(ii)~~ (2) Refuse to offer to its same line-make new motor vehicle dealers all models manufactured for that line-make, including, but not limited to, any model that contains a separate label or badge indicating an upgraded version of the same model. This provision does not apply to motorhome, travel trailer, or fold-down camping trailer manufacturers;

~~(iii)~~ (3) Require as a prerequisite to receiving a model or series of vehicles that a new motor vehicle dealer pay an extra unreasonable acquisition fee or surcharge, or purchase unreasonable advertising displays or other materials, or conduct unreasonable facility or image remodeling, renovation, or reconditioning of the dealer's facilities, or any other type of unreasonable upgrade requirement;

(4) Use motor vehicles in transit but not yet in the new motor vehicle dealer's physical possession in any sales effective or efficiency formula to the detriment of the new motor vehicle dealer;

~~(b)~~ (5) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor, including any numerical calculation or formula used, nationally or within the dealer's market, to make the allocations within 30 days of a request. Any information or documentation provided by the manufacturer may be subject to a reasonable confidentiality agreement;

~~(c)~~ (6) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles of a given model, which the manufacturer or distributor has sold during the current model year within the dealer's marketing district, zone, or region, whichever geographical area is the smallest within 30 days of a request;

~~(d)~~ (7) Increase prices of new motor vehicles which the new motor vehicle dealer had ordered and then eventually delivered to the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer which has been

submitted to the vehicle manufacturer is evidence of each order. In the event of manufacturer or distributor price reductions or cash rebates, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of \$5 shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. A price difference applicable to new model or series motor vehicles at the time of the introduction of the new models or the series is not a price increase or price decrease. This subdivision does not apply to price changes caused by the following:

~~(i)~~ (A) The addition to a motor vehicle ~~of~~ required or optional equipment pursuant to state or federal law;

~~(ii)~~ (B) In the case of foreign-made vehicles or components, revaluation of the United States dollar; or

~~(iii)~~ (C) Any increase in transportation charges due to an increase in rates charged by a common carrier and transporters;

~~(e)~~ (8) Offer any refunds or other types of inducements to any dealer for the purchase of new motor vehicles of a certain line-make to be sold to this state or any political subdivision of this state without making the same offer available upon request to all other new motor vehicle dealers of the same line-make;

~~(f)~~ (9) Release to an outside party, except under subpoena or in an administrative or judicial proceeding to which the new motor vehicle dealer or the manufacturer or distributor are parties, any business, financial, or personal information which has been provided by the dealer to the manufacturer or distributor, unless the new motor vehicle dealer gives his or her written consent;

~~(g)~~ (10) Deny a new motor vehicle dealer the right to associate with another new motor vehicle dealer for any lawful purpose;

~~(h)~~ (11) Establish, operate, or engage in the business of a new motor vehicle dealership. A manufacturer or distributor is not considered to have established, operated, or engaged in the business of a new motor vehicle dealership if the manufacturer or distributor is:

(A) Operating a preexisting dealership temporarily for a reasonable period;

(B) Operating a preexisting dealership which is for sale at a reasonable price; and

(C) Operating a dealership with another person who has made a significant investment in the dealership and who will acquire full ownership of the dealership under reasonable terms and conditions;

(+) (12) A manufacturer may not, except as provided by this section, directly or indirectly:

(A) Own an interest in a dealer or dealership: *Provided*, That a manufacturer may own stock in a publicly held company solely for investment purposes;

(B) Operate a new or used motor vehicle dealership, including, but not limited to, displaying a motor vehicle intended to facilitate the sale of new motor vehicles other than through franchised dealers, unless the display is part of an automobile trade show that more than two automobile manufacturers participate in; or

(C) Act in the capacity of a new motor vehicle dealer;

(+) (13) A manufacturer or distributor may own an interest in a franchised dealer, or otherwise control a dealership, for a period not to exceed 12 months from the date the manufacturer or distributor acquires the dealership if:

(+) (A) The person from whom the manufacturer or distributor acquired the dealership was a franchised dealer; and

(+) (B) The dealership is for sale by the manufacturer or distributor at a reasonable price and on reasonable terms and conditions;

(+) (14) The 12 month period may be extended for an additional 12 months. Notice of any such extension of the original twelve-month period must be given to any dealer of the same line-make whose dealership is located in the same county, or within 20 air

miles of, the dealership owned or controlled by the manufacturer or distributor prior to the expiration of the original 12 month period. Any dealer receiving the notice may protest the proposed extension within 30 days of receiving notice by bringing a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the extension;

~~(4)~~ (15) For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been under represented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer's or distributor's participation in the dealership is in a bona fide relationship with a franchised dealer who:

~~(i)~~ (A) Has made a significant investment in the dealership, subject to loss;

~~(ii)~~ (B) Has an ownership interest in the dealership; and

~~(iii)~~ (C) Operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions;

~~(m)~~ (16) Unreasonably withhold consent to the sale, transfer, or exchange of the dealership to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state;

~~(n)~~ (17) Fail to respond in writing to a request for consent to a sale, transfer, or exchange of a dealership within 60 days after receipt of a written application from the new motor vehicle dealer on the forms generally utilized by the manufacturer or distributor for such purpose and containing the information required therein. Failure to respond to the request within the 60 days is consent;

~~(o)~~ (18) Unfairly prevent a new motor vehicle dealer from receiving reasonable compensation for the value of the new motor vehicle dealership;

(p) (19) Audit any motor vehicle dealer in this state for warranty parts or warranty service compensation, service compensation, service or sales incentives, manufacturer rebates, or other forms of sales incentive compensation more than 12 months after the claim for payment or reimbursement has been made by the automobile dealer. ~~No~~ A chargeback ~~may~~ not be made until the dealer has had notice and an opportunity to support the claim in question within 30 days of receiving notice of the chargeback. ~~No~~ An otherwise valid reimbursements claims may not be denied once properly submitted in accordance with ~~the~~ material and reasonable manufacturer's submission guidelines unless the factory can show that the claim was false or fraudulent or that the new motor vehicle dealer failed to reasonably substantiate the claim consistent with the manufacturer's written reasonable and material guidelines. ~~due to clerical error or omission~~ This subsection does not apply where a claim is fraudulent. In addition, the manufacturer or distributor is responsible for reimbursing the audited dealer for all documented copying, postage, and administrative and personnel costs reasonably incurred by the dealer during the audit. Any charges to a dealer as a result of the audit must be separately billed to the dealer;

(q) (20) Unreasonably restrict a dealer's ownership of a dealership through noncompetition covenants, site control, sublease, collateral pledge of lease, right of first refusal, option to purchase, or otherwise. A right of first refusal is created when:

(i) (A) A manufacturer has a contractual right of first refusal to acquire the new motor vehicle dealer's assets where the dealer owner receives consideration, terms and conditions that are either the same as or better than those they have already contracted to receive under the proposed change of more than ~~fifty~~ 50 percent of the dealer's ownership;

(ii) (B) The proposed change of the dealership's ownership or the transfer of the new vehicle dealer's assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one of the dealer's owners to one of the following:

~~(A)~~ (i) A designated family member of one or more of the dealer owners;

~~(B)~~ (ii) A manager employed by the dealer in the dealership during the previous five years and who is otherwise qualified as a dealer operator;

~~(C)~~ (iii) A partnership or corporation controlled by a designated family member of one of the dealers; or

~~(D)~~ (iv) A trust established or to be established for the purpose of allowing the new vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards, or to provide for the succession of the franchise agreement to designated family members or qualified management in the event of the death or incapacity of the dealer or its principle owner or owners;

~~(i) for the purpose of allowing the new vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards; or~~

~~(ii) to provide for the succession of the franchise agreement to designated family members or qualified management in the event of death or incapacity of the dealer or its principle owner or owners.~~

~~(iii)~~ (C) Upon exercising the right of first refusal by a manufacturer, it eliminates any requirement under its dealer agreement or other applicable provision of this statute that the manufacturer evaluate, process, or respond to the underlying proposed transfer by approving or rejecting the proposal, is not subject to challenge as a rejection or denial of the proposed transfer by any party;

~~(iv)~~ (D) Except as otherwise provided in this ~~subsection~~ section, the manufacturer or distributor agrees to pay the reasonable expenses, including reasonable out-of-pocket professional fees which shall include, but not be limited to, accounting, legal, or appraisal services fees that are incurred by the proposed owner or transferee before the manufacturer's or distributor's exercise of its right of first refusal. Payment of the expenses and fees for professional services are not required if the



dealer fails to submit an accounting of those expenses and fees within 20 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such a written account of fees and expenses may be requested by a manufacturer or distributor before exercising its right of first refusal;

(+) (21) Except for experimental low-volume not-for-retail sale vehicles, cause warranty and recall repair work to be performed by any entity other than a new motor vehicle dealer;

(s) (22) Make any material or unreasonable change in any franchise agreement, including, but not limited to, the dealer's area of responsibility without giving the new motor vehicle dealer written notice by certified mail of the change at least 60 days prior to the effective date of the change, and shall include an explanation of the basis for the alteration. Upon written request from the dealer, this explanation shall include, but is not limited to, a reasonable and commercially acceptable copy of all information, data, evaluations, and methodology relied on or based its decision on, to propose the change to the dealer's area of responsibility. Any information or documentation provided by the manufacturer or distributor may be produced subject to a reasonable confidentiality agreement. At any time prior to the effective date of an alteration of a new motor vehicle dealer's area of responsibility and after the completion of any internal appeal process pursuant to the manufacturer's or distributor's policy manual, the motor vehicle dealer may petition the court to enjoin or prohibit the alteration within 30 days of receipt of the manufacturer's internal appeal process decision. The court shall enjoin or prohibit the alteration of a motor vehicle dealer's area of responsibility unless the franchisor shows, by a preponderance of the evidence, that the alteration is reasonable and justifiable in light of market conditions. If a motor vehicle dealer petitions the court, no alteration to a motor vehicle dealer's area of responsibility shall become effective until a final determination by the court. If a new motor vehicle dealer's area of responsibility is altered, the manufacturer shall allow 24 months for the motor vehicle dealer to become sales effective prior to taking any action claiming a breach or nonperformance of the motor vehicle dealer's sales performance responsibilities;

~~(t)~~ (23) Fail to reimburse a new motor vehicle dealer, at the dealer's regular rate, or the full and actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the dealership if the provision of the loaner vehicle is required by the manufacturer;

~~(u)~~ (24) Compel a new motor vehicle dealer through its finance subsidiaries to agree to unreasonable operating requirements or to directly or indirectly terminate a franchise through the actions of a finance subsidiary of the franchisor. This subsection does not limit the right of a finance subsidiary to engage in business practices in accordance with the usage of trade in retail or wholesale vehicle financing;

~~(v)~~ (25) Discriminate directly or indirectly between dealers on vehicles of like grade, line, model, or quantity where the effect of the discrimination would substantially lessen competition;

~~(w)~~ (26) Use or employ any performance standard that is not fair and reasonable and based upon accurate and verifiable data made available to the dealer;

~~(x)~~ (27) ~~To~~ Require or coerce any new motor vehicle dealer to sell, offer to sell, or sell exclusively extended service contract, maintenance plan, or similar product, including gap or other products, offered, endorsed, or sponsored by the manufacturer or distributor by the following means:

~~(i)~~ (A) By an act of statement that the manufacturer or distributor will adversely impact the dealer, whether it is express or implied;

~~(ii)~~ (B) By a contract made to the dealer on the condition that the dealer shall sell, offer to sell, or sell exclusively an extended service contract, extended maintenance plan, or similar product offered, endorsed, or sponsored by the manufacturer or distributor;

~~(iii)~~ (C) By measuring the dealer's performance under the franchise agreement based on the sale of extended service contracts, extended maintenance plans, or similar products offered, endorsed, or sponsored by the manufacturer or distributor;

~~(iv)~~ (D) By requiring the dealer to actively promote the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed, or sponsored by the manufacturer or distributor;

~~(v)~~ (E) Nothing in this paragraph prohibits a manufacturer or distributor from providing incentive programs to a new vehicle dealer who makes the voluntary decision to offer to sell, sell, or sell exclusively an extended service contract, extended maintenance plan, or similar product offered, endorsed, or sponsored by the manufacturer or distributor;

~~(v)~~ (F) Require a dealer to purchase goods or services from a vendor selected, identified, or designated by a manufacturer, factory branch, distributor, distributor branch, or one of its affiliates by agreement, program, incentive provision, or otherwise without making available to the dealer the option to obtain the goods or services of substantially similar quality and overall design from a vendor chosen by the dealer and approved by the manufacturer, factory branch, distributor, or distributor branch: *Provided*, That such approval may not be unreasonably withheld: *Provided, however*, That the dealer's option to select a vendor is not available if the manufacturer or distributor provides substantial reimbursement for the goods or services offered. Substantial reimbursement is equal to the difference in price of the goods and services from manufacturer's proposed vendor and the motor vehicle dealer's selected vendor: *Provided further*, That the goods are not subject to the manufacturer or distributor's intellectual property or trademark rights, or trade dress usage guidelines.

~~(3)~~ (c) A manufacturer or distributor, either directly or through any subsidiary, may not terminate, cancel, fail to renew, or discontinue any lease of the new motor vehicle dealer's established place of business except for a material breach of the lease.

~~(4)~~ (d) Except as may otherwise be provided in this article, ~~no~~ a manufacturer or franchisor may ~~sell, not~~ directly or indirectly, sell, lease, exchange, or convey a new motor vehicle to a retail customer, offer for retail sale, lease, exchange, or other conveyance

a new motor vehicle; or directly finance the retail sale, lease, exchange, or other conveyance of a new motor vehicle ~~any new motor vehicle~~ to a retail customer or consumer in this state, except through a new motor vehicle dealer holding a franchise for the line-make covering such new motor vehicle. This subsection does not apply to manufacturer or franchisor sales of new motor vehicles to charitable organizations, qualified vendors, or employees of the manufacturer or franchisor.

(5) (c) Except when prevented by an act of God, labor strike, transportation disruption outside the control of the manufacturer or time of war, a manufacturer or distributor may not refuse or fail to deliver, in reasonable quantities and within a reasonable time, to a dealer having a franchise agreement for the retail sale of any motor vehicle sold or distributed by the manufacturer, any new motor vehicle or parts or accessories to new motor vehicles as are covered by the franchise if the vehicles, parts and accessories are publicly advertised as being available for delivery or are actually being delivered.

(f) It is be unlawful for any manufacturer, factory branch, distributor, or distributor branch, when providing a new motor vehicle to a new motor vehicle dealer for offer, sale, or lease to the public, to fail to provide to the dealer a written disclosure that may be provided to a potential buyer or lessor of the new motor vehicle of each accessory or function of the vehicle that may be initiated, updated, changed, or maintained by the manufacturer or distributor through over the air or remote means, and the charge to the customer for the initiation, update, change, or maintenance that is known at the time of sale. A manufacturer or distributor may comply with this subdivision by notifying the new motor vehicle dealer that the information is available on a website or by other digital means.

(g) A manufacturer or distributor shall not attempt to coerce, threaten, or take any act prejudicial against a new motor vehicle dealer arising from the retail price at which a new motor vehicle dealer sells a new motor vehicle.

(h)Notwithstanding the terms of any franchise or agreement, or the terms of any program or policy, a manufacturer or distributor may not do any of the following if it has a dealer agreement with any new motor vehicle dealer in this state and if the manufacturer or distributor permits retail customers the option of reserving the purchase or lease of a vehicle through a manufacturer or distributor reservation system:

(1) Fail to assign any retail vehicle reservation or request to purchase or lease received by the manufacturer or distributor from a resident of this state to the franchised dealer authorized to sell that make and model which is designated by the customer, or if none is designated, to its franchised dealer authorized to sell that make and model located in closest proximity to the customer's location: *Provided*, That if the customer does not purchase or lease the vehicle from that dealer within 10 days of the vehicle being received by the dealer, or if the customer requests that the transaction be assigned to another dealer, then the manufacturer or distributor may assign the transaction to another franchised dealer authorized to sell that make and model;

(2) Prohibit or unreasonably interfere with a new motor vehicle dealer negotiating the final purchase price of the vehicle with a retail customer that has reserved the purchase or lease through a manufacturer or distributor reservation system;

(3) Prohibit or unreasonably interfere with a new motor vehicle dealer offering and negotiating directly with the customer the terms of vehicle financing or leasing through all sources available to the dealer for the retail customer that has reserved the purchase or lease of a vehicle through a manufacturer or distributor reservation system;

(4) Prohibit or unreasonably interfere with a new motor vehicle dealer's ability to offer to sell or sell any service contract, extended warranty, vehicle maintenance contract, or guaranteed asset protection (GAP) agreement, or any other vehicle-related products and services offered by the dealer with a retail customer that has reserved to purchase or lease through a manufacturer or distributor reservation system: *Provided*, That a manufacturer, distributor, or

captive finance source shall not be required to finance the product or service;

(5) Prohibit or unreasonably interfere with a new motor vehicle dealer directly negotiating the trade-in value the customer will receive, or prohibit the dealer from conducting an on-site inspection of the condition of a trade- vehicle before the dealer becomes contractually obligated to accept the trade-in value to negotiated with a retail customer that has reserved to purchase or lease a vehicle through the manufacturer or distributor reservation system;

(6) Use a third party to accomplish what would otherwise be prohibited by this subdivision;

(7) Nothing contained in this subdivision shall:

(A) Require that a manufacturer or distributor allocate or supply additional or supplemental inventory to a franchised dealer located in this state in order to satisfy a retail customer's vehicle reservation or request submitted directly to the manufacturer or distributor as provided in this section;

(B) Apply to the generation of sales leads: *Provided*, That for purposes of this subdivision the term 'sales leads' shall not include any reservation or request to purchase or lease a vehicle submitted directly by a customer or potential customer to a manufacturer or distributor reservation system; or

(C) Apply to a reservation or request to purchase or lease a vehicle through the manufacturer or distributor received from the customer that is a resident of this state if the customer designates a dealer outside of this state to be assigned the reservation or request to purchase or lease or if the dealer in closest proximity to the customer's location is in another state and the manufacturer or distributor assigns the reservation or request to purchase or lease to that dealer.

(8) Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement

with any new motor vehicle dealer in this state, offer new motor vehicles through a subscription directly to a retail customer or consumer. However, this subsection is not intended to prevent a manufacturer or distributor from providing or offering new motor vehicles through a subscription program through a new motor vehicle dealer for retail sales to a customer.

(i) Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement with any new motor vehicle dealer in this state, offer direct financing for the purchase, lease, or other conveyance of a motor vehicle to a retail customer. However, this subsection is not intended to prevent a manufacturer or distributor from providing or offering a financing program through a new motor vehicle dealer which is available for retail customers.

**§17A-6A-11. ~~Where motor vehicle dealer deceased or incapacitated~~ Motor vehicle dealer successorship or change in executive management.**

(1) Any designated family member of a ~~deceased or incapacitated~~ new motor vehicle dealer may succeed the dealer in the ownership or operation, or be a designated executive manager of the dealership under the existing dealer agreement if the designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to, or be designated as the executive manager of, the dealership within 120 days after the dealer's death or incapacity or designation of a successor or executive manager, and agrees to be bound by all of the terms and conditions of the dealer agreement, and the designated family member meets the current criteria generally applied by the manufacturer or distributor in qualifying new motor vehicle dealers or executive managers. A manufacturer or distributor may refuse to honor the designation or change existing dealer agreement with the designated family member only for good cause. In determining whether good cause exists for refusing to honor the agreement, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the manufacturer's existing written, reasonable,

and uniformly applied standards for business experience and financial qualifications. The designated family member will have a minimum of one year to satisfy that manufacturer's written and reasonable standards and financial qualifications for appointment as the dealer or executive manager and principal.

(2) The manufacturer or distributor may request from a designated family member ~~such any information or application personal and financial data as is~~ reasonably necessary to determine whether the existing dealer agreement should be honored. The designated family member shall supply the personal and financial data promptly upon the request.

(3) If a manufacturer or distributor believes that good cause exists for refusing to honor the succession or designation, the manufacturer or distributor may, within 45 days after receipt of the notice of the designated family member's intent to succeed the dealer in the ownership or the appointment of an executive manager in the operation of the dealership, or within forty-five days after the receipt of the requested personal and financial data, serve upon the designated family member notice of its refusal to approve the succession.

(4) The notice of the manufacturer or distributor provided in ~~subsection subdivision~~ (3) of this section shall state the specific factual and legal grounds for the refusal to approve the succession or designation of an executive manager. ~~the succession and that discontinuance of the agreement shall take effect not less than one hundred eighty days after the date the notice is served.~~

(5) If notice of refusal is not served within the ~~sixty~~ 45 days provided for in ~~subsection subdivision~~ (3) of this section, the dealer agreement continues in effect and is subject to termination only as otherwise permitted by this article.

(6) This section does not preclude a new motor vehicle dealer from designating any person as his or her successor by will or any other written instrument filed with the manufacturer or distributor, and if such an instrument is filed, it alone determines the succession rights to the management and operation of the dealership.



(7) If the manufacturer challenges the succession in ownership or executive manager designation, it maintains the burden of proof to show good cause by a preponderance of the evidence. If the person or new motor vehicle dealer seeking succession of ownership or executive manager designation files a civil action within 180 days of the manufacturer's refusal to approve or the one year qualifying period set forth in subdivision (1) of this section, whichever is longer, set forth in subsection (4) of this section, no action may be taken by the manufacturer contrary to the dealer agreement until such time as the civil action and any appeal has been exhausted: *Provided*, That when a motor vehicle dealer appeals a decision upholding a manufacturer's decision to not allow succession based upon the designated person's insolvency, or conviction of a crime punishable by imprisonment in excess of one year under the law which the designated person was convicted, the dealer agreement shall remain in effect pending exhaustion of all appeals only if the new motor vehicle dealer establishes that the public interest will not be harmed by keeping the dealer agreement in effect pending entry of final judgment after the appeal.

**§17A-6A-12. Establishment and relocation or establishment of additional dealers.**

(1) As used in this section, "relocate" and "relocation" do not include the relocation of a new motor vehicle dealer within four miles of its established place of business or if an existing new motor vehicle dealer sells or transfers the dealership to a new owner and the successor new motor vehicle dealership owner relocates to a location within four miles of the seller's last open new motor vehicle dealership location. The relocation of a new motor vehicle dealer to a site within the area of sales responsibility assigned to that dealer by the manufacturing branch or distributor may not be within six air miles of another dealer of the same line-make.

(2) Before a manufacturer or distributor enters into a dealer agreement establishing or relocating a new motor vehicle dealer within a relevant market area where the same line-make is represented, the manufacturer or distributor shall give written notice to each new motor vehicle dealer of the same line-make in

the relevant market area of its intention to establish an additional dealer or to relocate an existing dealer within that relevant market area.

(3) Within 60 days after receiving the notice provided in subdivision (2) of this section, or within 60 days after the end of any appeal procedure provided by the manufacturer or distributor, a new motor vehicle dealer of the same line-make within the affected relevant market area may bring a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the establishing or relocating of the proposed new motor vehicle dealer. *Provided*, That a new motor vehicle dealer of the same line-make within the affected relevant market area shall not be permitted to bring such an action if the proposed relocation site would be further from the location of the new motor vehicle dealer of the same line-make than the location from which the dealership is being moved. Once an action has been filed, the manufacturer or distributor may not establish or relocate the proposed new motor vehicle dealer until the circuit court has rendered a decision on the matter. An action brought pursuant to this section shall be given precedence over all other civil matters on the court's docket. The manufacturer has the burden of proving that good cause exists for establishing or relocating a proposed new motor vehicle dealer.

(4) This section does not apply to the reopening in a relevant market area of a new motor vehicle dealer that has been closed within the preceding two years if the established place of business of the new motor vehicle dealer is within four air miles of the established place of business of the closed or sold new motor vehicle dealer.

(5) In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line-make, the court shall take into consideration the existing circumstances, including, but not limited to, the following:

~~(a)~~ (A) The permanency and amount of the investment, including any obligations incurred by the dealer in making the investment;

~~(b)~~ (B) The effect on the retail new motor vehicle business and the consuming public in the relevant market area;

~~(c)~~ (C) Whether it is injurious or beneficial to the public welfare;

~~(d)~~ (D) Whether the new motor vehicle dealers of the same line-make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of that line-make in the market area, including the adequacy of motor vehicle sales and qualified service personnel;

~~(e)~~ (E) Whether the establishment or relocation of the new motor vehicle dealer would promote competition;

~~(f)~~ (F) The growth or decline of the population and the number of new motor vehicle registrations in the relevant market area; and

~~(g)~~ (G) The effect on the relocating dealer of a denial of its relocation into the relevant market area.

### **§17A-6A-13. Obligations regarding warranties.**

(1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service required of the dealer by the manufacturer or distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, diagnostic time as applicable, work and service, and the time allowance for the performance of the work, diagnostic time as applicable, and service in a manner in compliance with ~~section eight-a of this article~~. §17A-6A-8a of this code.

(2) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes

reasonable compensation under this section, ~~section eight-a of this article~~ §17A-6A-8a of this code shall govern: *Provided*, That in the case of a dealer of new motorcycles, motorboat trailers, all-terrain vehicles, utility terrain vehicles, and snowmobiles, the compensation of a dealer for warranty parts is the greater of the dealer's cost of acquiring the part plus 30 percent or the manufacturer's suggested retail price: *Provided, however*, That in the case of a dealer of travel trailers, fold-down camping trailers, and motorhomes, the compensation of a dealer's cost for warranty parts is not less than the dealer's cost of acquiring the part plus 20 percent.

(3) A manufacturer or distributor may not do any of the following:

~~(a)~~ (A) Fail to perform any warranty obligation;

~~(b)~~ (B) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects; or

~~(c)~~ (C) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall or the manufacturer's or distributor's warranty obligation as provided under §17A-6A-8a of this code.

(4) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be paid within 30 days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within 30 days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within 30 days after the receipt of the form is considered to be approved and payment shall be made within 30 days. The manufacturer has the right to initiate an audit of a claim within twelve months after payment and to charge back to the new motor vehicle dealer the amount of any false, fraudulent, or unsubstantiated claim, subject to the

requirements of ~~section eight-a of this article~~. §17A-6A-8a of this code.

(5) The manufacturer shall accept the return of any new and unused part, component, or accessory that was ordered by the dealer, and shall reimburse the dealer for the full cost charged to the dealer for the part, component, or accessory if the dealer returns the part and makes a claim for the return of the part within one year of the dealer's receipt of the part, component, or accessory and provides reasonable documentation, to include any changed part numbers to match new part numbers, provided that the part was ordered for a warranty repair.

#### **§17A-6A-15. Indemnity.**

Notwithstanding the terms of any dealer agreement, a manufacturer or distributor shall indemnify and hold harmless its dealers for any reasonable expenses incurred, including damages, court costs, and attorney's fees, arising out of complaints, claims, or actions to the extent such complaints, claims, or actions relate to the manufacture, assembly, or design of a new motor vehicle, manufacturer's warranty obligations excluding dealer negligence, or other functions by the manufacturer or distributor beyond the control of the dealer, including, without limitation, the selection by the manufacturer or distributor of parts or components for the vehicle, and any damages to merchandise occurring prior to acceptance of the vehicle by the dealer to the dealer if the carrier is designated by the manufacturer or distributor, if the new motor vehicle dealer gives timely notice to the manufacturer or distributor of the complaint, claim, or action.

#### **§17A-6A-15a. Dealer data, obligation of manufacturer, vendors, suppliers and others; consent to access dealership information; unlawful activities; indemnification of dealer.**

(a) Except as expressly authorized in this section, a manufacturer or distributor cannot require a motor vehicle dealer to provide its customer information to the manufacturer or distributor unless necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or

dealer incentives, for manufacturer's marketing purposes, for evaluation of dealer performance, for analytics, or to support claims submitted by the new motor vehicle dealer for reimbursement for warranty parts or repairs. Nothing in this section shall limit the manufacturer's ability to require or use customer information to satisfy any safety or recall notice obligation or other legal obligation.

(b) The dealer is only required to provide the customer information to the extent lawfully permissible, and to the extent the requested information relates solely to specific program requirements or goals associated with the manufacturer's or distributor's own vehicle makes. A manufacturer, factory branch, distributor, distributor branch, dealer, ~~management computer system data systems~~ vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch or dealer or management computer system data systems vendor may not prohibit a dealer from providing a means to regularly and continually monitor, or conduct an audit of, the specific data accessed from or written to the dealer's ~~computer system data systems~~ and from complying with applicable state and federal laws and any rules or regulations promulgated thereunder. These provisions do not impose an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer, ~~management computer~~ vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, dealer, or management computer data systems vendor to provide that capability.

(c) A manufacturer, factory branch, distributor, distributor branch, dealer, ~~management computer system data systems~~ vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch or dealer, or ~~management computer system data systems~~ vendor, may not provide access to customer or dealership information maintained in a dealer ~~management computer system data systems~~ used by a motor vehicle dealer located in this state, other than a subsidiary or affiliate of the manufacturer factory branch, distributor or distributor branch without first obtaining the dealer's prior express

written consent and agreement, revocable by the dealer upon 10 business days written notice, to provide the access.

(d) Upon a written request from a motor vehicle dealer, the manufacturer, factory branch, distributor, distributor branch, dealer, or management computer system data systems vendor, or any third party acting on behalf of or through any manufacturer, factory branch, distributor, distributor branch or dealer ~~management computer system data systems~~ vendor shall provide to the dealer a written list of all specific third parties other than a subsidiary or affiliate of the manufacturer, factory branch, distributor or distributor branch to whom any data obtained from the dealer has actually been provided within the 12 month period prior to date of dealer's written request. If requested by the dealer, the list shall further describe the scope and specific fields of the data provided. The consent does not change the person's obligations to comply with the terms of this section and any additional state or federal laws, and any rules or regulations promulgated thereunder, applicable to them with respect to the access.

~~(d)~~ (e) A manufacturer, factory branch, distributor, distributor branch, dealer, ~~management computer system data systems~~ vendor, or any third party acting on behalf of or through any dealer, or management computer system data systems vendor, having electronic access to customer or motor vehicle dealership data in a dealership ~~data-management computer~~ system used by a motor vehicle dealer located in this state shall provide notice in a reasonable timely manner to the dealer of any security breach of dealership or customer data obtained through the access.

~~(e)~~ (f) A manufacturer or distributor or a third party acting on behalf of a manufacturer or distributor may not require a dealer to provide any customer information: ~~(a)~~ Of Any individual who is not a customer of such manufacturer's or distributor's own vehicle makes; ~~(b)~~ for any purpose other than for reasonable marketing purposes on behalf of that dealer, market research, consumer surveys, market analysis, or dealership performance analysis; ~~(c)~~ if sharing that information would not be permissible under local, state, or federal law; ~~(d)~~ except to the extent the requested

information relates solely to specific program requirements or goals associated with such manufacturer's or distributor's own vehicle makes; ~~(e)~~ that is general customer information or other information related to the dealer, ~~or~~ ~~(f)~~ unless the requested information can be provided in a manner consistent with dealer's current privacy policies and Gramm-Leach-Bliley Act privacy notice, ~~and no~~ a dealer may not be required to amend that notice to accommodate data sharing with the manufacturer or distributor.

(g) As used in this section:

(1) 'Authorized Integrator' means any third party with whom a dealer has entered into a written contract to perform a specific function for a dealer that permits the third party to access protected dealer data and/or to write data to a dealer data system to carry out the specified function (the 'authorized integrator contract').

(2) 'Dealer' means a new motor vehicle dealer as defined by §17A-6A-3(11) of this code and any authorized dealer personnel.

(3) 'Dealer data system' means any software, hardware, or firmware used by a dealer in its business operations to store, process, or maintain protected dealer data.

(4) 'Dealer data systems vendor' means any dealer management system provider, customer relationship management system provider, or other vendor that permissibly stores protected dealer data pursuant to a written contract with the dealer ('dealer data systems vendor contract').

(5) 'Data access overcharge' means any charge to a dealer or authorized integrator for integration beyond reimbursement for any direct costs incurred by the dealer data systems vendor for such Integration. If a dealer data systems vendor chooses to seek reimbursement from any dealer or authorized integrator for such direct costs, the direct costs must be disclosed to the dealer, and justified by documentary evidence of the costs associated with such Integration or it will be considered a data access overcharge.

(6) 'Integration' means access to protected dealer data in a dealer's dealer data system by an authorized integrator, or an



authorized integrator writing data to a dealer's dealer data system. Integration does not require access to any copyrighted material but must allow for access to all protected dealer data. Integration may be accomplished by any commercially reasonable means that do not violate this section, but all dealer data vendors must include an option to integrate via a secure open application programming interface (API), which must be made available to dealers and authorized integrators. In the event that APIs are no longer the reasonable commercial or technical standard for secure data integration, a similar open access integration method may be provided, to the extent it provides the same or better secure access to dealers and authorized Integrators as an API.

(7) 'Prior express written consent' means written consent provided by the dealer that is contained in a document separate from any other consent, contract, franchise agreement, or other writing that specifically outlines the dealer's consent for the authorized Integrator to obtain the dealer data, as well as the scope and duration of that consent. This consent may be unilaterally revoked by the dealer: (A) without cause, upon 30 days' notice, and (B) immediately for cause.

(8) 'Protected dealer data' means any of the following data that is stored in a dealer data system:

(A) Personal, financial, or other data pertaining to a consumer, or a consumer's vehicle that is provided to a dealer by a consumer or otherwise obtained by a dealer: *Provided*, That this subdivision does not give a new motor vehicle dealer any ownership or rights to share or use the motor vehicle diagnostic data beyond what is necessary to fulfill a dealer's obligation to provide warranty, repair, or service work to its customers; or

(B) Any other data regarding a dealer's business operations in that dealer's dealer data system:

(9) 'Secure open API' means an application programming interface that allows authorized integrators to integrate with dealer data systems remotely and securely. The APIs must be 'open' in that all required information to Integrate via the API (software

development toolkit and any other necessary technical or other information) must be made available by a dealer data systems vendor to any authorized integrator upon request by a dealer. The secure open API must include all relevant endpoints to allow for access to all protected dealer data, or as are needed to integrate with protected dealer data, and must provide granularity and control necessary for dealers and authorized integrators to Integrate the data necessary under the authorized integrator contract. ‘Open’ does not mean that the API must be available publicly or at no cost to an authorized integrator, however no data access overcharge may be assessed in connection with a secure open API.

(10) ‘Third party’ includes service providers, vendors, including dealer data systems vendors and authorized integrators, and any other individual or entity other than the dealer. Third party does not include any manufacturer, factory branch, distributor, distributor branch or governmental entity acting pursuant to federal, state, or local law, or any third party acting pursuant to a valid court order.

(h) Prohibited Action

1. A third party may not:

(A) Access, share, sell, copy, use, or transmit protected dealer data from a dealer data system without the express written consent of a dealer;

(B) Take any action, by contract, by technical means, or otherwise, that would prohibit or limit a dealer’s ability to protect, store, copy, share, or use any protected dealer data. This includes, but is not limited to:

(i) Imposing any data access overcharges or other restrictions of any kind on the dealer or any authorized integrator for integration;

(ii) Prohibiting any third party that the dealer has identified as one of its authorized integrators from integrating with that dealer’s dealer data system;

(iii) Place unreasonable restrictions on integration by any authorized integrator or other third party that the dealer wishes to be an authorized integrator. Examples of unreasonable restrictions include, but are not limited to:

(I) Unreasonable restrictions on the scope or nature of the data shared with an authorized integrator;

(II) Unreasonable restrictions on the ability of the authorized integrator to write data to a dealer data system;

(III) Unreasonable restrictions or conditions on a third party accessing or sharing protected dealer data, or writing data to a dealer data system; and

(IV) Requiring unreasonable access to sensitive, competitive, or other confidential business information of a third party as a condition for access to protected dealer data or sharing protected dealer data with an authorized integrator;

(iv) Prohibiting or limiting a dealer's ability to store, copy, securely share or use protected dealer data outside the dealer data system in any manner and for any reason; or

(v) Permitting access to or accessing protected dealer data without express written consent by the dealer.

(i) Nothing in this section shall be interpreted to prevent any dealer or third party from discharging its obligations as a service provider under an agreement or otherwise under federal, state, or local law to protect and secure protected dealer data, or to otherwise limit those responsibilities.

(j) A dealer data systems vendor or authorized integrator is not responsible for any action taken directly by the dealer, or for any action it takes in appropriately following the written instructions of the dealer, to the extent that such action prevents it from meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence of such actions by the dealer.

(k) A dealer is not responsible for any action taken directly by any of its dealer data systems vendors or authorized integrators, or for any action it takes in appropriately following the written instructions of any of its dealer data systems vendors or authorized integrators, to the extent that such action prevents it from meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence of such actions by the dealer data systems vendor or authorized integrator.

(l) Additional responsibilities and restrictions

(1) All dealer data systems vendors must adopt and make available a standardized Integration framework (use of the STAR Standards or a standard compatible with the STAR standards shall be deemed to be in compliance with this requirement) and allow for integration via secure open APIs to authorized integrators. In the event that APIs are no longer the reasonable commercial or technical standard for secure data integration, a similar open access integration method may be provided, to the extent it provides the same or better secure Integration to dealers and authorized integrators as a secure open API.

(2) All dealer data systems vendors and authorized integrators:

(A) May Integrate, or otherwise access, use, store, or share protected dealer data, only as outlined in, and to the extent permitted by their dealer data systems vendor contract or authorized integrator contract;

(B) Must make any dealer data systems vendor contract or authorized integrator contract terminable upon no more than 90 days notice from the dealer;

(C) Must, upon notice of the dealer's intent to terminate its dealer data systems vendor contract or authorized integrator contract, in order to prevent any risk of consumer harm or inconvenience, work to ensure a secure transition of all protected dealer data to a successor dealer data systems vendor or authorized integrator. This includes, but is not limited to:

(i) Providing unrestricted access to all protected dealer data and all other data stored in the dealer data system in a commercially reasonable time and format that a successor dealer data systems vendor or authorized integrator can access and use; and

(ii) Deleting or returning to the dealer all protected dealer data prior to termination of the contract pursuant to any written directions of the dealer;

(iii) Providing a dealer, upon request, with a listing of all entities with whom it is sharing or has shared protected dealer data, or with whom it has allowed access to protected dealer data; and

(iv) Allowing a dealer to audit the dealer data systems vendor or authorized integrator's access to and use of any protected dealer data.

(j) (m) Notwithstanding the terms or conditions of any consent, authorization, release, novation, franchise, or other contract or agreement, every manufacturer, factory branch, distributor, distributor branch, dealer, ~~system data systems~~ vendor, or any third party acting on behalf of or through a manufacturer, factory branch, distributor, distributor branch or dealer, ~~management computer system data systems~~ vendor shall fully indemnify, defend, and hold harmless any dealer or manufacturer, factory branch, distributor or distributor branch from all damages, attorney fees, and costs, other costs and expenses incurred by the dealer from complaints, claims, or actions arising out of manufacturer's, factory's branch, distributor's, distributor's branch, dealer ~~management computer system data systems~~ vendors, or any third party for its willful, negligent, or impermissible use or disclosure of dealer data or customer data or other sensitive information in the dealer's data computer system. The indemnification includes, but is not limited to, judgments, settlements, fines, penalties, litigation costs, defense costs, court costs, costs related to the disclosure of security breaches, and attorneys' fees arising out of complaints, claims, civil, or administrative actions.

(j) (n) The rights conferred on motor vehicle dealers in this section are not waivable and may not be reduced or otherwise modified by any contract or agreement.

~~(k)~~ (o) This section applies to contracts entered into after the effective date of this section.

(p) If any provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(q) A manufacturer, factory branch, distributor, distributor branch, dealer, data management computer systems vendor, or any third party acting on behalf of itself, or through a manufacturer, factory branch, distributor, distributor branch, or dealer data management computer system vendor shall not take an act prejudicial against a new motor vehicle dealer because of a new motor vehicle dealer exercising its rights under this section.

#### **§17A-6A-15c. Manufacturer performance standards; uniform application; prohibited practices.**

A manufacturer may not require dealer adherence to a performance standard or standards which are not applied uniformly to other similarly situated dealers. In addition to any other requirements of the law, the following shall apply:

(1) ~~A performance standard, sales objective, or program for measuring dealer performance that may have a material effect on a dealer, including the dealer's right to payment under any incentive or reimbursement program and the application of the standard, sales objective, or program~~ used by a manufacturer, distributor, or factory branch in determining a dealer's compliance with the dealer agreement shall be reasonable and based on accurate information, including, but not limited to, the dealer's specific local market circumstances and geographical characteristics. A manufacturer, distributor, or factory branch may not impose unreasonable restrictions on a dealer relative to compliance with a sales performance standard or sales objective.

(2) Upon written request from a dealer participating in the program, the manufacturer shall provide in writing the dealer's

performance requirement or sales goal or objective, which shall include a reasonable and general explanation of the methodology, criteria, and calculations used.

(3) A manufacturer shall allocate a reasonable and appropriate supply of vehicles to assist the dealer in achieving any performance standards established by the manufacturer and distributor.

(4) The manufacturer or distributor has the burden of proving by a preponderance of the evidence that the performance standard, sales objective, or program for measuring dealership performance complies with this article.

### **§17A-6A-18. West Virginia law to apply.**

Notwithstanding the terms, provisions, or requirements of any franchise agreement, contract, or other agreement of any kind between a new motor vehicle dealer and a manufacturer or distributor captive finance source, dealer management system, or any subsidiary, affiliate, or partner of a manufacturer or distributor, or captive finance source or dealer management system, the provisions of this code apply to all such agreements and contracts listed in this section or governed by the article. Any provisions in the agreements and contracts which violate the terms of this section are null and void.”

And,

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

**Com. Sub. for H. B. 4560** – “A Bill to amend and reenact §17A-6A-2, §17A-6A-3, §17A-6A-5, §17A-6A-8a, §17A-6A-10, §17A-6A-11, §17A-6A-12, §17A-6A-13, §17A-6A-15, §17A-6A-15a, §17A-6A-15c, and §17A-6A-18 of the Code of West Virginia, 1931, as amended, all relating generally to motor vehicle dealers, distributors, wholesalers and manufacturers; expanding stated purpose of article; defining terms; clarifying behaviors which do not constitute good cause for a dealer to be sanctioned; addressing compensation for certain dealer actions; clarifying prohibited practices of a manufacturer and distributor; modifying provisions related to dealer successorship or change in executive

management; addressing payment to dealers for diagnostic work; clarifying limits of manufacturers and distributors indemnification of dealers; addressing severability; establishing prohibitions against misuse of dealer data; clarifying responsibilities of and restrictions on dealers, manufacturers, distributors and third parties; acknowledging that manufacturer performance standards take local market circumstances into account; and adding to the list of parties subject to West Virginia law; clarifying governing law; amending terms related to cancellations of dealer agreements; modifying circumstances not constituting good cause to cancel an agreement; clarifying the standard of proof in termination, cancellation and nonrenewal disputes; modifying compensation terms when contract is discontinued; setting interest rate where payments to dealers from manufacturers or distributors are untimely; increasing the notice period for dealers where a manufacturer or distributor does not approve a successor dealer or executive manager; clarifying provision related to determination of distance between dealerships; restricting manufacturer and distributor use of dealership property; modifying obligations under warranties; clarifying indemnity practices; identifying unlawful practices; and clarifying manufacturer performance standards.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 657**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Ferrell, Hardy, Linville, Martin and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4560) passed.

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



A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4629**, Relating to procedures for certain actions against the state.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 17. PROCEDURES FOR CERTAIN ACTIONS AGAINST THE STATE.**

**§55-17-3. Preliminary procedures; service on Attorney General; notice to the Legislature.**

(a)(1) Notwithstanding any provision of law to the contrary, at least 30 days prior to the institution of an action against a ~~government~~ governmental agency, the complaining party or parties ~~must~~ shall provide the chief officer of the ~~government~~ governmental agency and the Attorney General written notice, by certified mail, return receipt requested, of the alleged claim and the relief desired. Upon receipt, the chief officer of the ~~government~~ governmental agency shall ~~forthwith~~ immediately forward a copy of the notice to the President of the Senate and the Speaker of the House of Delegates. The provisions of this subdivision do not apply in actions seeking injunctive relief where the court finds that irreparable harm would have occurred if the institution of the action was delayed by the provisions of this subsection.

(2) The written notice to the chief officer of the ~~government~~ governmental agency and the Attorney General required by subdivision (1) of this subsection is considered to be provided on the date of mailing of the notice by certified mail, return receipt requested. If the written notice is provided to the chief officer of the ~~government~~ governmental agency as required by subdivision (1) of this subsection, any applicable statute of limitations is tolled for 30 days from the date the notice is provided and, if received by

the ~~government~~ governmental agency as evidenced by the return receipt of the certified mail, for 30 days from the date of the returned receipt.

(3) A copy of any complaint filed in an action as defined in §55-17-2 of this code ~~section two of this article~~ shall be served on the Attorney General.

(b) (1) Notwithstanding any procedural rule or any provision of this code to the contrary in an action instituted against a ~~government~~ governmental agency that seeks a judgment, as defined in ~~section two of this article~~ §55-17-2 of this code, the chief officer of the ~~government~~ governmental agency which is named a party to the action shall, upon receipt of service, ~~forthwith~~ immediately give written notice thereof, together with a copy of the complaint filed, to the President of the Senate and the Speaker of the House of Delegates.

(2) Upon request, the chief officer of the ~~government~~ governmental agency shall furnish the President ~~of the Senate and Speaker of the House~~ with copies of pleadings filed and discovery produced in the proceeding and other documents, information, and periodic reports relating to the proceeding as may be requested.

(3) The chief officer of a ~~government~~ governmental agency who fails without good cause to comply with the provisions of this subsection is guilty of misfeasance. This subsection does not require a notice or report to the President ~~of the Senate and the Speaker of the House~~ that no action has been instituted or is pending against a governmental agency during a specified period.

(c) The requirements for notice and delivery of pleadings and other documents to the President of the Senate or Speaker of the House of Delegates pursuant to the provisions of this section do not constitute a waiver of any constitutional immunity or protection that proscribes or limits actions, suits, or proceedings against the Legislature or the State of West Virginia.

(d) The exercise of authority granted by the provisions of this section does not subject the Legislature or any member of the Legislature to any terms of a judgment.

(e) If 90 days elapse after service of notice required by subsection (a) of this section has been effected and action has not been instituted, then the notice shall be considered to have expired, and before an action may be instituted, the complaining party or parties must provide new notice as required by subsection (a) of this section which shall be accompanied by a second or subsequent notice fee of \$250 to the attorney general and by a second or subsequent notice fee of \$250 to the chief officer of the governmental agency: *Provided*, That no further tolling of any applicable statute of limitations shall occur during any second or subsequent notice.

**§55-17-3a. Legislature and its presiding officers never to be named as parties to a civil action in court.**

(a) Article V of the Constitution of West Virginia provides that the legislative, executive, and judicial departments of the government of West Virginia shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others.

(b) It is an unconstitutional violation of the separation of powers mandated by Article V of the Constitution of West Virginia for:

(1) Any court of this state to issue a writ of mandamus, a writ of prohibition, or an injunction against the Legislature; or

(2) Any person to name the Legislature or the presiding officers thereof, in any action challenging the constitutionality of a statute.

(c) Pursuant to the separation of powers required by Article V of the West Virginia Constitution, if any suit is filed seeking relief under subdivision (1), subsection (a) of this section, or if any suit is filed naming the legislature, or the presiding officers thereof, in violation of the provisions of subdivision (2), subsection (a) of this

section, the court must, upon motion, summarily dismiss the action, or dismiss the parties improperly joined.

(c) This section shall be applied retrospectively and retroactively to all actions pending at the time of the enactment of this section.”

And,

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

**Com. Sub. for H. B. 4629** - “A Bill to amend and reenact §55-17-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §55-17-3a, all relating to actions against the State of West Virginia; providing for expiration of notice of intent to institute an action where an action has not been instituted within the prescribed time period; requiring complaining party or parties to provide a new notice; requiring new notices to be accompanied by the required fee payable to the attorney general or chief officer of the state agency; providing that applicable statute of limitations is not tolled during second or subsequent notices; prohibiting a court from issuing a writ of mandamus, a writ of prohibition or an injunction against the Legislature under the separation of powers provision of the state constitution; prohibiting the naming of the Legislature or its presiding officers in any action challenging the constitutionality of a statute under the separation of powers provision of the state constitution; requiring dismissal of such actions or dismissal of the improperly joined parties; and providing for retrospective and retroactive application of prohibitions to all actions pending at the time of the enactment of this bill.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 658**), and there were—yeas 91, nays 7, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Doyle, Evans, Fast, Fleischauer, Fluharty, Pushkin and Thompson.

Absent and Not Voting: Martin and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4629) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4787**, Creating the Highly Automated Motor Vehicle Act.

On motion of Delegate Kessinger, the House concurred in the following amendment by the Senate, with further amendment:

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

**“CHAPTER 17H. FULLY AUTONOMOUS VEHICLE ACT.**

**ARTICLE 1. FULLY AUTONOMOUS VEHICLES.**

**§17H-1-1 Short Title.**

This article may be cited as the “Fully Autonomous Vehicle Act”.

**§17H-1-2 Statement of intent and purpose.**

The Legislature finds that continuing advances in technology have improved and are expected to continue to improve the safety and operation of fully autonomous vehicles such that these vehicles should be legally permitted to be operated in West Virginia pursuant to the provisions of this act.

### **§17H-1-3 Definitions.**

The following words and phrases when used in this article shall have, unless the context clearly indicates otherwise, the meanings given to them in this section.

‘Automated driving system’ or ‘ADS’ means the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether it is limited to a specific operational design domain.

‘Dynamic driving task’ or ‘DDT’ means all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic, excluding the strategic functions such as trip scheduling and selection of destinations and waypoints, and including without limitation:

(1) Lateral vehicle motion control via steering;

(2) Longitudinal motion control via acceleration and deceleration;

(3) Monitoring the driver environment via object and event detection, recognition, classification, and response preparation;

(4) Object and event response execution;

(5) Maneuver planning; and

(6) Enhanced conspicuity via lighting, signaling, and gesturing.

‘DDT fallback’ means the response by the person or human driver to either perform the DDT or achieve a minimal risk condition after occurrence of a DDT performance-relevant system failure or upon operational design domain exit, or the response by an automated driving system to achieve minimal risk condition given the same circumstances.

‘Fully autonomous vehicle’ means a motor vehicle equipped with an automated driving system (ADS) designed to function without a human driver as a level 4 or 5 system under SAE J3016.

‘Human driver’ means a natural person in the vehicle with a valid license to operate a motor vehicle who controls all or part of the dynamic driving task (DDT).

‘Minimal risk condition’ means a condition in which a person, human driver, or an ADS may bring a vehicle after performing the DDT fallback in order to reduce the risk of a crash when a given trip cannot or should not be completed.

‘On-demand autonomous vehicle network’ means a transportation service network that uses a software application or other digital means to dispatch or otherwise enable the pre-arrangement of transportation with fully autonomous vehicles for purposes of transporting passengers or goods, including for-hire transportation and transportation of goods or passengers for compensation.

‘Operational design domain’ or ‘ODD’ means operating conditions under which a given ADS is specifically designed to function, including, but not limited to, environmental, geographical, and time-of-day restrictions, and/or the requisite presence or absence of certain traffic or roadway characteristics.

‘Person’ means a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any legal or commercial entity.

‘Platooning’ means a situation when no more than three fully autonomous vehicles are traveling in concert, pursuant to a pre-determined written travel plan that identifies the vehicles and proposed route.

‘Request to intervene’ means notification by an ADS to a human driver, that the human driver should promptly begin or resume performance of part or all of the DDT.

‘SAE J3016’ means the *Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles* published by the Society of Automotive Engineers (SAE) International in April, 2021.

**§17H-1-4 Construction.**

Nothing in this article shall be construed to:

(1) Prohibit a human driver from operating a fully autonomous vehicle to control all or part of the DDT;

(2) Prohibit a fully autonomous vehicle from operating without a human driver; or

(3) Prohibit a person from operating a vehicle with ADS that is not a fully autonomous vehicle on the public roads of this state.

**§17H-1-5 Operation of fully autonomous vehicles without a human driver.**

(a) A person may operate a fully autonomous vehicle on the public roads of this state without a human driver provided that the ADS is engaged and the vehicle meets the following conditions:

(1) If a failure of the ADS occurs which renders the system unable to perform the entire dynamic driving task (DDT) relevant to its intended operational design domain, the fully autonomous vehicle will achieve a minimal risk condition;

(2) The fully autonomous vehicle is capable of operating in compliance with the applicable traffic and motor vehicle safety laws and regulations of this state when reasonable to do so, unless an exemption has been granted by the Department of Transportation; and

(3) When required by federal law, the vehicle bears the required manufacturer's certification label indicating that at the time of its manufacture it has been certified to be in compliance with all applicable Federal Motor Vehicle Safety Standards, including reference to any exemption granted by the National Highway Traffic Safety Administration.

(b) Prior to operating a fully autonomous vehicle on the public roads of this state without a human driver, a person as defined in



this article shall submit a law enforcement interaction plan to the department that describes:

(1) How to communicate with a fleet support specialist who is available during the times the vehicle is in operation;

(2) How to safely remove the fully autonomous vehicle from the roadway and steps to safely tow the vehicle;

(3) How to recognize whether the fully autonomous vehicle is in autonomous mode; and

(4) Any additional information the manufacturer or owner deems necessary regarding hazardous conditions or public safety risks associated with the operation of the fully autonomous vehicle.

**§17H-1-6. Operation of a fully autonomous motor vehicle with an ADS by a human driver.**

(a) A person may operate a motor vehicle equipped with an ADS capable of performing the entire dynamic driving task (DDT) if:

(1) The ADS will issue a request to intervene whenever the ADS is not capable of performing the entire DDT, with the expectation that the person will respond appropriately to the request; and

(2) The ADS is capable of being operated in compliance with the applicable provisions of rules and regulations promulgated under this article, unless an exemption has been granted by the Department of Transportation or the National Highway Traffic Safety Administration.

(b) Nothing in this article prohibits or restricts a human driver from operating a fully autonomous vehicle equipped with controls that allow for the human driver to control all or part of the DDT.

**§17H-1-7 Operation of fully autonomous commercial and motor carrier vehicles.**

(a) A fully autonomous vehicle that is also a commercial vehicle under West Virginia law may operate pursuant to state laws governing the operation of commercial motor vehicles, except that any provision that by its nature reasonably applies only to a human driver does not apply to a vehicle operating with the ADS engaged.

(b) A fully autonomous vehicle that is also a motor carrier vehicle requiring a commercial driver's license pursuant to federal or state law may operate pursuant to Federal and State laws governing commercial drivers and the operation of commercial motor vehicles, except any provision which by its nature reasonably applies only to a human driver shall not apply to a fully autonomous vehicle operating with the ADS engaged. This section shall not apply to a school bus.

#### **§17H-1-8 Operation of an on-demand autonomous motor vehicle network.**

An on-demand autonomous motor vehicle network shall be permitted to operate pursuant to State laws governing the operation of transportation network companies, taxis, or any other ground transportation for-hire of passengers, with the exception that any provision of such laws that reasonably applies only to a human driver would not apply to the operation of fully autonomous vehicles with the ADS engaged on an on-demand autonomous vehicle network.

#### **§17H-1-9 Licensing, titling, and registration.**

(a) When an automated driving system (ADS) installed on a motor vehicle is engaged:

(1) The ADS is considered the driver or operator for the purpose of assessing compliance with applicable traffic or motor vehicle laws and shall be considered to satisfy electronically all physical acts required by a driver or operator of the vehicle; and

(2) The ADS is considered to be licensed to operate the vehicle.

(b) A fully autonomous vehicle shall be properly registered in accordance with the laws of this state. If a fully autonomous vehicle

is registered in this state, the vehicle shall be identified on the registration as a fully autonomous vehicle. The requirements under this article relating to exhibiting a driver's license and registration card are satisfied if the license and vehicle registration card are in the fully autonomous vehicle physically or electronically, and available for inspection by a police officer.

#### **§17H-1-10 Insurance.**

Before operating a fully autonomous motor vehicle on public roads in this state without a human driver, a person shall submit proof of financial responsibility satisfactory to the Department of Motor Vehicles that the fully autonomous vehicle is covered by insurance or proof of self-insurance that satisfy the applicable laws of this state.

#### **§17H-1-11 Control.**

(a) Unless otherwise provided in this article and notwithstanding any other provision of this code, fully autonomous vehicles and automated driving systems are governed exclusively by this article. The Department of Transportation is the sole and exclusive state agency that may implement the provisions of this article.

(b) A state agency, political subdivision, municipality, or local entity may prohibit the operation of fully autonomous vehicles, ADS, or on-demand autonomous vehicle networks, or otherwise enact or keep in force rules or ordinances that would impose taxes, fees, or other requirements (including performance standards), specific to the operation of fully autonomous vehicles, ADS, or on-demand autonomous vehicle networks in addition to the requirements of this act.

#### **§17H-1-12 Platooning.**

(a) *General rule.* The department shall be the lead state agency on fully autonomous vehicle platooning under this section.

(b) *Platoon restrictions.* A platoon shall observe the following restrictions:

(1) A maximum of three vehicles shall be in a platoon;

(2) Vehicles in a platoon shall travel only on limited access highways or interstate highways, unless otherwise permitted by the Department or the West Virginia Division of Highways;

(3) The department or the West Virginia Division of Highways, as applicable under subdivision (2) of this subsection, may restrict movement under this section for operational or safety reasons, including, but not limited to, emergency conditions; and

(4) Consistent with applicable federal and state laws, the lead vehicle in a platoon may operate with a driver and non-lead vehicles may operate with an ADS engaged, with or without a driver.

(c) *Plan for general platoon operations.* A person may operate a platoon on a highway of this state if the person files and reviews a plan for general platoon operations with the department. The department shall review the plan in consultation with the State Police and the Division of Highways, as applicable. If the plan is not rejected by the department within 30 days after receipt of the plan, the person may operate the platoon.

(d) *Non-lead vehicles.* Non-lead vehicles in a platoon are not subject to violations of this code relating to following too closely.

(e) *Visual identifiers required.* Each vehicle in a platoon must be marked with a visual identifier. The department, after consultation with the State Police and the Division of Highways shall establish the criteria and placement of the visual identifier.

**§17H-1-13 Fully autonomous vehicles not exempt from state laws pertaining to ownership.**

Unless expressly stated in this section, fully autonomous vehicles, whether traveling individually or in a platoon, are not exempt from any other laws or rules applicable to the ownership and operation of any non-fully autonomous vehicle in this state.

**§17H-1-14 Duties following crashes involving fully autonomous vehicles.**

In the event of a crash:

(1) The fully autonomous vehicle shall remain at the scene of the accident when required by State law consistent with its capability under §17H-1-5; and

(2) The owner of the highly automated motor vehicle, or a person on behalf of the vehicle owner, shall promptly report any crashes or collisions consistent with §17C-4-1, *et seq.* of this code.

**§17H-1-15 Fully autonomous vehicle equipment standards.**

A fully autonomous vehicle that is designed to be operated exclusively by an ADS for all trips is not subject to motor vehicle equipment laws or rules of this state that:

(1) Relate to or support motor vehicle operation by a human driver seated in the vehicle; and

(2) Are not relevant for an ADS.”

And,

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

**Com. Sub. for H. B. 4787** - “A Bill to amend the Code of West Virginia Code, 1931, as amended, by adding thereto a new chapter, designated §17H-1-1, §17H-1-2, §17H-1-3, §17H-1-4, §17H-1-5, §17H-1-6, §17H-1-7, §17H-1-8, §17H-1-9, §17H-1-10, §17H-1-11, §17H-1-12, §17H-1-13, §17H-1-14, and §17H-1-15, all relating to establishing the Fully Autonomous Vehicle Act; defining terms; providing for construction of the act; providing requirements for the operation of fully autonomous vehicles without a human driver and with a human driver; providing for the operation of on-demand autonomous vehicle networks; providing for the operation of fully autonomous commercial and motor vehicle carriers; providing for the platooning of fully autonomous vehicles; providing for licensing, titling, registration, and insurance

requirements of fully autonomous vehicles; providing for control and regulation of fully autonomous vehicles; providing for equipment standards for fully autonomous vehicles; and providing duties following a crash involving fully autonomous vehicles.”

With the further amendment, sponsored by Delegate Capito, being as follows:

On page 5, section §17H-1-6(a)(2), line 7, by removing the following language: “rules and regulations promulgated under”;

And,

On page 6, section §17H-1-11(b), line 5, by striking “A” (the first letter in the subsection) and inserting in lieu thereof “No”.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 659**), and there were—yeas 87, nays 11, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Cooper, Doyle, Fleischauer, Foster, Garcia, Hornbuckle, Lovejoy, McGeehan, Pushkin, Thompson and Williams.

Absent and Not Voting: Martin and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4787) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 4847**, Relating to missing persons generally.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 3D. MISSING PERSONS ACT.**

**§15-3D-4. Missing persons complaints; law-enforcement procedures.**

(a) Complaint requirements. — A person may file a missing persons complaint with any law-enforcement agency having jurisdiction. The law-enforcement agency shall attempt to collect the following information from a complainant and, as soon as thereafter as is practicable, shall then furnish the information to the West Virginia State Police:

- (1) The missing person’s name;
- (2) The missing person’s date of birth;
- (3) The missing person’s address;
- (4) The missing person’s identifying characteristics, including, but not limited to: Birthmarks, moles, tattoos, scars, height, weight, gender, race, current hair color, natural hair color, eye color, prosthetics, surgical implants, cosmetic implants, physical anomalies, and blood type;
- (5) A description of the clothing the missing person was believed to have been wearing when he or she went missing and any items that might be with the missing person, such as jewelry, accessories, shoes, or any other distinguishing garments or items;
- (6) The date of the last known contact with the missing person;
- (7) The missing person’s driver’s license and Social Security number, or any other numbers related to other forms of identification;
- (8) A recent photograph of the missing person;

(9) Information related to the missing person's electronic communication devices or electronic accounts, such as cell phone numbers, social networking login information, and email addresses and login information;

(10) Any circumstances that the complainant believes may explain why the person is missing;

(11) The name and location of the missing person's school or employer;

(12) The name and location of the missing person's dentist or primary care physician;

(13) A description of the missing person's possible means of transportation, including make, model, color, license, and identification number of a vehicle;

(14) Any identifying information related to a known or possible abductor, or the person last seen with the missing person, including the person's name, physical description, date of birth, identifying physical marks, a description of the person's possible means of transportation, including the make, model, color, license, and identification number of the person's vehicle, and any known associates;

(15) The name of the complainant and his or her relationship to the missing person; and

(16) Any additional information considered relevant by either the complainant or the law-enforcement agency.

(b) Upon receipt of the information required by subsection (a) of this section, the State Police shall monitor and assist in the investigation or, if the available evidence supports a conclusion that the missing person may have left the county from which he or she went missing, or at the request of the lead law-enforcement agency, the State Police shall supervise the investigation.

~~(b)~~ (c) High-risk determination; requirements. —



(1) Upon initial receipt of a missing persons report, the lead law-enforcement agency shall immediately assess whether facts or circumstances indicate that the person meets any of the following risk indicators, which, if applicable, will be entered into NCIC:

(A) The person is or was likely involved in a natural disaster;

(B) The person is a juvenile, or was a juvenile when he or she went missing;

(C) The person is likely endangered;

(D) The person has mental or physical disabilities;

(E) The disappearance is believed to have been the result of abduction or kidnapping, or was otherwise involuntary;

(F) The person is 75 years of age or older;

~~(F)~~ (G) The person is under the age of 21 and declared emancipated by the laws of his or her state of residence; and

~~(G)~~ (H) None of the criteria in paragraphs (A) through ~~(F)~~ (F), inclusive, of this subdivision apply, but additional facts support a reasonable concern for the person's safety.

(2) If, upon assessment, the lead law-enforcement agency determines that the missing person meets one of the classifications in subdivision (1) of this subsection, the lead law-enforcement agency shall:

(A) Immediately notify the terminal operator responsible for WEAPON system entries for the law-enforcement agency and provide the operator with all relevant information collected from the missing persons complainant as soon as possible. The terminal operator will enter all information into the WEAPON system and submit the information to the West Virginia State Police communications section. If the law-enforcement agency does not have an agreement with a local terminal agency, then the law-enforcement agency will contact the West Virginia State Police terminal agency for that particular area and request that the West

Virginia State Police enter the information into the WEAPON system. Once the missing persons complaint has been entered into the WEAPON system, the West Virginia State Police communications section shall immediately notify all law-enforcement agencies within the state and surrounding region by means of the WEAPON system with all information that will promote efforts to promptly locate and safely recover the missing person. Local law-enforcement agencies that receive the notification of a missing persons complaint shall notify all officers to be on the lookout for the missing person or a suspected abductor; and

(B) Immediately, and no later than two hours, after the determination that a juvenile is missing, take appropriate steps to ensure that the case is entered into the NCIC database with a photograph and other applicable information related to that missing person.

~~(e)~~(d) General requirements. —

(1) The lead law-enforcement agency shall take appropriate steps to ensure that all relevant information related to a missing persons complaint is submitted in a timely manner to the WEAPON system, and as applicable, NCIC, CODIS, NDIS, NamUs, and NCMEC. Any information that the West Virginia State Police obtains from these databases must be provided to the lead law-enforcement agency and to other law-enforcement agencies who may come in contact with or be involved in the investigation or location of a missing person.

(2) The lead law-enforcement agency or the West Virginia State Police shall submit any available DNA profiles that may aid in a missing persons investigation and that have not already been submitted by a medical examiner into appropriate DNA databases, including, but not limited to, NamUs.

~~(d)~~(e) Removal upon location of person. — Upon the determination that the person is no longer missing, the lead law-enforcement agency or the West Virginia State Police shall

immediately remove or request the removal of all records of the missing person from all missing persons databases.

**§15-3D-5. Missing persons investigation requirements.**

(a) A law-enforcement agency may not delay an investigation of a missing persons complaint on the basis of a written or unwritten policy requiring that a certain period of time pass after any event, including the receipt of a complaint, before an investigation may commence; and shall commence an active investigation immediately upon receipt of the missing persons complaint.

(b) A law-enforcement agency may not refuse to accept a missing person report over which it has investigatory jurisdiction.

(c) A law-enforcement agency is not required to obtain written authorization before publicly releasing any photograph that would aid in the location or recovery of a missing person.

(d) A The lead law-enforcement agency shall notify the complainant, a family member, or other person in a position to assist in efforts to locate the missing person of the following:

(1) Whether additional information or materials would aid in the location of the missing person, such as information related to credit or debit cards the missing person may have access to, other banking information, or phone or computer records;

(2) That any DNA samples requested for the missing persons investigation are requested on a voluntary basis, to be used solely to help locate or identify the missing person and will not be used for any other purpose; and

(3) Any general information about the handling of the investigation and the investigation's progress, unless disclosure would adversely affect the ability to locate or protect the missing person, or to apprehend or prosecute any person criminally involved in the person's disappearance.

(e) A law-enforcement agency may provide informational materials through publications, or other means, regarding publicly available resources for obtaining or sharing missing persons information.

(f) ~~Lead~~ The lead law-enforcement ~~agencies~~ agency shall coordinate with all other law-enforcement agencies to ~~make~~ ensure the appropriate use of all available and applicable tools, resources, and technologies to resolve a missing persons investigation, including but not limited to:

(1) Assistance from other law-enforcement agencies, whether at a local, state, or federal level;

(2) Nonprofit search and rescue organizations, which may provide trained animal searches, use of specialized equipment, or man trackers;

(3) Cell phone triangularization and tracking services;

(4) Subpoenas of cell phone, land line, Internet, email, and social networking website records; and

(5) Services of technology experts to examine any available information collected from a computer or communications device belonging to or used by the missing person.

(g) If a person remains missing for 30 days after the receipt of a missing persons complaint or the date on which the person was last seen, whichever occurs earlier, the lead law-enforcement agency shall attempt to obtain the following information:

(1) DNA samples from family members and the missing person, along with any necessary authorizations to release such information. All DNA samples obtained in a missing persons investigation shall be immediately forwarded to an appropriate laboratory for analysis;

(2) Any necessary written authorization to release the missing person's medical and dental records, including any available x-rays, to the lead law-enforcement agency. If no family or next of

kin exists or can be located, the lead law-enforcement agency may execute a written declaration, stating that an active investigation seeking to locate the missing person is being conducted and that the records are required for the exclusive purpose of furthering the investigation. The written declaration, signed by the supervising or chief officer of the law-enforcement agency, is sufficient authority for a health care practitioner to immediately release the missing person's x-rays, dental records, dental x-rays, and records of any surgical implants to the law-enforcement agency;

(3) Additional photographs of the missing person that may aid the investigation; and

(4) Fingerprints of the missing person.

(h) Nothing in this section precludes a law-enforcement agency from attempting to obtain the materials identified in subsection (g) of this section before the expiration of the 30-day period.

## **ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.**

### **§15-10-5. Federal officers' peace-keeping authority.**

(a) Notwithstanding any provision of this code to the contrary, any person who is employed by the United States government as a federal law-enforcement officer and is listed in subsection (b) of this section, has the same authority to enforce the laws of this state, except state or local traffic laws or parking ordinances, as that authority granted to state or local law-enforcement officers, if one or more of the following circumstances exist:

(1) The federal law-enforcement officer is requested to provide temporary assistance by the head of a state or local law-enforcement agency or the designee of the head of the agency and that request is within the state or local law-enforcement agency's scope of authority and jurisdiction and is in writing: *Provided*, That the request does not need to be in writing if an emergency situation exists involving the imminent risk of loss of life or serious bodily injury;

(2) The federal law-enforcement officer is requested by a state or local law-enforcement officer to provide the officer temporary assistance when the state or local law-enforcement officer is acting within the scope of the officer's authority and jurisdiction and where exigent circumstances exist; or

(3) A felony is committed in the federal law-enforcement officer's presence or under circumstances indicating a felony has just occurred.

(b) This section applies to the following persons who are employed as full-time federal law-enforcement officers by the United States government and who are authorized to carry firearms while performing their duties:

(1) Federal Bureau of Investigation special agents;

(2) Drug Enforcement Administration special agents;

(3) United States Marshal's Service marshals and deputy marshals;

(4) United States postal service inspectors;

(5) Internal revenue service special agents;

(6) United States secret service special agents;

(7) Bureau of alcohol, tobacco, and firearms special agents;

(8) Police officers employed pursuant to 40 U.S.C. §§ 318 and 490 at the Federal Bureau of Investigation's criminal justice information services division facility located within this state;

(9) Law enforcement commissioned rangers of the national park service;

(10) Department of Veterans Affairs Police and Department of Veterans Affairs special investigators;

(11) Office of Inspector General special agents; and

(12) Federal Air Marshals with the Federal Air Marshal Service.

(c) Any person acting under the authority granted pursuant to this section:

(1) Has the same authority and is subject to the same exemptions and exceptions to this code as a state or local law-enforcement officer;

(2) Is not an officer, employee, or agent of any state or local law-enforcement agency;

(3) May not initiate or conduct an independent investigation into an alleged violation of any provision of this code except to the extent necessary to preserve evidence or testimony at risk of loss immediately following an occurrence described in subdivision (3), subsection (a) of this section;

(4) Is subject to 28 U.S.C. §1346, the Federal Tort Claims Act; and

(5) Has the same immunities from liability as a state or local law-enforcement officer.”

And,

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

**H. B. 4847** – “A Bill to amend and reenact §15-3D-4 and §15-3D-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §15-10-5 of said code, all relating to law enforcement generally; providing that missing persons information shall be furnished to West Virginia State Police; providing West Virginia State Police shall monitor and assist in missing persons investigation; providing that West Virginia State Police shall supervise missing persons investigation in certain circumstances; providing that missing persons report involving person aged over 75 years are high-risk; providing that an active investigation shall start when the missing persons complaint is received; providing the lead law-enforcement agency engage in coordination efforts with

other law-enforcement agencies and ensure appropriate use of certain resources; and removing the incorporation by reference of an obsolete federal statute within the definition of Federal Bureau of Investigation police officer.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 660**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Hardy, Householder, Howell, Martin and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4847) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4826**, Relating to e-sports.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 22D. WEST VIRGINIA LOTTERY SPORTS WAGERING ACT.**

**§29-22D-3. Definitions.**

For the purposes of this article, the following terms have the meanings ascribed to them in this section:



(1) ‘Adjusted gross sports wagering receipts’ means an operator’s gross sports wagering receipts from West Virginia Lottery sports wagering, less winnings paid to wagerers in such games.

(2) ‘Collegiate sport or athletic event’ means a sport or athletic event offered or sponsored by, or played in connection with, a public or private institution that offers educational services beyond the secondary level.

(3) ‘Commission’ or ‘State Lottery Commission’ means the West Virginia Lottery Commission, created by §29-22-1 *et seq.* of this code.

(4) ‘Director’ means the Director of the West Virginia State Lottery Commission, appointed pursuant to §29-22-6 of this code.

(5) ‘E-sports event’ means leagues, competitive circuits, tournaments, or similar competitions where individuals or teams play video games, typically for spectators, either in person or online, for the purpose of prizes, money, or entertainment.

(~~5~~6) ‘Gaming equipment’ or ‘sports wagering equipment’ means any mechanical, electronic, or other device, mechanism, or equipment, and related supplies used or consumed in the operation of West Virginia Lottery sports wagering at a licensed gaming facility including, but not limited to, a kiosk installed to accept sports wagers.

(~~6~~7) ‘Gaming facility’ means a designated area on the premises of an existing historic resort hotel, licensed under §29-25-1 *et seq.* of this code, to operate video lottery and table games or the facility of an entity authorized to operate racetrack video lottery machines pursuant to §29-22A-1 *et seq.* of this code.

(~~7~~8) ‘Government’ means any governmental unit of a national, state, or local body exercising governmental functions, other than the United States government.

(89) 'Gross sports wagering receipts' means the total gross receipts received by a licensed gaming facility from sports wagering.

(910) 'License' means any license applied for or issued by the commission under this article including, but not limited to:

(A) A license to act as agent of the commission in operating West Virginia Lottery sports wagering at a licensed gaming facility (operator license or West Virginia Lottery sports wagering license);

(B) A license to supply a gaming facility licensed under this article to operate sports wagering with sports wagering equipment or services necessary for the operation of sports wagering (supplier license);

(C) A license to be employed at a racetrack or gaming facility licensed under this article to operate West Virginia Lottery sports wagering when the employee works in a designated gaming area that has sports wagering or performs duties in furtherance of or associated with the operation of sports wagering at the licensed gaming facility (occupational license); or

(D) A license to provide management services under a contract to a gaming facility licensed under this article to operate sports wagering (management services provider license).

(4011) 'Licensed gaming facility' means a designated area on the premises of an existing historic resort hotel, pursuant to §29-25-1 *et seq.* of this code, or the facility of an entity authorized to operate racetrack video lottery machines, pursuant to §29-22A-1 *et seq.* of this code licensed under this article to conduct West Virginia Lottery sports wagering.

(4112) 'Lottery' means the public gaming systems or games regulated, controlled, owned, and operated by the State Lottery Commission in the manner provided by general law, as provided in this article, §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, §29-22C-1 *et seq.*, and §29-25-1 *et seq.* of this code.

(~~42~~13) ‘National criminal history background check system’ means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification.

(~~43~~14) ‘Operator’ means a licensed gaming facility which has elected to operate a sports pool and other authorized West Virginia Lottery sports wagering activities.

(~~44~~15) ‘Professional sport or athletic event’ means an event at which two or more persons participate in sports or athletic events and receive compensation in excess of actual expenses for their participation in such event.

(~~45~~16) ‘Sports event’ or ‘sporting event’ means any professional sport or athletic event, any collegiate sport or athletic event, motor race event, e-sports event, or any other special event authorized by the commission under this article.

(~~46~~17) ‘Sports pool’ means the business of accepting wagers on any sports event by any system or method of wagering.

(~~47~~18) ‘Sports wagering account’ means a financial record established by a licensed gaming facility for an individual patron in which the patron may deposit and withdraw funds for sports wagering and other authorized purchases, and to which the licensed gaming facility may credit winnings or other amounts due to that patron or authorized by that patron.

(~~48~~19) ‘Sports wagering agreement’ means a written agreement between the commission and one or more other governments whereby persons who are physically located in a signatory jurisdiction may participate in sports wagering conducted by one or more operators licensed by the signatory governments.

(~~49~~20) ‘Sports wagering fund’ means the special fund in the State Treasury created in §29-22D-17 of this code.

(~~20~~21) ‘Supplier’ means a person that requires a supplier license to provide a sports wagering licensee with goods or services

to be used in connection with operation of West Virginia Lottery sports wagering.

(~~24~~22) ‘Wager’ means a sum of money or thing of value risked on an uncertain occurrence.

(~~22~~23) ‘West Virginia Lottery sports wagering’ or ‘sports wagering’ means the business of accepting wagers on sporting events, and other events, the individual performance statistics of athletes in a sporting event or other events, or a combination of any of the same by any system or method of wagering approved by the commission including, but not limited to, mobile applications and other digital platforms that utilize communications technology to accept wagers originating within this state. The term includes, but is not limited to, exchange wagering, parlays, over-under, moneyline, pools, and straight bets. The term does not include:

(A) Pari-mutuel betting on the outcome of horse or dog races authorized by §19-23-12a and §19-23-12d of this code;

(B) Lottery games of the West Virginia State Lottery authorized by §29-22-1 *et seq.* of this code;

(C) Racetrack video lottery authorized by §29-22A-1 *et seq.* of this code;

(D) Limited video lottery authorized by §29-22B-1 *et seq.* of this code;

(E) Racetrack table games authorized by §29-22C-1 *et seq.* of this code;

(F) Video lottery and table games authorized by §29-25-1 *et seq.* of this code; and

(G) Daily Fantasy Sports (DFS).

(~~23~~24) ‘West Virginia Lottery sports wagering license’ means authorization granted under this article by the commission to a gaming facility that is already licensed under §29-22A-1 *et seq.* or §29-25-1 *et seq.* of this code, which permits the gaming facility as

an agent of the commission to operate West Virginia Lottery sports wagering in one or more designated areas or in one or more buildings owned by the licensed gaming facility on the grounds where video lottery is conducted by the licensee or through any other authorized platform developed by the gaming facility. This term is synonymous with ‘operator’s license’.

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 661**), and there were—yeas 80, nays 17, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Barnhart, Burkhammer, Fast, Hanna, Holstein, Keaton, D. Kelly, Kessinger, Kimble, Kimes, Mandt, Mazzocchi, Pinson, Toney, B. Ward, G. Ward and Worrell.

Absent and Not Voting: Howell, Martin and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4826) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 4848**, Relating to nonintoxicating beer, wine and liquor licenses.

Delegate Steele moved that the House concur in the following amendment by the Senate, with further amendment:

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

**“CHAPTER 11. TAXATION.**

**ARTICLE 16. NONINTOXICATING BEER.****§11-16-5a. Off-premises sales not required to be bagged.**

A licensee who is licensed for off-premises sales of nonintoxicating beer or nonintoxicating craft beer is not required to place nonintoxicating beer or nonintoxicating craft beer, in a bag.

**§11-16-6d. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed Class A retail dealer or a third party; requirements; limitations; third party license fee; retail transportation permit; and requirements.**

(a) A Class A retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed original container of bottles or cans, and sealed growlers, when separately licensed for growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by telephone, a mobile ordering application, or a web-based software program, as authorized by the licensee's license. There is no additional fee for licensed Class A retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted

for off-premises consumption when the Class A retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through telephone orders, a mobile ordering application, or a web-based software program. The annual nonintoxicating beer or nonintoxicating craft beer delivery license fee is \$200 per third party entity, with no limit on the number of drivers and vehicles. The delivery license fee under this subsection may not be prorated nor refunded.

(c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall comply with licensure requirements in §11-16-8 of this code, and shall require any information set forth in this article and as reasonably required by the commissioner.

(d) *Sale Requirements.* —

(1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of the prepared food or meal and nonintoxicating beer or nonintoxicating craft beer by the Class A retail dealer or third party licensee;

(2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating craft beer;

(3) ‘Prepared food or a meal’ shall, for purposes of this article, mean food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of multiple meals shall not amount to any combination of bottles, cans, or sealed growlers in excess of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and

(5) A third party delivery licensee may not have a pecuniary interest in a Class A retail dealer, as set forth in this article, therefore a third party delivery licensee may only charge a convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third party licensee may not collect a percentage of the delivery order for the delivery of alcohol, but may continue to collect a percentage of the delivery order directly related to the prepared food or a meal. The convenience fee charged by the third party delivery licensee to the person purchasing may not be greater than ~~five dollars~~ \$20 per delivery order where nonintoxicating beer or nonintoxicating craft beer are ordered by the purchasing person. For any third party licensee also licensed for wine growler delivery as set forth in §60-8-6c of the code, or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed ~~five dollars~~.

(e) *Delivery Requirements.* —

(1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older. The licensed Class A retail dealer and the third party delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A Class A retail dealer or third party delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and shall submit certification of the training to the commissioner;

(3) The Class A retail dealer or third party delivery licensee shall hold a retail transportation permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft beer pursuant to §11-16-6d(g) of this code: *Provided*, That a delivery driver may retain an electronic copy of his or her permit;

(4) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating



beer or nonintoxicating craft beer orders in the county or contiguous counties where the Class A retail dealer is located;

(5) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class A retail dealer or third party delivery licensee shall pay and account for all sales and municipal taxes;

(6) A Class A retail dealer or third party delivery licensee may not deliver prepared food or a meal, and nonintoxicating beer or nonintoxicating craft beer to any other Class A licensee;

(7) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer for personal use, and not for resale; and

(8) A Class A retail dealer or third party delivery licensee shall not deliver and leave prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer at any address without verifying a person's age and identification as required by this section.

*(f) Telephone, mobile ordering application, or web-based software requirements. —*

(1) The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the prepared food or a meal, and nonintoxicating beer or nonintoxicating craft beer delivery which is subject to age verification upon delivery with the delivery person's visual review and age verification ~~and, as applicable, a stored scanned image of the purchasing person's legal identification;~~

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery

driver's name and vehicle information and delivery shall be subject to legal identification verification;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification ;

(4) All records are subject to inspection by the commissioner. A Class A retail dealer or third party delivery licensee shall retain all records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer must be issued a retail transportation permit per §11-16-6d(g) of this code.

*(g) Retail Transportation Permit. —*

(1) A Class A retail dealer or third party delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and nonintoxicating beer or nonintoxicating craft beer.

(2) A Class A retail dealer or a third party licensee shall apply for a permit and provide vehicle and driver information, as required by the commissioner. Upon any change in vehicles or drivers, the Class A retail dealer or third party delivery licensee shall update the vehicle and driver information with the commissioner within 10 days of the change.

*(h) Enforcement. —*

(1) A Class A retail dealer or third party delivery licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple Class A retail dealers or licensees, employees, or independent contractors.

(2) A license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the Class A retail dealer or third party delivery licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a growler subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, or accepting delivery of orders are considered to be purchasers.

**§11-16-6f. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed Class B retail dealer or a third party; requirements; limitations; third party license fee; retail transportation permit; and requirements.**

(a) A Class B retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed original container of bottles or cans, and sealed growlers, when separately licensed for growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by a telephone, a mobile ordering application, or web-based software program, as authorized by the licensee's license. There is no additional fee for licensed Class B retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license

for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class B retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through a telephone order, a mobile ordering application, or web-based software program. The nonintoxicating beer or nonintoxicating craft beer delivery annual license fee is \$200 per third party licensee, with no limit on the number of drivers and vehicles. The delivery license fee under this subsection may not be prorated nor refunded.

(c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall comply with licensure requirements in §11-16-8 of this code and shall require any information set forth in this article and as reasonably required by the commissioner.

(d) *Sale Requirements.* —

(1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and nonintoxicating beer or nonintoxicating craft beer by the licensee or third party licensee;

(2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating craft beer;

(3) Food, for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of food and any combination of sealed nonintoxicating beer or nonintoxicating

craft beer bottles, cans, or growlers shall not be in excess of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and

(5) A third party delivery licensee shall not have a pecuniary interest in a Class B retail dealer, as set forth in this article. A third party delivery licensee may only charge a convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third party licensee may not collect a percentage of the delivery order for the delivery of nonintoxicating beer or nonintoxicating craft beer, but may continue to collect a percentage of the delivery order directly related to food. The convenience fee charged by the third party delivery licensee to the purchasing person may not be greater than ~~five dollars~~ \$20 per delivery order. For any third party licensee also licensed for wine delivery as set forth in §60-8-6f of this code the total convenience fee for any order, sale, and delivery of sealed wine may not exceed ~~five dollars~~ \$20.

(e) *Delivery Requirements.* —

(1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older. A Class B retail dealer and a third party licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A Class B retail dealer and a third party licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and submit the certification of the training to the commissioner;

(3) The Class B retail dealer or third party delivery licensee shall hold a retail transportation permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft beer pursuant to §11-16-6f(g) of this code: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of the licensure;

(4) A Class B retail dealer and a third party licensee may deliver food and sealed nonintoxicating beer or nonintoxicating craft beer orders in the county where the Class B retail dealer is located;

(5) A Class B retail dealer and a third party licensee may only deliver food and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class B retail dealer and a third party licensee shall pay and account for all sales and municipal taxes;

(6) A Class B retail dealer and a third party licensee may not deliver food and nonintoxicating beer or nonintoxicating craft beer to any other Class B licensee;

(7) Deliveries of food and sealed nonintoxicating beer or nonintoxicating craft beer are only for personal use, and not for resale; and

(8) A Class B retail dealer and a third party licensee shall not deliver and leave food and sealed nonintoxicating beer or nonintoxicating craft beer at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements.* —

(1) The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the food and nonintoxicating beer or nonintoxicating craft beer delivery. The delivery is subject to age verification upon delivery with the delivery person's visual review and age verification ~~and, as applicable, requires a stored scanned image of the purchasing person's legal identification;~~

(2) Any mobile ordering application or web-based software used must create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification ;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(4) All records are subject to inspection by the commissioner. A Class B retail dealer and a third party licensee shall retain all records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer shall be issued a retail transportation permit in accordance with §11-16-6f(g) of this code.

*(g) Retail Transportation Permit. —*

(1) A Class B retail dealer and a third party licensee shall obtain and maintain a retail transportation permit for the delivery of food and nonintoxicating beer or nonintoxicating craft beer.

(2) A Class B retail dealer or a third party licensee shall apply for a permit and provide vehicle and driver information, required by the commissioner. Upon any change in vehicles or drivers, Class B retail dealer and a third party licensee shall update the vehicle and driver information with the commissioner within 10 days of the change.

*(h) Enforcement. —*

(1) The Class B retail dealer and a third party licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple Class B retail dealers or third party licensees, employees, or independent contractors.

(2) A license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the Class B

retail dealer or third party licensee, their employees, or independent contractors.

(3) It is a violation for any Class B retail dealer or third party licensee, their employees, or independent contractors to break the seal of a growler subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, or accepting delivery of orders are considered to be purchasers.

#### **§11-16-8. Form of application for license; fee and bond; refusal of license.**

(a) A license may be issued by the commissioner to any person who submits an application, accompanied by a license fee and, where required, a bond, and states under oath:

(1) The name and residence of the applicant, the duration of ~~such~~ the residency, and that the applicant is 21 years of age. If the applicant is a firm, association, partnership, limited partnership, limited liability company, or corporation, the application shall include the residence of the members or officers. If a person, firm, partnership, limited partnership, limited liability company, association, corporation, or trust applies for a license as a distributor, the person, or in the case of a firm, partnership, limited partnership, limited liability company, association or trust, the members, officers, trustees, or other persons in active control of the activities of the limited liability company, association, or trust relating to the license, shall include the residency for these persons on the application. All applicants and licensees ~~must~~ shall include a manager on the applicant's license application, or a licensee's renewal application, who ~~must~~ shall meet all other requirements of licensure. ~~including, but not limited to, The applicant shall be a United States citizenship or naturalization citizen or a naturalized citizen, passing pass a background investigation, being be at least 21 years of age, being be a suitable person, being be of good morals and character of good moral character, and meet other requirements, all as set forth in this article and the rules~~



promulgated thereunder, all in the interest of protecting public health and safety and being a suitable applicant or licensee. In order to maintain licensure, a licensee shall notify the commissioner immediately of a change in managers. If the applicant is a trust or has a trust as an owner, the trustees, or other persons in active control of the activities of the trust relating to the license, shall provide a certification of trust as described in §44D-10-1013 of this code. This certification of trust shall include the excerpts described in §44D-10-1013(e) of this code and shall further state, under oath, the names, addresses, Social Security numbers, and birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of age, the certification of trust ~~must~~ shall state that the beneficiary's interest in the trust is represented by a trustee, parent, or legal guardian who is 21 years of age and who will direct all actions on behalf of the beneficiary related to the trust with respect to the distributor until the beneficiary is 21 years of age. Any beneficiary who is not 21 years of age or older shall have his or her trustee, parent, or legal guardian include in the certification of trust and state under oath his or her name, address, Social Security number, and birth date;

(2) The place of birth of the applicant, that he or she is a citizen of the United States and of good moral character and, if a naturalized citizen, when and where naturalized. If the applicant is a corporation organized or authorized to do business under the laws of the state, the application ~~must~~ shall state when and where incorporated, the name and address of each officer, and that each officer is a citizen of the United States and a person of good moral character. If the applicant is a firm, association, limited liability company, partnership, limited partnership, trust, or has a trust as an owner, the application shall provide the place of birth of each member of the firm, association, limited liability company, partnership or limited partnership and of the trustees, beneficiaries, or other persons in active control of the activities of the trust relating to the license and that each member or trustee, beneficiary, or other persons in active control of the activities of the trust relating to the license is a citizen of the United States, and if a

naturalized citizen, when and where naturalized, each of whom ~~must~~ shall qualify and sign the application;

(3) The particular place for which the license is desired and a detailed description thereof;

(4) The name of the owner of the building and, if the owner is not the applicant, that the applicant is the actual and bona fide lessee of the premises;

(5) That the ~~place~~ premises or building in which ~~is proposed~~ the applicant proposes to do business conforms to all applicable laws of health, fire, and zoning regulations and is a safe and proper place or building; not within ~~300~~ 200 feet of a school or church measured from front door to front door, along the street or streets. This requirement does not apply to a Class B license or to a place occupied by a beer licensee so long as it is continuously so occupied. The prohibition ~~against locating a proposed business in a place or building within 300 feet of a school~~ does not apply to a college, ~~or~~ university, or church that has notified the commissioner, in writing, that it has no objection to the location of a proposed business in a place or building within ~~300~~ 200 feet of the college, ~~or~~ university, or church;

(6) That the applicant is not incarcerated and has not during the five years preceding the date of ~~said~~ the application been convicted of a felony;

(7) That the applicant is the only person in any manner pecuniarily interested in the business ~~so asked~~ to be licensed and that no other person is in any manner pecuniarily interested during the continuance of the license; and

(8) That the applicant has not during five years preceding the date of the application had a nonintoxicating beer license revoked.

(b) In the case of an applicant that is a trust or has a trust as an owner, a distributor license may be issued only upon submission by the trustees or other persons in active control of the activities of the trust relating to the distributor license of a true and correct copy of the written trust instrument to the commissioner for his or her

review. Notwithstanding any provision of law to the contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this section is confidential and is not a public record and is not available for release pursuant to the West Virginia Freedom of Information Act codified in §29B-1-1 *et seq.* of this code.

(c) The provisions and requirements of subsection (a) of this section are mandatory prerequisites for the issuance of a license and, if any applicant fails to qualify, the commissioner shall refuse to issue the license ~~shall be refused~~. In addition to the information furnished in any application, the commissioner may make ~~such~~ any additional and independent investigation of each applicant, manager, and of the place to be occupied as necessary or advisable and, for this reason, all applications, with license fee and bond, ~~must~~ shall be submitted with all true and correct information. For the purpose of conducting ~~such~~ the independent investigation, the commissioner may withhold the granting or refusal to grant the license for a 30-day period or until the applicant has completed the conditions set forth in this section. If it appears that the applicant and manager meet the requirements in the code and the rules, including, but not limited to, being a suitable person of ~~good reputation and morals~~ good moral character; having made no false statements or material misrepresentations; involving no hidden ownership; and having no persons with an undisclosed pecuniary interest contained in the application; and if there are no other omissions or failures by the applicant to complete the application, as determined by the commissioner, the commissioner shall issue a license authorizing the applicant to sell nonintoxicating beer or nonintoxicating craft beer.

(d) The commissioner may refuse a license to any applicant under the provisions of this article if the commissioner is of the opinion:

(1) That the applicant or manager is not a suitable person to be licensed;

(2) That the place to be occupied by the applicant is not a suitable place; or is within ~~300~~ 200 feet of any school or church

measured from front door to front door along the street or streets. This requirement does not apply to a Class B licensee or to a place now occupied by a beer licensee so long as it is continuously so occupied. ~~The prohibition against locating any such place within 300 feet of a school~~ does not apply to a college, ~~or university, or church~~ that has notified the commissioner, in writing, that it has no objection to the location of any such place within ~~300~~ 200 feet;

(3) That the manager, owner, employee, or person is in a contractual relationship to provide goods or services to the applicant is an active employee of the commissioner; or

(4) That the license should not be issued for reason of conduct declared to be unlawful by this article.

## **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

### **ARTICLE 1. GENERAL PROVISIONS.**

#### **§60-1-3a. Off-premises sales not required to be bagged.**

Alcoholic liquors in this state are not required to be placed in a bag by a licensee who is licensed for off-premises sales of alcoholic liquors.

### **ARTICLE 3. SALES BY COMMISSIONER.**

#### **§60-3-26. Sale of certain liquors prohibited.**

(a) Upon the effective date of this section, the commissioner is hereby directed to divest the state of all stocks of alcoholic liquors in the commissioner's possession manufactured in the Russian Federation, or by any person or entity located therein, and to cease purchasing such products during the time this section is in effect.

(b) The commissioner, at the direction of the Governor, is hereby authorized to auction to the highest bidder or sell at a public event all stocks of alcohol liquors in the commissioner's possession which were either manufactured in the Russian Federation or by a person or entity located therein.

(c) The state's proceeds from the sale authorized by subsection (b) of this section shall be paid to a licensed, recognized charitable organization or organizations engaged in assisting the people of Ukraine.

(d) The provisions of this section shall expire three years from the effective date of the section or until the Governor lifts the ban established in subsection (a) of this section.

## **ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

### **§60-3A-3a. Liquor sampling.**

(a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee may, ~~with the written approval of the commissioner,~~ conduct a liquor sampling event on a designated sampling day.

(b) At least five business days prior to the liquor sampling, the Class A retail licensee shall submit a written proposal to the commissioner ~~requesting to~~ informing the Commissioner that the Class A licensee will hold a liquor sampling event, including:

- (1) The day of the event;
- (2) The location of the event;
- (3) The times for the event; and

(4) The specific brand and flavor of the West Virginia product to be sampled.

(c) Upon approval by the commissioner, a Class A retail licensee may serve a complimentary liquor sample of the approved brand and flavor of the West Virginia product that is purchased by the Class A retail licensee from the commissioner.

(d) The complimentary liquor samples on any sampling day shall not exceed:

(1) One separate and individual sample serving per customer verified to be 21 years of age or older; and

(2) One ounce in total volume.

(e) Servers at the liquor sampling event shall:

(1) Be employees of the Class A retail licensee; and

(2) Be at least 21 years of age or older; ~~and~~

~~(3) Have specific knowledge of the West Virginia product being sampled to convey to the customer.~~

(f) All servers at the liquor sampling event shall verify the age of the customer sampling liquor by requiring and reviewing proper forms of identification. Servers at the liquor sampling event may not serve any person who is:

(1) Under the age of 21 years;

(2) Intoxicated.

(g) A liquor sampling event shall:

(1) Occur only inside the Class A retail licensee's licensed premises; and

(2) Cease on or before 9:00 p.m. on any approved sampling day.

(h) Any liquor bottle used for sampling must be from the inventory of the licensee, and clearly and conspicuously labeled 'SAMPLE, NOT FOR RESALE'. If the seal is broken on any liquor bottle or if any liquor bottle is opened, then that liquor bottle must be removed from the licensed premises immediately following the event.

(i) Violations of this section are subject to the civil and criminal penalties set forth in sections twenty-four, twenty-five-a, twenty-six and twenty-seven of this article;

~~(j) To implement the provisions of this section, the commissioner may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of~~

~~this code or propose rules for legislative approval in accordance with the provisions of article three, chapter twenty nine a of this code.~~

**§60-3A-3b. Private liquor delivery license for a retail liquor outlet or a third party; requirements; limitations; third party license fee; private liquor bottle delivery permit; requirements, and curbside in-person and in-vehicle delivery by a retail liquor outlet.**

(a) A retail liquor outlet that is licensed to sell liquor for off-premises consumption may apply for a private liquor delivery license permitting the order, sale, and delivery of sealed liquor bottles or cans in the original container. The order, sale, and delivery of sealed liquor bottles or cans in the original container is permitted for off-premises consumption when completed by the licensee to a person purchasing the sealed liquor bottles or cans through a telephone, a mobile ordering application, or a web-based software program, authorized by the licensee's license. There is no additional fee for a licensed retail liquor outlet to obtain a private liquor delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for liquor sales or distribution, may apply for a private liquor delivery license for the privilege of ordering and delivery of sealed liquor bottles or cans, from a licensed retail liquor outlet. The order and delivery of sealed liquor bottles or cans permitted for off-premises consumption by a third party licensee when a retail liquor outlet sells to a person purchasing the sealed liquor bottles or cans through telephone orders, a mobile ordering application, or a web-based software program. The private liquor delivery license non-prorated, nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private liquor delivery license application shall comply with licensure requirements in this article and shall provide any information required by the commissioner.

(d) Sale Requirements. -

(1) The purchase of sealed liquor bottles or cans in the original container may accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and sealed liquor bottles or cans in the original container by the licensee or third party licensee;

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this chapter for the sale of alcoholic liquors and in §11-16-1 *et seq.* of the code, for nonintoxicating beer or nonintoxicating craft beer.

(3) 'Food', for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of up to five 750 milliliter sealed liquor bottles for each order: *Provided*, That the entire delivery order may not contain any combination of sealed liquor bottles or cans in the original container, where the combination is more than 128 fluid ounces of liquor total; and

(5) A third party delivery licensee shall not have a pecuniary interest in a retail liquor outlet, as set forth in this article. A third party private liquor delivery licensee may only charge a convenience fee for the delivery of any alcohol. The third party private liquor delivery licensee may not collect a percentage of the liquor delivery order, but may continue to collect a percentage of the delivery order directly related to food. The convenience fee charged by the third-party private liquor delivery licensee to the purchasing person shall be no greater than ~~five dollars~~ \$20 per delivery order where a sealed liquor bottle or can in the original container is ordered by the purchasing person. For any third party licensee also licensed for other nonintoxicating beer or nonintoxicating craft beer delivery pursuant to §11-16-1 *et seq.* of this code, wine delivery pursuant to §60-8-1 *et seq.* of this code, or a sealed craft cocktail growler delivery pursuant to §60-7-1 *et seq.* of this code, the total convenience fee of any order, sale, and



delivery of sealed alcoholic liquor or nonintoxicating beer, or nonintoxicating craft beer shall not exceed ~~five dollars.~~ \$20.

(e) *Private Liquor Delivery Requirements.* —

(1) Delivery persons employed for the delivery of a sealed liquor bottles or cans in the original container shall be 21 years of age or older and a retail liquor outlet and a third-party private liquor delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A retail liquor outlet and a third-party private liquor delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. A retail liquor outlet and a third-party private liquor delivery licensee shall submit certification of the training to the commissioner;

(3) The retail liquor outlet or third party private liquor delivery licensee shall hold a private liquor bottle delivery permit for each vehicle delivering a sealed liquor bottle or can in the original container pursuant to subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) A retail liquor outlet or third party private liquor delivery licensee shall deliver food and a sealed liquor bottle or can order in the original container in the market zone or contiguous market zone where the licensed retail liquor outlet is located;

(5) A retail liquor outlet or third party private liquor delivery licensee may only deliver food and a sealed liquor bottle or can in the original container to addresses located in West Virginia, The retail liquor outlet or third party private liquor delivery licensee shall pay and account for all sales and municipal taxes;

(6) A retail liquor outlet or third party private liquor delivery licensee may not deliver food and a sealed liquor bottle or can in the original container to any licensee licensed under §11-16-1 *et seq.* of this code, and under this chapter;

(7) Deliveries of food and a sealed liquor bottle or can in the original container are only for personal use, and not for resale; and

(8) A retail liquor outlet or third party private liquor delivery licensee shall not deliver and leave food and a sealed liquor bottle or can in the original container at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements.* —

(1) The delivery person shall only permit the person who placed the order through a telephone order, a mobile ordering ~~application~~ applicant, or web-based software to accept the food and a sealed liquor bottle or can in the original container for delivery which is subject to verification upon delivery with the delivery person's visual review and verification ~~and, as applicable, a stored scanned image of the purchasing person's legal identification;~~

(2) Any mobile ordering application or web-based software used shall ~~create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information~~ and delivery shall be subject to legal identification verification;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's ~~legal~~ identification and details of the sale, ~~accessible by the delivery driver for verification,~~ and shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(4) All records are subject to inspection by the commissioner. A retail liquor outlet or third party private liquor delivery licensee shall retain records for three years, and shall not unreasonably withhold the records from the commissioner's inspection; and

(5) The retail liquor outlet or third party delivery licensee shall hold a valid private liquor bottle delivery permit required by subsection (g) of this section for each vehicle that may offer delivery.

(g) *Private Liquor Bottle Delivery Permit.* —.

(1) A retail liquor outlet or third party delivery licensee shall obtain and maintain a retail transportation permit for the delivery of and a sealed liquor bottle or can in the original container.

(2) A retail liquor outlet or third party private delivery licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) Subject to the requirement of §60-6-12 of this code, a private liquor bottle delivery permit shall meet the requirements of a transportation permit authorizing the permit holder to transport liquor subject to the requirements of this chapter.

(h) *Enforcement.* —

(1) The retail liquor outlet or the licensed third party are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a sealed liquor bottle. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this chapter.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

(i) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in the original container may provide for the

sale and curbside in-person or in-vehicle pick-up of sealed liquor bottles or cans in the original container, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

(j) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in the original container may provide for the sale and delivery through a drive up or drive through structure, approved by the commissioner, of sealed liquor bottles or cans in the original container, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

**§60-3A-8. Retail license application requirements; retail licensee qualifications.**

(a) Prior to or simultaneously with the submission of a bid for a retail license or the payment of a purchase option for a Class A retail license, each applicant shall file an application with the commissioner, stating under oath, the following:

(1) If the applicant is an individual, his or her name and residence address;

(2) If the applicant is other than an individual, the name and business address of the applicant; the state of its incorporation or organization; the names and residence addresses of each executive officer and other principal officer, partner, or member of the entity; a copy of the entity's charter or other agreement under which the entity operates; the names and residence addresses of any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership, or other interests in the applicant; and all applicants and licensees must list a manager on the applicant's license application, or a licensee's renewal application, and further that the manager shall meet all other requirements of licensure, including, but not limited to, United States citizenship or naturalization, passing a background investigation, being at least 21 years of age, being a suitable person, being of good morals and character, and other requirements, all as set forth in the code and the legislative rules, in order for the manager to be able to meet and

conduct any regulatory matters, including, but not limited to, licensure or enforcement matters related to the applicant or licensee all in the interest of protecting public health and safety and being a suitable applicant or licensee. In order to maintain active licensure, any change by a licensee in any manager listed on an application must be made immediately to the commissioner, in order to verify that the new manager meets licensure requirements;

(3) That the applicant and manager have ~~never~~ not been convicted in this state or any other state of any felony or other crime involving moral turpitude or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law, and if the applicant is other than an individual, that none of its executive officers, other principal officers, partners, or members, or any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership, or other interests in the applicant, has been convicted; and

(4) That the applicant and the manager, each is a United States citizen of good moral character and, if a naturalized citizen, when and where naturalized; and, if a corporation organized and authorized to do business under the laws of this state, when and where incorporated, with the name and address of each officer; that each officer is a citizen of the United States and a person of good moral character; and if a firm, association, partnership, or limited partnership, that each member is a citizen of the United States and, if a naturalized citizen, when and where naturalized, each of whom must sign the application.

(b) An applicant and manager shall provide the commissioner any additional information requested by the commissioner including, but not limited to, authorization to conduct a criminal background and credit records check.

(c) Whenever a change occurs in any information provided to the commissioner, the change shall immediately be reported to the commissioner in the same manner as originally provided.

(d) The commissioner shall disqualify each bid submitted by an applicant under §60-3A-10 of this code and no applicant shall be issued or eligible to hold a retail license under this article, if:

(1) The applicant has been convicted in this state of any felony or other crime involving ~~moral turpitude~~ fraud, dishonesty, or deceit or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law; or

(2) Any executive officer or other principal officer, partner, or member of the applicant, or any person owning, directly or indirectly, at least twenty percent of the outstanding stock, partnership, or other interests in the applicant, has been convicted in this state of any felony or other crime involving ~~moral turpitude~~ fraud, dishonesty, or deceit or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law.

(e) The commissioner shall not issue a retail license to an applicant which does not hold a license issued pursuant to federal law to sell liquor at wholesale.

### **ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

#### **§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from state; transportation and storage; method of payment.**

(a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to retail licensees. The commissioner shall sell liquor, other than wine, to retail licensees according to a uniform pricing schedule. The commissioner shall obtain, if possible, upon request, any liquor requested by a retail licensee and those permitted to manufacture and sell liquor pursuant to ~~section three, article four of this chapter~~ §60-4-3 of this code.

(b) Wholesale prices shall be established in order to yield a net profit for the General Revenue Fund of not less than \$6,500,000 annually on an annual volume of business equal to the average for the past three years. The net revenue derived from the sale of

alcoholic liquors shall be deposited into the General Revenue Fund in the manner provided in ~~section seventeen, article three of this chapter~~ §60-3-17 of this code.

(c) Notwithstanding any provision of this code to the contrary, the commissioner shall specify the maximum wholesale markup percentage which may be applied to the prices paid by the commissioner for all liquor, other than wine, in order to determine the prices at which all liquor, other than wine, will be sold to retail licensees. A retail licensee shall purchase all liquor, other than wine, for resale in this state only from the commissioner, and the provisions of ~~sections twelve and thirteen, article six of this chapter~~ §60-6-12 and §60-6-13 of this code shall not apply to the transportation of the liquor: *Provided*, That a retail licensee shall purchase wine from a wine distributor who is duly licensed under ~~article eight of this chapter~~ §60-8-1 et seq. of this code. All liquor, other than wine, purchased by retail licensees shall be stored in the state at the retail outlet or outlets operated by the retail licensee: *Provided, however*, That the commissioner, in his or her discretion, may upon written request permit a retail licensee to store liquor at a site other than the retail outlet or outlets.

(d) The sale of liquor by the commissioner to retail licensees shall be paid by electronic funds transfer which shall be initiated by the commissioner on the business day following the retail licensees order or by money order, certified check, or cashier's check which shall be received by the commissioner at least 24 hours prior to the shipping of the alcoholic liquors: *Provided*, That if a retail licensee posts with the commissioner an irrevocable letter of credit or bond with surety acceptable to the commissioner from a financial institution acceptable to the commissioner guaranteeing payment of checks, then the commissioner may accept the retail licensee's checks in an amount up to the amount of the letter of credit.

(e) (1) A retail licensee may not sell liquor to persons licensed under the provisions of ~~article seven of this chapter~~ §60-7-1 et seq. of this code at less than ~~one hundred ten percent~~ 112.5 percent of the retail licensee's cost as defined in §47-11A-6 of this code.

(2) A retail licensee may not sell liquor to the general public at less than ~~one hundred ten percent~~ 110 percent of the retail licensee's cost as defined in §47-11A-6 of this code.

## ARTICLE 4. LICENSES.

### §60-4-22. Wholesale representatives' licenses.

(a) A person, firm or corporation may not be or act or serve as an agent, broker or salesman selling or offering to sell or soliciting or negotiating the sale of alcoholic liquor to the commission or to any distributor licensed pursuant to article eight of this chapter without first obtaining a license so to do in accordance with the provisions of this section. Only salaried employees of distilleries, manufacturers, producers or processors of alcoholic liquor may be licensed hereunder and no person may be licensed hereunder who sells or offers to sell alcoholic liquor to the commission or any distributor on a fee or commission basis. The commission shall be the licensing authority and may grant to persons of good moral character the license herein provided and may refuse to grant such license to any person (1) convicted of a felony, within ten years prior to his or her application for such license (2) convicted of a crime involving fraud, dishonesty, or deceit or (3) convicted of a felony violation of a state or federal liquor law; refuse to grant, suspend or revoke licenses. Licenses shall be on an annual basis for the period from July 1, until June 30 next following. New and renewal licenses shall be granted only upon verified application to the commission presented on forms provided by the commission. Any person representing more than one producer, manufacturer or distributor of alcoholic liquors shall file a separate application and shall obtain a separate license for each such representation. The annual license fee shall be \$100. The fee for any license granted for the remainder of any license year between January 1, and June 30 of the same calendar year shall be \$50.

~~No person who is the father, mother, son, daughter, brother, sister, uncle, aunt, nephew or niece of a member of the commission or of any elected or appointed state official, county official or municipal official, or who is the spouse of any such person so related to a member of the commission or to any elected or~~



~~appointive state official, county official or municipal official, may be granted a license. No member of the Legislature or the spouse of any such member may be granted a license. Nor may any member or officer of any political party executive committee of this state or the spouse of any such member or officer be granted a license.~~

(b) In addition to all other information which the commission may require to be supplied on the license application forms, each applicant shall be required to state his or her name and his or her residence address and the name and business address of the producer, manufacturer or distributor he or she represents; the name and address of each additional producer, manufacturer or distributor of alcoholic liquors he or she represents; the monetary total of all alcoholic liquor sales, if any, made by him or her to the commission or to any distributor licensed pursuant to article eight of this chapter during the fiscal year preceding the license year for which he or she is seeking a license; the monetary total of the gross income received by him or her on such sales, if any, during such fiscal year; whether he or she has, during such fiscal year, made or given, voluntarily or on request, any gift, contribution of money or property to any member or employee of the commission or of any distributor licensed pursuant to article eight of this chapter or to or for the benefit of any political party committee or campaign fund; and his or her relationship, if any, by blood or marriage, to any member of the commission or to any elected or appointive state official, county official or municipal official. All such applications shall be verified by oath of the applicant and shall be prepared and filed in duplicate. All such applications and a current list of all licensees hereunder shall be matters of public record and shall be available to public inspection at the commission's offices at the State Capitol. Every licensee who ceases to be an agent, broker or salesman, as herein contemplated, shall so advise the commission in writing and such person's name shall be immediately removed from the license list and his or her license shall be canceled and terminated.

(c) All persons licensed under this section shall be authorized representatives of the wineries, farm wineries, distilleries, mini-

distilleries, manufacturers, producers or processors of alcoholic liquor they represent. A licensed person may not share, divide or split his or her salary with any person other than his or her wife or some legal dependent, nor may he or she make any contribution to any political party campaign fund in this state.

(d) All licensees shall be subject to all other provisions of this chapter and to the lawful rules promulgated by the commission. Licenses may be refused, suspended or revoked by the commission for cause, including any of the applicable grounds of revocation specified in section nineteen of this article. Provisions of this article relating to notice, hearing and appeals shall, to the extent applicable, govern procedures on suspension and revocation of licenses hereunder.

(e) Any person, firm or corporation violating any provision of this section, including knowingly making of any false statement in a verified application for a license shall be guilty of a misdemeanor offense and shall, upon conviction thereof, be fined not exceeding \$1,000 or imprisoned in jail not exceeding twelve months, or be subject to both such fine and imprisonment in the discretion of the court.

**§60-4-23. License to operate a facility where exotic entertainment is offered; definitions; restrictions, regulations and prohibitions; prohibitions against minors; application, renewal, license fee, restrictions on transfer; effective date; legislative rules; unlawful acts and penalties imposed.**

[Repealed.]

## **ARTICLE 6. MISCELLANEOUS PROVISIONS.**

### **§60-6-24. Requirement for posting informational sign.**

~~Each store or outlet controlled or operated by the state Alcohol Beverage Control Commission, and any store, supermarket, club, restaurant, or Any licensee licensed under this chapter to sell alcoholic liquors, including liquor, wine, hard cider, other facility selling alcoholic beverages or nonintoxicating beer or~~

~~nonintoxicating craft beer~~ for either ~~on-premise on-premises~~ or ~~off-premise off-premises~~ consumption, shall post in an open and prominent place within ~~such~~ the establishment, a blood-alcohol chart containing information showing the estimated percent of alcohol in the blood by the number of drinks in relation to body weight and time of consumption, ~~as follows:~~

~~FORM OMITTED~~

~~FORM OMITTED~~

~~The size of display and location of said blood-alcohol chart shall be prescribed by the commissioner, by rule and regulation as provided in the chart available on the commissioner's website. Enforcement of the posting provisions of this section shall be carried out by the West Virginia nonintoxicating beer commissioner commissioner in establishments which are for all licensees required to post such the notice. but are not subject to the supervision of the West Virginia Alcohol Beverage Control Commissioner~~

## **ARTICLE 7. LICENSES TO PRIVATE CLUBS.**

### **§60-7-2. Definitions; authorizations; requirements for certain licenses.**

Unless the context in which used clearly requires a different meaning, as used in this article:

~~(a)~~ (1) 'Applicant' means a private club applying for a license under the provisions of this article.

~~(b)~~ (2) 'Code' means the official Code of West Virginia, 1931, as amended.

~~(c)~~ (3) 'Commissioner' means the West Virginia Alcohol Beverage Control Commissioner.

~~(d)~~ (4) 'Licensee' means the holder of a license to operate a private club granted under this article, which remains unexpired, unsuspended, and unrevoked.

(e) (5) 'Private club' means any corporation or unincorporated association which either: ~~(1)~~ (A) Belongs to or is affiliated with a nationally recognized fraternal or veterans' organization which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly- elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests;

~~(2)~~ (B) Is a nonprofit social club, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly-elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests;

~~(3)~~ (C) Is organized and operated for legitimate purposes which has at least 100 duly- elected or approved dues-paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this state, to which club are admitted only duly- elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons for serving meals to members and their guests; or

~~(4)~~ (D) Is organized for legitimate purposes and owns or leases a building or other delimited premises in any state, county, or municipal park, or at any airport, in which building or premises a

club has been established, to which club are admitted only duly-elected and approved dues-paying members in good standing and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in connection with the club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in the club to the members and their guests.

(6) 'Private bakery' means an applicant for a private club or licensed private club license that has a primary function of operating a food preparation business that produces baked goods, including brownies, cookies, cupcakes, confections, muffins, breads, cakes, wedding cakes, and other baked goods. The applicant or licensee desires to sell baked goods infused with liquor, wine, or nonintoxicating beer or nonintoxicating craft beer, either: (A) In the icing, syrup, drizzle, or some other topping; (B) as an infusion where the alcohol is not processed or cooked out of the baked goods; or (C) the alcohol can be added by the purchaser from an infusion packet containing alcohol no greater than 10 milliliters. This applicant or licensee may not sell liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for on or off-premises consumption. This applicant or licensee may sell the baked goods with alcohol added as authorized for on and off-premises consumption. Further, the applicant or licensee shall meet the criteria set forth in this subdivision which:

(i) Has at least 50 members;

(ii) Operates a kitchen that produces baked goods, as specified in this subdivision, including at least: (I) A baking oven and a four-burner range or hot plate; (II) a sink with hot and cold running water; (III) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (IV) baking utensils and pans, kitchen utensils, and other food consumption apparatus as determined by the commissioner; and (V) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(iii) Maintains, at any one time, \$750 of food inventory capable of being prepared in the private bakery's kitchen. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, pre-packaged foods, baking items such as flour, sugar, icing, and other confectionary items, or canned prepared foods;

(iv) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 18 who are in the private club bar are accompanied by a parent or legal guardian, and if a person under 18 years of age is not accompanied by a parent or legal guardian that person may not be admitted as a guest; and

(v) Meet and be subject to all other private club requirements.

(7) 'Private cigar shop' means an applicant for a private club or licensed private club licensee that has a primary function of operating a cigar shop for sales of premium cigars for consumption on or off the licensed premises. Where permitted by law, indoor on-premises cigar consumption is permitted with a limited food menu, which may be met by utilizing a private caterer, for members and guests while the private club applicant or licensee is selling and serving liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for on-premises consumption. Further, the applicant or licensee shall meet the criteria set forth in this subdivision which:

(A) Has at least 50 members;

(B) Operates a cigar shop and bar with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (iv) kitchen utensils and other food consumption apparatus as determined by the commissioner; and (v) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintains, at any one time, \$500 of food inventory capable of being prepared in the private club bar's kitchen or has on hand at least \$150 in food provided by a private caterer. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 18 who are in the private club bar are accompanied by a parent or legal guardian, and if a person under 18 years of age is not accompanied by a parent or legal guardian, that person may not be admitted as a guest; and

(E) Meets and is subject to all other private club requirements.

~~(7)~~ (8) 'Private caterer' means a licensed private club restaurant, private hotel, or private resort hotel authorized by the commissioner to cater and serve food and sell and serve alcoholic liquors, or non-intoxicating beer or non-intoxicating craft beer. A private caterer shall purchase wine sold or served at a catering event from a wine distributor. A private caterer shall purchase nonintoxicating beer and nonintoxicating craft beer sold or served at the catering event from a licensed beer distributor. A private caterer shall purchase liquor from a retail liquor outlet authorized to sell in the market zone, where the catering event is held. The private caterer or the persons or entity holding the catering event shall:

~~(1)~~ (A) Have at least 10 members and guests attending the catering event;

~~(2)~~ (B) Have obtained an open container waiver or have otherwise been approved by a municipality or county in which the event is being held;

~~(3)~~ (C) Operate a private club restaurant on a daily operating basis;

~~(4)~~ (D) Only use its employees, independent contractors, or volunteers to sell and serve alcoholic liquors who have received certified training in verifying the legal identification, the age of a purchasing person, and the signs of visible, noticeable, and physical intoxication;

~~(5)~~ (E) Provide to the commissioner, at least 7 seven days before the event is to take place:

~~(A)~~ (i) The name and business address of the unlicensed private venue where the private caterer is to provide food and alcohol for a catering event;

~~(B)~~ (ii) The name of the owner or operator of the unlicensed private venue;

~~(C)~~ (iii) A copy of the contract or contracts between the private caterer, the person contracting with the caterer, and the unlicensed private venue;

~~(D)~~ (iv) A floorplan of the unlicensed private venue to comprise the private catering premises, which shall only include spaces in buildings or rooms of an unlicensed private venue where the private caterer has control of the space for a set time period where the space safely accounts for the ingress and egress of the stated members and guests who will be attending the private catering event at the catering premises. The unlicensed private venue's floorplan during the set time period as stated in the contract shall comprise the private caterer's licensed premises, which is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer and nonintoxicating craft beer, and wine throughout the licensed private catering premises: *Provided*, That the unlicensed private venue shall: ~~(i)~~ (I) Be inside a building or structure, ~~(ii)~~ (II) have other facilities to prepare and serve food and alcohol, ~~(iii)~~ (III) have adequate restrooms and sufficient building facilities for the number of members and guests expected to attend the private catering event, and ~~(iv)~~ (IV) otherwise be in compliance with health, fire, safety, and zoning requirements;



~~(6)~~ (F) Not hold more than 15 private catering events per calendar year. Upon reaching the 16th event, the unlicensed venue shall obtain its own private club license;

~~(7)~~ (G) Submit to the commissioner, evidence that any noncontiguous area of an unlicensed venue is within 150 feet of the private caterer's submitted floorplan and may submit a floorplan extension for authorization to permit alcohol and food at an outdoor event;

~~(8)~~ (H) Meet and be subject to all other private club requirements; and

~~(9)~~ (I) Use an age verification system approved by the commissioner.

~~(g)~~ (9) 'Private club bar' means an applicant for a private club or licensed private club licensee that has a primary function for the use of the licensed premises as a bar for the sale and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when licensed for ~~such~~ those sales, while providing a limited food menu for members and guests, and meeting the criteria set forth in this ~~subsection~~ subdivision which:

~~(1)~~ (A) Has at least 100 members;

~~(2)~~ (B) Operates a bar with a kitchen, including at least: ~~(A)~~ (i) A two-burner hot plate, air fryer, or microwave oven; ~~(B)~~ (ii) a sink with hot and cold running water; ~~(C)~~ (iii) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; ~~(D)~~ (iv) kitchen utensils and other food consumption apparatus as determined by the commissioner; and ~~(E)~~ (v) food fit for human consumption available to be served during all hours of operation on the licensed premises;

~~(3)~~ (C) Maintains, at any one time, \$500 of food inventory capable of being prepared in the private club bar's kitchen. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable

food or meals, frozen meals, prepackaged foods, or canned prepared foods;

(4) (D) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 18 who are in the private club bar are accompanied by a parent or legal guardian, and if a person under 18 years of age is not accompanied by a parent or legal guardian that person may not be admitted as a guest; and

~~(5)~~ (E) Meets and is subject to all other private club requirements.

(10) 'Private food truck' means an applicant for a private club, licensed private club licensee, or licensed private manufacturer's club licensee that has a primary function of operating a food preparation business using an industrial truck, van, or trailer to prepare food and meals for sale at various locations within the state while utilizing a propane or electric generator powered kitchen. The private food truck applicant shall obtain county or municipal approval to operate for food and liquor, wine, and nonintoxicating beer or nonintoxicating craft beer sales and service, while providing a food menu for members and guests. The private food truck applicant shall meet the criteria set forth in this subdivision which:

(A) Has at least 10 members;

(B) Operates with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) at least a 10 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; and (iv) plastic or metal kitchen utensils and other food consumption apparatus as determined by the commissioner;

(C) Maintains, at any one time, \$500 of food inventory that is fit for human consumption and capable of being prepared and served from the private food truck's kitchen during all hours of operation;

(D) Shall be sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private food truck is to be located and operate, and further each location shall have a bounded and defined area and set hours for private food truck operations, sales, and consumption of alcohol that are not greater than a private club's hours of operation;

(E) Provides the commissioner with a list of all locations, including a main business location, where the private food truck operates, and is approved for sales pursuant to subsection (D) of this section, and immediately update the commissioner when new locations are approved by a county or municipality;

(F) Requires all nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section to be purchased from the licensed distributor where the private food truck has its home location or from a resident brewer acting in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code.

(G) Requires wine or hard cider sold, furnished, tendered, or served pursuant to the license created by this section to be purchased from a licensed distributor, winery, or farm winery in accordance with §60-8-1 *et seq.* of this code.

(H) Requires liquor sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private food truck has its main business location, all in accordance with §60-3A-1 *et seq.* of this code.

(I) A licensee authorized by this section shall utilize bona fide employees to sell, furnish, tender, or serve the nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

(J) A brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery may obtain a private food truck license;

(K) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery,

distillery, mini-distillery, micro-distillery, and liquor broker representatives may attend a location where a private food truck is located and discuss their respective products but may not engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

(L) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 18 who are in the private club bar are accompanied by a parent or legal guardian, and if a person under 18 years of age is not accompanied by a parent or legal guardian that person may not be admitted as a guest;

(M) Obtains all permits required by §60-6-12 of this code; and

(N) Meets and is subject to all other applicable private club requirements.

~~(H)~~ (11) ‘Private club restaurant’ means an applicant for a private club or licensed private club licensee that has a primary function of using the licensed premises as a restaurant for serving freshly prepared meals and dining in the restaurant area. The private club restaurant may have a bar area separate from or commingled with the restaurant, seating requirements for members and guests ~~must~~ shall be met by the restaurant area. The applicant for a private club restaurant license which: ~~shall meet the criteria set forth in this subsection which:~~

~~(1)~~ (A) Has at least 100 members;

~~(2)~~ (B) Operate a restaurant and full kitchen with at least: ~~(A)~~ (i) Ovens and four-burner ranges; ~~(B)~~ (ii) refrigerators or freezers, or some combination of refrigerators and freezers greater than 50 cubic feet, or a walk-in refrigerator or freezer; ~~(C)~~ (iii) other kitchen utensils and apparatus as determined by the commissioner; and ~~(D)~~ (iv) freshly prepared food fit for human consumption available to be served during all hours of operation on the licensed premises;

~~(3)~~ (C) Maintains, at any one time, \$1,000 of fresh food inventory capable of being prepared in the private club restaurant’s

full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(4) (D) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under 18 years of age who are in the bar area of a private club restaurant are accompanied by a parent or legal guardian. The licensee may not seat a person in the bar area who is under the age of 18 years and who is not accompanied by a parent or legal guardian, but may allow that person, as a guest, to dine for food and nonalcoholic beverage purposes in the restaurant area of a private club restaurant:

~~(5)~~ (E) May uncork and serve members and guests up to two bottles of wine that a member purchased from a wine retailer, wine specialty shop, an applicable winery or farm winery when licensed for retail sales, or a licensed wine direct shipper when the purchase is for personal use and, not for resale. The licensee may charge a corkage fee of up to \$10 dollars per bottle. In no event may a member or a group of members and guests exceed two sealed bottles or containers of wine to carry onto the licensed premises for uncorking and serving by the private club restaurant and for personal consumption by the member and guests. A member or guest may cork and reseal any unconsumed wine bottles as provided in §60-8-3(j) of this code and the legislative rules for carrying unconsumed wine off the licensed premises;

~~(6)~~ (F) ~~Must have~~ Has at least two restrooms for members and their guests: *Provided*, That this requirement may be waived by the local health department upon supplying a written waiver of the requirement to the commissioner: *Provided, however*, That the requirement may also be waived for a historic building by written waiver supplied to commissioner of the requirement from the historic association or district with jurisdiction over a historic building: *Provided, further* That in no event ~~shall~~ may a private club restaurant have less than one restroom; and

~~(7) (G) Shall meet and be~~ Meets and is subject to all other private club requirements.

~~(i) (12) 'Private manufacturer club' means an applicant for a private club or licensed private club licensee which is also licensed as a distillery, mini-distillery, micro-distillery, winery, farm winery, brewery, or resident brewery that manufacturers liquor, wine, nonintoxicating beer or nonintoxicating craft beer, which may be sold, served, and furnished to members and guests for on-premises consumption at the licensee's licensed premises and in the area or areas denoted on the licensee's floorplan, and which:~~  
~~meets the criteria set forth in this subsection and which:~~

~~(1) (A)~~ Has at least 100 members;

~~(2) (B)~~ Offers tours, may offer complimentary samples, and may offer space as a conference center or for meetings;

~~(3) (C)~~ Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer, or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 15 hours per week;

~~(4) (D)~~ Maintains, at any one time, \$500 of fresh food inventory capable of being prepared in the private manufacturer club's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

~~(5) (E)~~ Owns or leases, controls, operates, and uses acreage amounting to at least one acre which is contiguous bounded or fenced real property that would be listed on the licensee's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

~~(6) (F)~~ Lists the entire property from ~~subdivision (5)~~ paragraph (E) of this ~~subsection~~ subdivision and all adjoining buildings and structures on the private manufacturer club's floorplan that would comprise the licensed premises, which would be authorized for the

lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, and wine throughout the licensed premises, whether these activities were conducted in a building or structure or outdoors while on the private manufacturer club's licensed premises, and as noted on the private manufacturer club's floorplan;

(7) (G) Identifies a person, persons, an entity, or entities who or which has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(8) (H) Uses an age verification system approved by the commissioner; and

(9) (I) Meets and is subject to all other private club requirements.

(+) (13) 'Private fair and festival' means an applicant for a private club or a licensed private club meeting the requirements of §60-7-8a of this code for a temporary event, and the criteria set forth in this ~~subsection~~ subdivision which:

(+) (A) Has at least 100 members;

(2) (B) Has been sponsored, endorsed, or approved, in writing, by the governing body (or its duly elected or appointed officers) of either the municipality or of the county in which the festival, fair, or other event is to be conducted;

(3) (C) Prepares, provides, or engages a food vendor to provide adequate freshly prepared food or meals to serve its stated members and guests who will be attending the temporary festival, fair, or other event, and further shall provide any documentation or agreements ~~of such~~ to the commissioner prior to approval;

(4) (D) Does not use third-party entities or individuals to purchase, sell, furnish, or serve alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer;

~~(5)~~ (E) Provides adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the festival, fair, or other event;

~~(6)~~ (F) Provides a floorplan for the proposed premises with a defined and bounded area to safely account for the ingress and egress of stated members and guests who will be attending the festival, fair, or other event;

~~(7)~~ (G) Uses an age verification system approved by the commissioner; and

~~(8)~~ (H) Meets and is subject to all other private club requirements.

~~(k)~~ (14) 'Private hotel' means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

~~(1)~~ (A) Has at least 2,000 members;

~~(2)~~ (B) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 30 separate bedrooms, and also offers a conference center for meetings;

~~(3)~~ (C) Operates a restaurant and full kitchen with ovens, four-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 20 hours per week;

~~(4)~~ (D) Maintains, at any one time, \$2,500 of fresh food inventory capable of being prepared in the private hotel's full kitchen and in calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

~~(5)~~ (E) Owns or leases, controls, operates, and uses acreage amounting to more than one acre but fewer than three acres, which are contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for



hotel and conferences and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

~~(6)~~ (F) Lists the entire property from ~~subdivision (5)~~ paragraph (E) of this ~~subsection~~ subdivision and all adjoining buildings and structures on the private hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private hotel's licensed premises and as noted on the private hotel's floorplan;

~~(7)~~ (G) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

~~(8)~~ (H) Uses an age verification system approved by the commissioner; ~~and~~

~~(9)~~ (I) Meets and is subject to all other private club requirements; and

(J) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have secure access via key or key card to an in-room mini-bar in their rented short-term accommodation; the mini-bar may be a small refrigerator not in excess of 1.6 cubic feet for the sale of nonintoxicating beer or nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 72 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding 750 ml of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, and 200 ml, with any combination of those liquor bottles not exceeding 750 ml; and (iv) any combination of canned or packaged food valued at least \$50. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, wine, and liquor. All nonintoxicating beer or nonintoxicating craft beer

available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

(4) (15) 'Private resort hotel' means an applicant for a private club or licensed private club licensee which: ~~meeting the criteria set forth in this subsection which:~~

(4) (A) Has at least 5,000 members;

(2) (B) Offers short term, daily rate accommodations or lodging for members and their guests amounting to at least 50 separate bedrooms;

(3) (C) Operates a restaurant and full kitchen with ovens, six-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 25 hours per week;

(4) (D) Maintains, at any one time, \$5,000 of fresh food inventory capable of being prepared in the private resort hotel's full kitchen. ~~and~~ In calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

(5) (E) Owns or leases, controls, operates, and uses acreage amounting to at least 10 contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for destination, resort, and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) (F) Lists the entire property from ~~subdivision (5) paragraph (E) of this subsection~~ subdivision and all adjoining buildings and structures on the private resort hotel's floorplan ~~which would comprise comprising~~ the licensed premises, ~~which would be~~ authorized for the lawful sales, service, and consumption of

alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private resort hotel's licensed premises; ~~and as noted on the private resort hotel's floorplan;~~

(7) (G) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(8) (H) Uses an age verification system approved by the commissioner;

(9) (I) Meets and is subject to all other private club requirements; ~~and~~

(10) (J) May have a separately licensed resident brewer with a brewpub license inner-connected via a walkway, doorway, or entryway, all as determined and approved by the commissioner, for limited access during permitted hours of operation for tours and complimentary samples at the resident brewery; and

(K) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have access via key or key card to an in-room mini-bar in their rented short-term accommodation. The mini-bar may be a small refrigerator not in excess of 3.2 cubic feet for the sale of nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 144 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding one and a half liters of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, 200 ml, and 375 ml with any combination of such liquor bottles not exceeding one and a half liters; and (iv) any combination of canned or packaged food valued at least \$100. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, wine, and liquor. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be

purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

(m) (16) ‘Private golf club’ means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this ~~subsection~~ subdivision which:

(1) (A) Has at least 100 members;

(2) (B) Maintains at least one 18-hole golf course with separate and distinct golf playing holes, not reusing nine golf playing holes to comprise the 18 golf playing holes, and a clubhouse;

(3) (C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) (D) Owns or leases, controls, operates, and uses acreage amounting to at least 80 contiguous acres of bounded or fenced real property which would be listed on the private golf club’s floorplan and could be used for golfing events and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(5) (E) Lists the entire property from ~~subdivision (4) paragraph D~~ of this subsection and all adjoining buildings and structures on the private golf club’s floorplan ~~which would comprise~~ comprising the licensed premises, ~~which~~ would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private golf club’s licensed premises; ~~and as noted on the private golf club’s floorplan;~~

(6) (F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property, buildings, and structures located on the proposed licensed premises;

(7) (G) Uses an age verification system approved by the commissioner; and

(8) (H) Meets and is subject to all other private club requirements.

(n) (17) 'Private nine-hole golf course' means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this ~~subsection~~ subdivision which:

(1) (A) Has at least 50 members;

(2) (B) Maintains at least one nine-hole golf course with separate and distinct golf playing holes;

(3) (C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) (D) Owns or leases, controls, operates, and uses acreage amounting to at least 30 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole golf course's floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(5) (E) Lists the entire property from ~~subdivision (4)~~ paragraph (D) of this ~~subsection~~ subdivision and all adjoining buildings and structures on the private nine-hole golf course's floorplan ~~which would comprise~~ comprising the licensed premises, ~~which~~ would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private nine-hole golf course's licensed premises; ~~and as noted on the private nine-hole golf course's floorplan;~~

(6) (F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) (G) Uses an age verification system approved by the commissioner; and

(8) (H) Meets and is subject to all other private club requirements.

(9) (18) 'Private tennis club' means an applicant for a private club or licensed private club licensee ~~meeting the criteria set forth in this subsection subdivision~~ which:

(1) (A) Has at least 100 members;

(2) (B) Maintains at least four separate and distinct tennis courts, either indoor or outdoor, and a clubhouse or similar facility;

(3) (C) Has a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and is capable of serving freshly prepared food;

(4) (D) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property which would be listed on the private tennis club's floorplan and could be used for tennis events and large events such as weddings, reunions, conferences, tournaments, meetings, and sporting or recreational events;

(5) (E) Lists the entire property from ~~subdivision (4) paragraph (D) of this subsection subdivision~~ and all adjoining buildings and structures on the private tennis club's floorplan ~~that would comprise~~ comprising the licensed premises, ~~which~~ would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private tennis club's licensed premises; ~~and as noted on the private tennis club's floorplan;~~

(6) (F) Has identified a person, persons, an entity, or entities who or which has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) (G) Meets and is subject to all other private club requirements; and

(8) (H) Uses an age verification system approved by the commissioner.

(19) 'Private college sports stadium' means an applicant for a private club or licensed private club licensee that operates a college or university stadium or coliseum for Division I, II, or III and involves a college public or private or university that is a member of the National Collegiate Athletic Association, or its successor, and uses the facility for football, basketball, baseball, soccer, or other Division I, II, or III sports, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may sell alcoholic liquors when conducting or temporarily hosting non-collegiate sporting events. This license may be issued in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary food and beverage vendor under contract with that college or university. All alcohol sales shall take place within the confines of the college stadium: *Provided*, That any outside area approved for alcohol sales shall be surrounded by a fence or other barrier prohibiting entry except upon the college or university's express permission, and under the conditions and restrictions established by the college or university, so that the alcohol sales area is closed in order to prevent entry and access by the general public. Further the applicant shall:

(A) Have at least 1,000 members;

(B) Maintain an open-air or closed-air stadium or coliseum venue primarily used for sporting events, such as football, basketball, baseball, soccer, or other Division I, II, or III sports, and also weddings, reunions, conferences, meetings, or other events where parties shall reserve the college stadium venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens and equipment that is equivalent or greater than a private club

restaurant, as determined by the commissioner, on the licensed premises and capable of serving freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private college sports stadium;

(D) Own or lease, control, operate, and use acreage amounting to at least two contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private college stadium's floorplan and could be used for contracted-for temporary non-collegiate sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private college sports stadium's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private college sports stadium's licensed premises and as noted on the private college sports stadium's floorplan;

(F) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

~~(p)~~ (20) 'Private professional sports stadium' means an applicant for a private club or licensed private club licensee that is only open for professional sporting events when ~~such~~ the events are affiliated with or sponsored by a professional sporting association, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may not sell



alcoholic liquors when conducting or hosting non-professional sporting events, and further the applicant shall:

(1) (A) Have at least 1,000 members;

(2) (B) Maintain an open-air or closed-air stadium venue primarily used for sporting events, such as football, baseball, soccer, auto racing, or other professional sports, and also weddings, reunions, conferences, meetings, or other events where parties ~~must~~ reserve the stadium venue in advance of the event;

(3) (C) Operate a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and capable of serving freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private professional sports stadium;

(4) (D) Own or lease, control, operate, and use acreage amounting to at least three contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the professional sports stadium's floorplan and could be used for contracted- for professional sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(5) (E) List the entire property from ~~subdivision (4) paragraph (D) of this subsection~~ subdivision and all adjoining buildings and structures on the private professional sports stadium's floorplan ~~which would comprise~~ comprising the licensed premises, ~~which would~~ and be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private professional sports stadium's licensed premises; ~~and as noted on the private professional sports stadium's floorplan;~~

(6) (F) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) (G) Meet and be subject to all other private club requirements; and

~~(8)~~ (H) Use an age verification system approved by the commissioner.

~~(q)~~ (21) 'Private farmers market' means an applicant for a private club or licensed private club licensee that operates as an association of bars, restaurants, retailers who sell West Virginia-made products among other products, and other stores who open primarily during daytime hours of 6:00 a.m. to 6:00 p.m., but may operate in the day or evenings for special events where the sale of food and alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer may occur for on-premises consumption, such as reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant, and all ~~business~~ businesses that are members of the association have agreed in writing to be liable and responsible for all sales, service, furnishing, tendering, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer occurring on the entire licensed premises of the private farmer's market, including indoor and outdoor bounded areas, and further the applicant shall:

~~(1)~~ (A) Have at least 100 members;

~~(2)~~ (B) Have one or more members operating a private club restaurant and full kitchen with ovens, four-burner ranges, a refrigerator or freezer or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 15 hours per week;

~~(3)~~ (C) Have one or more members operating who maintain, at any one time, \$1,000 of fresh food inventory capable of being prepared for events conducted at the private farmers market in the private club restaurant's full kitchen, and in calculating the food inventory the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(4) (D) Have an association that owns or leases, controls, operates, and uses acreage amounting to more than one acre, which is contiguous acreage of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for large contracted-for reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events;

(5) (E) Have an association that lists in the application for licensure the entire property and all adjoining buildings and structures on the private farmers market's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private farmers market's licensed premises and as noted on the private farmers market's floorplan;

(6) (F) Have an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(7) (G) Have at least two separate and unrelated vendors applying for the license and certifying that all vendors in the association have agreed to the liability responsibility associated with a private farmers market license;

(8) (H) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer or nonintoxicating craft beer;

(9) (I) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private farmers market;

(10) (J) Provide a copy of a written agreement between all the vendors of the association that is executed by all vendors stating that each vendor is jointly and severally liable for any violations of this chapter committed during the event;

~~(11)~~ (K) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members, patrons, and guests ages, to verify whether a member, patron, or guest is intoxicated and to provide for the public health and safety of members, patrons, and guests;

~~(12)~~ (L) Use an age verification system approved by the commissioner; and

~~(13)~~ (M) Meet and be subject to all other private club requirements.

~~(14)~~ (22) ‘Private wedding venue or barn’ means an applicant for a private club or licensed private club licensee that is only open for reserved weddings, reunions, conferences, meetings, or other events and does not maintain daily or regular operating hours, and which:

~~(1)~~ (A) Has at least 25 members;

~~(2)~~ (B) Maintains a venue, facility, barn, or pavilion primarily used for weddings, reunions, conferences, meetings, or other events where parties ~~must~~ reserve or contract for the venue, facility, barn, or pavilion in advance of the event;

~~(3)~~ (C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises ~~and~~ that is capable of serving freshly prepared food, or may engage a food caterer to provide adequate freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private wedding venue or barn. The applicant or licensee shall provide written documentation including a list of food caterers or written agreements regarding any food catering operations to the commissioner prior to approval of a food catering event;

~~(4)~~ (D) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property. The applicant or licensee shall verify that, the property is not less than two acres and is remotely located, subject to the commissioner’s approval. The bounded or fenced real

property may be listed on the private wedding venue's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, or other events;

~~(5)~~ (E) Lists the entire property from ~~subdivision (4) paragraph (D)~~ of this ~~subsection~~ subdivision and all adjoining buildings and structures on the private wedding venue or barn's floorplan that would comprise the licensed premises, ~~which~~ and would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private wedding venue or barn's licensed premises; ~~and as noted on the private wedding venue or barn's floorplan;~~

~~(6)~~ (F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

~~(7)~~ (G) Meets and is subject to all other private club requirements; and

~~(8)~~ (H) Uses an age verification system approved by the commissioner.

~~(s)~~ (23) 'Private multi-sport complex' means an applicant for a private club or licensed private club licensee that is open for multiple sports events to be played at the complex facilities, reserved weddings, concerts, reunions, conferences, meetings, or other special events, and which:

~~(1)~~ (A) Has at least 100 members;

~~(2)~~ (B) Maintains an open-air multi-sport complex primarily for use for sporting events, such as baseball, soccer, basketball, tennis, frisbee, or other sports, but may also conduct weddings, concerts, reunions, conferences, meetings, or other events where parties ~~must~~ reserve the parts of the sports complex in advance of the sporting or other event;

~~(3)~~ (C) Operates a restaurant and full kitchen with ovens in the licensee's main facility, as determined by the commissioner, on the

licensed premises and capable of serving freshly prepared food, or meals to serve its stated members, guests, and patrons who will be attending the event at the private ~~professional sports stadium~~ multi-sport complex. A licensee may contract with temporary food vendors or food trucks for food sales only, but not on a permanent basis, in areas of the multi-sport complex not readily accessible by the main facility;

(4) (D) Maintains, at any one time, \$1,000 of fresh food inventory capable of being prepared in the private multi-sport complex's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(5) (E) Owns or leases, controls, operates, and uses acreage amounting to at least 50 contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private multi-sport complex's floorplan and could be used for contracted-for sporting events, group-type weddings, concerts, reunions, conferences, meetings, or other events;

(6) (F) Lists the entire property from ~~subdivision (5)~~ paragraph (E) of this subsection subdivision and all adjoining buildings and structures on the private multi-sport complex's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private multi-sport complex's licensed premises and as noted on the private multi-sport complex's floorplan. The licensee may sell alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer from a golf cart or food truck owned or leased by the licensee and also operated by the licensee when the golf cart or food truck is located on the private multi-sport complex's licensed premises;

(7) (G) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

~~(8)~~ (H) Meets and is subject to all other private club requirements; and

~~(9)~~ (I) Uses an age verification system approved by the commissioner.

The Department of Natural Resources, the authority governing any county or municipal park, or any county commission, municipality, other governmental entity, public corporation, or public authority operating any park or airport may lease, as lessor, a building or portion thereof or other limited premises in any park or airport to any corporation or unincorporated association for the establishment of a private club pursuant to this article.

**§60-7-6. Annual license fee; partial fee; and reactivation fee.**

(a) The annual license fee for a license issued under the provisions of this article to a fraternal or veterans' organization or a nonprofit social club is \$750.

(b) The annual license fee for a license issued under the provisions of this article to a private club other than a private club of the type specified in subsection (a) of this section is \$1,000 if the private club bar or restaurant has fewer than 1,000 members; \$1,000 for a private club restaurant, private hotel, or private resort hotel to be licensed as a private caterer as defined in §60-7-2 of this code; \$500 if the private club is a private bakery; \$1,500 if the private club is a private wedding venue or barn or a private cigar shop; \$2,000 if the private club is a private nine-hole golf course, private farmers market, private food truck, private college sports stadium, private professional sports stadium, private multi-sport complex, private manufacturer club, or a private tennis club as defined in §60-7-2 of this code; \$2,500 if the private club bar or private club restaurant has 1,000 or more members; \$4,000 if the private club is a private hotel with three or fewer designated areas or a private golf club as defined in §60-7-2 of this code; and further, if the private club is a private resort hotel as defined in §60-7-2 of this code, the private resort hotel may designate areas within the licensed premises for the lawful sale, service, and consumption of alcoholic liquors as provided for by this article. The annual license

fee for a private resort hotel with five or fewer designated areas is \$7,500 and the annual license fee for a private resort hotel with at least six, but no more than 10 designated areas is \$12,500. The annual license fee for a private resort hotel with at least 11, but no more than 15 designated areas shall be \$17,500. The annual license fee for a private resort hotel with no fewer than 15 nor more than 20 designated areas is \$22,500. A private resort hotel that obtained the license and paid the \$22,500 annual license fee may, upon application to and approval of the commissioner, designate additional areas for a period not to exceed seven days for an additional fee of \$150 per day, per designated area.

(c) The fee for any license issued following January 1 of any year that expires on June 30 of that year is one half of the annual license fee prescribed by subsections (a) and (b) of this section.

(d) A licensee that fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, after initial application, shall be charged an additional \$150 reactivation fee. The fee payment may not be prorated or refunded, and the reactivation fee shall be paid prior to the processing of any renewal application and payment of the applicable full year annual license fee. A licensee who continues to operate upon the expiration of its license is subject to all fines, penalties, and sanctions available in §60-7-13 and §60-7-13a of this code, all as determined by the commissioner.

(e) The commissioner shall pay the fees to the State Treasurer ~~and credited to~~ for deposit into the General Revenue Fund of the state.

(f) The Legislature finds that the hospitality industry has been particularly damaged by the COVID-19 pandemic and that some assistance is warranted to promote reopening and continued operation of private clubs and restaurants licensed under this article. Accordingly, the fees set forth in subsections (a) and (b) of this section are temporarily modified as follows;



(1) License fees for the license period beginning July 1, 2021, shall be reduced to one third of the rate set forth in subsections (a) and (b) of this section;

(2) License fees for the license period beginning July 1, 2022, shall be two thirds of the rate set forth in subsections (a) and (b) of this section; and

(3) License fees for the license period beginning July 1, 2023, and beyond, shall be as set forth in subsections (a) and (b) of this section.

**§60-7-8f. Private delivery license for a licensed private club restaurant, private manufacturer club, or a third party; requirements; limitations; third party license fee; private cocktail delivery permit; and requirements.**

(a) A licensed private club restaurant or private manufacturer club licensed to sell liquor for on-premises consumption may apply for a private delivery license permitting the order, sale, and delivery of liquor and a nonalcoholic mixer or beverage in a sealed craft cocktail growler, when separately licensed for craft cocktail growler sales. The order, sale, and delivery of a sealed craft cocktail growler is permitted for off-premises consumption when completed by the licensee to a person purchasing the craft cocktail growler through a telephone, a mobile ordering application, or web-based software program, authorized by the licensee's license. There is no additional fee for a licensed private club restaurant or private manufacturer club to obtain a private delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for liquor sales or distribution, may apply for a private delivery license for the privilege of ordering and delivery of craft cocktail growlers, from a licensee with a craft cocktail growler license. The order and delivery of a sealed craft cocktail growler is permitted by a third party who obtains a license under this section when a private club restaurant or private manufacturer club sells to a person purchasing the sealed

craft cocktail growler through telephone orders, a mobile ordering application, or a web-based software program. The private delivery license nonprorated, nonrefundable annual fee is \$200 for each third party entity, with no limit on the number of drivers and vehicles.

(c) The private delivery license application shall comply with licensure requirements in this article and shall require any information required by the commissioner; *Provided*, That the license application may not require a third party applicant to furnish information pursuant to §60-7-12 of this code.

(d) *Sale Requirements.* —

(1) The craft cocktail growler purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of the prepared food or a meal, and craft cocktail growler by the licensed private club restaurant, private manufacturer club, or third party private delivery licensee;

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this chapter for the sale of alcoholic liquors and as set forth in §11-16-1 *et seq.* of the code for nonintoxicating beer or nonintoxicating craft beer.

(3) ‘Prepared food or a meal’ for this article, means food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of multiple sealed craft cocktail growlers for each order of food or meal: *Provided*, That the entire delivery order may not contain any combination of craft cocktail growlers of more than 128 fluid ounces total; and

(5) A third party private delivery licensee shall not have a pecuniary interest in a private club restaurant or private manufacturer club licensee, as set forth in this article. A third party

private delivery licensee may only charge a convenience fee for the delivery of any alcohol. The third party private delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol, but may continue to collect a percentage of the delivery order directly related to the prepared food or a meal. ~~The convenience fee charged by the third party private delivery licensee to the purchasing person shall be no greater than five dollars per delivery order where a craft cocktail growler is ordered by the purchasing person. For any third party licensee also licensed for wine growler delivery as set forth in §60-8-6c of the code, or nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed five dollars.~~

*(e) Craft Cocktail Growler Delivery Requirements. —*

(1) Delivery persons employed for the delivery of a sealed craft cocktail growler shall be 21 years of age or older. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. The licensee shall submit certification of the training to the commissioner;

(3) The third party delivery licensee or the private club restaurant or private manufacturing club shall hold a private cocktail delivery permit for each vehicle delivering a craft cocktail growler pursuant to subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure.

(4) Prepared food or a meal, and a sealed craft cocktail growler order delivered by a third party private delivery licensee, a private club restaurant, or private manufacturer club may occur in the

county or contiguous counties where the licensed private club restaurant or private manufacturer club is located;

(5) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee may only deliver prepared food or a meal, and a sealed craft cocktail growler to addresses located in West Virginia. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall account for and pay all sales and municipal taxes;

(6) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee may not deliver prepared food or a meal, and a sealed craft cocktail growler to any other licensee;

(7) Deliveries of prepared food or a meal, and a sealed craft cocktail growler are only for personal use, and not for resale; and

(8) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall not deliver and leave the prepared food or a meal, and a sealed craft cocktail growler at any address without verifying a person's age and identification as required by this section.

*(f) Telephone, mobile ordering application, or web-based software requirements. —*

(1) The delivery person may only permit the person who placed the order through a telephone order, a mobile ordering application, or web-based software to accept the prepared food or meal and a craft cocktail growler delivery, subject to age verification upon delivery with the delivery person's visual review and age verification ~~and, as application, a stored scanned image of the purchasing person's legal identification;~~

(2) Any mobile ordering application or web-based software used ~~shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery~~

driver's name and vehicle information and delivery shall be subject to legal identification verification;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's ~~legal~~ identification and details of the sale, accessible by the delivery driver for verification, ~~and~~ shall include the delivery driver's name and vehicle information, and delivery shall be subject to legal identification verification;

(4) All records are subject to inspection by the commissioner. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall retain records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) The third party private delivery licensee or the private club restaurant or private manufacturing club shall hold a valid private cocktail delivery permit under subsection (g) of this section for each vehicle used for delivery: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure.

*(g) Private Cocktail Delivery Permit. —*

(1) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and a sealed craft cocktail growler, subject to the requirements of this article.

(2) A third party private delivery licensee, a private club restaurant, or private manufacturer club licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private cocktail delivery permit shall meet the requirements of a transportation permit authorizing the permit holder to transport liquor subject to the requirements of this chapter.

(h) *Enforcement.* —

(1) The third party private delivery licensee, the private club restaurant, or the private manufacturers club licensed by this section are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a craft cocktail growler. The licensees in violation are subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

**§60-7-17. Repealer.**

[Repealed.]

**ARTICLE 8. SALE OF WINES.**

**§60-8-6c. Winery and farm winery license to sell wine growlers and provide complimentary samples prior to purchasing a wine growler.**

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of wine and its industry in this state to protect the public health, welfare, and safety of the citizens of this state, and promote hospitality and tourism. Therefore, this section authorizes a licensed winery or farm winery with its principal place of business and manufacture located in this state to have certain

abilities to promote the sale of wine manufactured in this state for the benefit of the citizens of this state, the state's growing wine industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of wine.* — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may, when licensed under this section, offer only wine manufactured by the licensed winery or farm winery for retail sale to customers from the winery or farm winery's licensed premises for consumption off of the licensed premises only in the form of original container sealed wine kegs, wine bottles, or wine cans, or also a sealed wine growler for personal consumption, and not for resale. A licensed winery or farm winery may not sell, give, or furnish wine for consumption on the premises of the principal place of business and manufacture located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (c) of this section or unless separately licensed as a private wine restaurant or a private manufacturer club.

(c) *Complimentary samples.* — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may offer complimentary samples of wine as set forth in §60-4-3b of this code.

(d) *Retail sales.* — Every licensed winery or farm winery under this section shall comply with all the provisions of this article as applicable to wine retailers when conducting wine growler sales and is subject to all applicable requirements and penalties in this article.

(e) *Payment of taxes and fees.* — A winery or farm winery licensed under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and shall meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) *Advertising.* — A winery or farm winery under this section may advertise a particular brand or brands of wine produced by the licensed winery or farm winery and the price of the wine subject to

state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(g) *Wine Growler defined.* – For purposes of this section and section §60-8-6d of the code, ‘wine growler’ means a container or jug that is made of glass, ceramic, metal, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and is capable of being securely sealed. The growler may be used by an authorized licensee for purposes of off-premises sales only of wine for personal consumption, and not for resale. The wine served and sold in a sealed wine growler may include ice or water mixed with the wine to create a frozen alcoholic beverage. Any frozen alcoholic beverage machine used for filling wine growlers shall be sanitized daily and shall be under control and served by the licensee from the secure area. Notwithstanding any other provision of this code to the contrary, a securely sealed wine growler is not an open container under state and local law. A wine growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. For purpose of this article, a secure seal means using a tamper evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of wine growler to form a seal that ~~must~~ shall be broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the wine growler is opened.

(h) *Wine Growler requirements.* — A winery or farm winery licensed under this section shall prevent patrons from accessing the secure area where the winery or farm winery fills a wine growler and prevent patrons from filling a wine growler. A licensed winery or farm winery under this section shall sanitize, fill, securely seal, and label any wine growler prior to its sale. A licensed winery or farm winery under this section may refill a wine growler subject to the requirements of this section. A winery or farm winery shall visually inspect any wine growler before filling or refilling it. A winery or farm winery may not fill or refill any wine growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.



(i) *Wine Growler labeling.* — A winery or farm winery licensed under this section selling wine growlers shall affix a conspicuous label on all sold and securely sealed wine growlers listing the name of the licensee selling the wine growler, the brand of the wine in the wine growler, the alcohol content by volume of the wine in the wine growler, and the date the wine growler was filled or refilled. All labeling on the wine growler shall be consistent with all federal labeling and warning requirements.

(j) *Wine Growler sanitation.* — A licensed winery or farm winery authorized under this section shall clean and sanitize all wine growlers it fills or refills in accordance with all state and county health requirements prior to its filling and sealing. In addition, the licensed winery or farm winery shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under this article.

(k) *Fee.* — There is no additional fee for a licensed winery or farm winery authorized under this section to sell wine growlers, but the licensee shall meet all other requirements of this section.

(l) *Limitations on licensees.* — To be authorized under this section, a licensed winery or farm winery may not produce more than 10,000 gallons of wine per calendar year at the winery or farm winery's principal place of business and manufacture located in the State of West Virginia. A licensed winery or farm winery authorized under this section is subject to the applicable penalties under this article for violations of this section.

(m) *Rules.* — The commissioner, in consultation with the Bureau for Public Health, may propose legislative rules concerning sanitation for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

**§60-8-6e. Private wine delivery license for a licensed Class A wine licensee or a third party; requirements; limitations; third party license fee; private retail transportation permit; and requirements.**

(a) A Class A wine licensee who is licensed to sell wine for on-premises consumption may apply for a private wine delivery license permitting the order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers, when separately licensed for wine growler sales. The order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the wine through a telephone, mobile ordering application, or web-based software program, authorized by the licensee's license. There is no additional fee for a Class A wine licensee to obtain a private wine delivery license. The order, sale, and delivery process must meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for wine sales or distribution, may apply for a private wine delivery license for the privilege of ordering and delivery of wine in the original container of sealed bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted by a third party licensee when sold by a Class A wine licensee to a person purchasing the wine through telephone orders, mobile ordering application, or web-based software program for off-premises consumption. The private wine delivery license non-prorated, nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private wine delivery license application shall comply with licensure requirements in this article and shall contain any information required by the commissioner.

(d) *Sale Requirements.* —

(1) The wine purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of prepared food or a meal, and sealed wine by the licensee or third-party licensee.

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of wine.

(3) ‘Prepared food or a meal’ for this article, means food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of no more than 384 fluid ounces of wine per delivery order; and

(5) A third-party private wine delivery licensee may not have a pecuniary interest in a Class A wine licensee, as set forth in this article. A third-party private wine delivery licensee may only charge a convenience fee for the delivery of wine as provided in this section. The third-party private wine delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol but may collect a percentage of the delivery order directly related to prepared food or a meal. The convenience fee charged by the third-party private wine delivery licensee to the purchasing person may be no greater than ~~five dollars~~ \$20 per delivery order where wine is ordered by the purchasing person. For any third-party private wine delivery licensee also licensed for nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed ~~five dollars~~. \$20.

*(e) Private Wine Delivery Requirements. —*

(1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or older. The third-party private wine delivery licensee or a Class A wine licensee shall file each delivery person’s name, driver’s license, and vehicle information with the commissioner;

(2) The third-party private wine delivery licensee or the Class A wine licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. The third-party private wine delivery licensee shall submit certification of the training to the commissioner;

(3) The third party private wine delivery licensee or Class A wine licensee shall hold a retail transportation permit for each vehicle delivering sealed wine per subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) Delivery of food or a meal, and sealed wine orders by a third-party private wine delivery licensee or Class A wine licensee may occur in the county or contiguous counties where the wine licensee is located;

(5) The third-party private wine delivery licensee or Class A wine licensee may only deliver prepared food or a meal and sealed wine to addresses located in West Virginia. The third-party private wine delivery licensee or Class A wine licensee shall account for and pay all sales and municipal taxes;

(6) The third-party private wine delivery licensee or Class A wine licensee may not deliver prepared food or a meal, and sealed wine to any other wine licensees;

(7) Deliveries of food or a meal, and sealed wine are only for personal use, and not for resale; and

(8) The third-party private wine delivery licensee or Class A wine licensee shall not deliver and leave deliveries of prepared food or a meal, and sealed wine any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements.* —

(1) The delivery person shall only permit the person who placed the order through a telephone order, a mobile ordering application, or web-based software to accept the prepared food or

meal, and wine delivery which is subject to age verification upon delivery with the delivery person's visual review and verification ~~and, as applicable, a stored scanned image of the purchasing person's legal identification;~~

(2) Any mobile ordering application or web-based software used ~~shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information~~ and delivery shall be subject to legal identification verification;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's ~~legal~~ identification and details of the sale, accessible by the delivery driver for verification, ~~and~~ shall include the delivery driver's name and vehicle information, and delivery shall be subject to legal identification verification;

(4) All records are subject to inspection by the commissioner, and the third-party private wine delivery licensee and Class A wine licensee shall retain the records for inspection for three years. The third-party private wine delivery licensee or Class A wine licensee may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering wine shall be issued a private wine retail transportation permit per subsection (g) of this section.

*(g) Private Wine Retail Transportation Permit. —*

(1) A Class A wine licensee or a third-party private wine delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and sealed wine.

(2) A Class A wine licensee or a third-party private wine delivery licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private wine retail transportation permit shall meet the requirements of a transportation permit authorizing the permit holder to transport wine subject to the requirements of this chapter.

(h) *Enforcement.* —

(1) The licensee or the third-party private wine delivery licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a wine bottle, wine can, or wine growler. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

**§60-8-6f. Private wine delivery license for a licensed Class B wine licensee or a third party; requirements; limitations; third party license fee; private retail transportation permit; and requirements.**

(a) A Class B wine licensee who is licensed to sell wine for on-premises consumption may apply for a private wine delivery license permitting the order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers, when separately licensed for wine growler sales. The order, sale, and delivery of wine in the original container of sealed bottles, cans, or sealed wine growlers is permitted for off-premises consumption when completed by the licensee or the licensee's

employees to a person purchasing the wine through a telephone order, a mobile ordering application, or web-based software program, as authorized by the licensee's license. There is no additional fee for a Class B wine licensee to obtain a private wine delivery license. The order, sale, and delivery process shall meet the requirements of this section, and subject to the penalties of this article.

(b) A third party, not licensed for wine sales or distribution, may apply for a private wine delivery license for the privilege of the ordering and delivery of wine in the original container of sealed bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted for off-premises consumption by a third party licensee when sold by a Class B wine licensee to a person purchasing the wine through telephone orders, mobile ordering application, or web-based software program. The private wine delivery license non-prorated, nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private wine delivery license application shall comply with licensure requirements in this article and shall contain any information required by the commissioner.

(d) *Sale Requirements.* —

(1) The wine purchase may accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and sealed wine by the licensee or third-party private wine delivery licensee.

(2) Any purchasing person must be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of wine.

(3) Food, for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of food and any combination of sealed wine bottles, cans, or growlers shall not be in excess of 384 fluid ounces of wine; and

(5) A third-party private wine delivery licensee shall not have a pecuniary interest in a Class B wine licensee, as set forth in this article. A third-party private wine delivery licensee may only charge a convenience fee for the delivery of wine. The third-party private wine delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol but may collect a percentage of the delivery order directly related to food only. ~~The convenience fee charged by the third party private wine delivery licensee to the purchasing person shall be no greater than five dollars per delivery order where wine is ordered by the purchasing person. For any third party licensee also licensed for nonintoxicating beer or nonintoxicating craft beer delivery as set forth in §11-16-6f of the code, the total convenience fee of any order, sale, and delivery shall not exceed five dollars.~~ The convenience fee charged by the third-party private wine delivery licensee to the purchasing person shall be no greater than \$20 per delivery order where wine is ordered by the purchasing person. For any third-party licensee also licensed for nonintoxicating beer or nonintoxicating craft beer delivery as set forth in §11-16-6f of the code, the total convenience fee of any order, sale, and delivery shall not exceed \$20.

*(e) Private Wine Delivery Requirements. —*

(1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or older. The third-party private wine delivery licensee or a Class B wine licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The third-party private wine delivery licensee or Class B wine licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and certification. The third-party private wine delivery licensee or Class B wine licensee shall submit certification of the training to the commissioner;



(3) The third party delivery licensee or Class B wine licensee must hold a retail transportation permit for each vehicle delivering sealed wine as required by subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) The third-party private wine delivery licensee or Class B wine licensee may only deliver food and sealed wine orders by a third-party private wine delivery licensee or Class B wine licensee in the county where the wine licensee is located;

(5) The third-party private wine delivery licensee or Class B wine licensee may only deliver food and sealed wine to addresses located in West Virginia with all sales and municipal taxes accounted for and paid;

(6) A third-party private wine delivery licensee or Class B wine licensee may not deliver food and sealed wine to any other wine licensees;

(7) Deliveries of food and sealed wine are only for personal use, and not for resale; and

(8) A third-party private wine delivery licensee or Class B wine licensee shall not deliver and leave food and sealed wine at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements.* —

(1) The delivery person shall only permit the person who placed the order through a telephone, a mobile ordering application, or web-based software to accept the food and wine delivery which is subject to age verification upon delivery with the delivery person's visual review and verification ~~and, as applicable, a stored scanned image of the purchasing person's legal identification;~~

(2) Any mobile ordering application or web-based software used shall ~~create a stored record and image of the purchasing~~

~~person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;~~

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, ~~and~~ must include the delivery driver's name and vehicle information, and delivery shall be subject to legal identification verification;

(4) All records are subject to inspection by the commissioner. The third-party private wine delivery licensee or Class B wine licensee shall retain the records for inspection for three years. The third-party private wine delivery licensee or Class B wine licensee may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering wine shall be issued a private wine retail transportation permit under subsection (g) of this section.

*(g) Private Wine Retail Transportation Permit. —*

(1) A Class B wine licensee or third party private wine delivery licensee shall obtain and maintain a retail transportation permit for the delivery of food and wine.

(2) A Class B wine licensee or third party private wine delivery licensee shall provide vehicle and driver information requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private wine retail transportation permit shall meet the requirements of a transportation permit authorizing the permit holder to transport wine subject to the requirements of this chapter.

*(h) Enforcement. —*

(1) The licensee or third-party private wine delivery licensee are each responsible for any violations committed by their employees or agents under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a wine bottle, wine can, or wine growler. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY, AND DECENCY.**

#### **§61-8-27. Unlawful admission of children to dance house, etc.; penalty.**

Any proprietor or any person in charge of a dance house, concert saloon, theater, museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors are sold or given away, or any place of entertainment injurious to health or morals who admits or permits to remain therein any minor under the age of 18 years, unless accompanied by his or her parent or guardian, is guilty of a misdemeanor and, ~~on~~ upon conviction thereof, shall be punished by a fine not exceeding \$200: *Provided*, That there is exemption from this prohibition for: (a) A private bakery, private cigar shop, private caterer, private club restaurant, private manufacturer club, private fair and festival, private resort hotel, private hotel, private golf club, private food truck, private

nine-hole golf course, private tennis club, private wedding venue or barn, private outdoor dining and private outdoor street dining, private multi-vendor fair and festival license, private farmers market, private college sports stadium or coliseum, private professional sports stadium, and a private multi-sports complex licensed pursuant to §60-7-1 *et seq.* of this code and in compliance with ~~§60-7-2(f)(115), §60-7-2(h)(49), §60-7-2(i)(8), §60-7-2(j)(7), §60-7-2(k)(84), §60-7-2(l)(8), §60-7-2(m)(7), §60-7-2(n)(78), §60-7-2(o)(8), §60-7-2(p)(87), §60-7-2(q)(128), §60-7-2(r)(8), §60-7-2(s)(97), §60-7-2(6)(iv), §60-7-2(7)(D), §60-7-2(8)(I), §60-7-2(10)(L), §60-7-2(11)(D), §60-7-2(12)(H), §60-7-2(13)(6), §60-7-2(14)(H), §60-7-2(15)(H), §60-7-2(16)(G), §60-7-2(17)(G), §60-7-2(18)(H), §60-7-2(19)(H), §60-7-2(20)(H), §60-7-2(21)(L), §60-7-2(22)(H), §60-7-2(23)(H), §60-7-8c(b)(14), §60-7-8d, and §60-8-32a~~ of this code; or (b) a private club with more than 1,000 members that is in good standing with the Alcohol Beverage Control Commissioner, that has been approved by the Alcohol Beverage Control Commissioner; and which has designated certain seating areas on its licensed premises as nonalcoholic liquor and nonintoxicating beer areas, as noted in the licensee's floorplan, by using a mandatory carding or identification program by which all members or guests being served or sold alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer are asked and required to provide their proper identification to verify their identity and further that they are of legal drinking age, 21 years of age or older, prior to each sale or service of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer."

And,

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

**H. B. 4848** – "A Bill to repeal §60-4-23 of the Code of West Virginia, 1931, as amended; to repeal §60-7-17 of said code; to amend said code by adding thereto a new section, designated §11-16-5a, to amend and reenact §11-16-6d, §11-16-6f, and §11-16-8 of said code; to amend said code by adding thereto a new section designated §60-1-3a; to further amend said code by adding thereto a new section, designated § 60-3-26; to amend and reenact §60-3A-3a, §60-3A-3b, §60-3A-8, and §60-3A-17 of said code; to

amend and reenact §60-4-22 of said code; to amend and reenact §60-6-24 of said code; to amend and reenact §60-7-2, §60-7-6, and 60-7-8f of said code; to amend and reenact §60-8-6c, §60-8-6e, and §60-8-6f of said code; and to amend and reenact §61-8-27 of said code, all relating to nonintoxicating beer, wine, and liquor licenses and requirements; clarifying that licenses are not required to place nonintoxicating beer, wine, and liquor in a bag after purchase; removing requirement that servers at a sampling have specific knowledge of the West Virginia product being sampled; providing for modification of the 300 foot requirement to 200 feet with the option for a college, university, or church to provide a written waiver; directing the Commissioner of the Alcoholic Beverage Control Administration to discontinue the state's acquisition of alcoholic liquors manufactured in the Russian Federation or by any person or entity located therein; establishing duration of the ban; authorizing the commissioner, at the Governor's direction, to sell or auction alcoholic liquors made in the Russian Federation or under the authority of a business located within the federation with the proceeds going to charitable organizations assisting the people of Ukraine; increasing the maximum convenience fee charge for delivery of nonintoxicating beer and alcoholic liquors to \$20; removing delivery provisions requiring storage of a scanned image of legal identification but requiring review of legal identification for nonintoxicating beer and alcoholic liquors; increasing the markup to private clubs from 110 percent to 112.5 percent; clarifying licensure requirements for nonintoxicating beer and alcoholic liquors; clarifying licensure requirements for wholesale representatives; removing prohibition against an elected official or his or her relative being employed as a wholesale representative; repealing an exotic entertainment; revising the blood alcohol chart; creating a license for a private bakery to produce confections with alcohol added, setting forth license requirements and setting a license fee; creating a license for a private cigar shop to, where legally permissible, permit the sale of alcohol, food, and cigars for on-premises consumption, setting forth license requirements and setting a license fee; creating a license for a private college sports stadium for alcohol sales in certain areas of Division I, II, or III sports stadiums, setting forth license requirements, and setting a license fee; allowing private multi-sport complex to also serve

nonintoxicating beer and nonintoxicating craft beer from a golf cart; creating a license for a private food truck to conduct food and alcohol sales at various locations where permitted by a county or municipality, setting forth license requirements and setting a license fee; permitting private hotels and private resort hotels to apply for a private caterer license; authorizing private hotels and private resort hotels to utilize in-room mini bars for limited nonintoxicating beer and alcoholic liquor sales to adults 21 years of age or over, and setting forth requirements; removing language automatically repealing inconsistent code language; authorizing wine growler sales where wine may be mixed with ice and water by the licensee to produce a frozen alcoholic beverage for sale by the licensee in sealed wine growlers, and additional requirements; and providing additional exceptions to the criminal penalty for the unlawful admission of children to a dance house or other places of entertainment for certain private clubs with an age verification system.”

With the further amendment, sponsored by Delegate Steele, being as follows:

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

## **“CHAPTER 11. TAXATION.**

### **ARTICLE 16. NONINTOXICATING BEER.**

#### **§11-16-5a. Off-premises sales not required to be bagged.**

A licensee who is licensed for off-premises sales of nonintoxicating beer or nonintoxicating craft beer is not required to place nonintoxicating beer or nonintoxicating craft beer, in a bag.

**§11-16-6d. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed Class A retail dealer or a third party; requirements; limitations; third party license fee; retail transportation permit; and requirements.**

(a) A Class A retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed original container of bottles or cans, and sealed growlers, when separately licensed for growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by telephone, a mobile ordering application, or a web-based software program, as authorized by the licensee's license. There is no additional fee for licensed Class A retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class A retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through telephone orders, a mobile ordering application, or a web-based software program. The annual nonintoxicating beer or nonintoxicating craft beer delivery license fee is \$200 per third party entity, with no limit on the number of drivers and vehicles. The delivery license fee under this subsection may not be prorated nor refunded.

(c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall comply with licensure requirements in §11-16-8 of this code, and shall require any

information set forth in this article and as reasonably required by the commissioner.

(d) *Sale Requirements.* —

(1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of the prepared food or meal and nonintoxicating beer or nonintoxicating craft beer by the Class A retail dealer or third party licensee;

(2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating craft beer;

(3) ‘Prepared food or a meal’ shall, for purposes of this article, mean food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of multiple meals shall not amount to any combination of bottles, cans, or sealed growlers in excess of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and

(5) A third party delivery licensee may not have a pecuniary interest in a Class A retail dealer, as set forth in this article, therefore a third party delivery licensee may only charge a convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third party licensee may not collect a percentage of the delivery order for the delivery of alcohol, but may continue to collect a percentage of the delivery order directly related to the prepared food or a meal. The convenience fee charged by the third party delivery licensee to the person purchasing may not be greater than ~~five dollars~~ \$20 per delivery order where nonintoxicating beer or nonintoxicating craft beer are ordered by



the purchasing person. For any third party licensee also licensed for wine growler delivery as set forth in §60-8-6c of the code, or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed ~~five dollars~~.

(e) *Delivery Requirements.* —

(1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older. The licensed Class A retail dealer and the third party delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A Class A retail dealer or third party delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and shall submit certification of the training to the commissioner;

(3) The Class A retail dealer or third party delivery licensee shall hold a retail transportation permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft beer pursuant to §11-16-6d(g) of this code: *Provided*, That a delivery driver may retain an electronic copy of his or her permit;

(4) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders in the county or contiguous counties where the Class A retail dealer is located;

(5) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class A retail dealer or third party delivery licensee shall pay and account for all sales and municipal taxes;

(6) A Class A retail dealer or third party delivery licensee may not deliver prepared food or a meal, and nonintoxicating beer or nonintoxicating craft beer to any other Class A licensee;

(7) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer for personal use, and not for resale; and

(8) A Class A retail dealer or third party delivery licensee shall not deliver and leave prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements.* —

(1) The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the prepared food or a meal, and nonintoxicating beer or nonintoxicating craft beer delivery which is subject to age verification upon delivery with the delivery person's visual review and age verification ~~and, as applicable, a stored scanned image of the purchasing person's legal identification;~~

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification ;

(4) All records are subject to inspection by the commissioner. A Class A retail dealer or third party delivery licensee shall retain all records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer must be issued a retail transportation permit per §11-16-6d(g) of this code.

(g) *Retail Transportation Permit.* —

(1) A Class A retail dealer or third party delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and nonintoxicating beer or nonintoxicating craft beer.

(2) A Class A retail dealer or a third party licensee shall apply for a permit and provide vehicle and driver information, as required by the commissioner. Upon any change in vehicles or drivers, the Class A retail dealer or third party delivery licensee shall update the vehicle and driver information with the commissioner within 10 days of the change.

(h) *Enforcement.* —

(1) A Class A retail dealer or third party delivery licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple Class A retail dealers or licensees, employees, or independent contractors.

(2) A license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the Class A retail dealer or third party delivery licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a growler subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, or accepting delivery of orders are considered to be purchasers.

**§11-16-6f. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed Class B retail dealer or a third party; requirements; limitations; third party license fee; retail transportation permit; and requirements.**

(a) A Class B retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed original container of bottles or cans, and sealed growlers, when separately licensed for growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by a telephone, a mobile ordering application, or web-based software program, as authorized by the licensee's license. There is no additional fee for licensed Class B retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class B retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through a telephone order, a mobile ordering application, or web-based software program. The nonintoxicating beer or nonintoxicating craft beer delivery annual license fee is \$200 per third party licensee, with no limit on the number of drivers and vehicles. The delivery license fee under this subsection may not be prorated nor refunded.

(c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall comply with licensure requirements in §11-16-8 of this code and shall require any information set forth in this article and as reasonably required by the commissioner.

(d) *Sale Requirements.* —

(1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and nonintoxicating beer or nonintoxicating craft beer by the licensee or third party licensee;

(2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating craft beer;

(3) Food, for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of food and any combination of sealed nonintoxicating beer or nonintoxicating craft beer bottles, cans, or growlers shall not be in excess of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and

(5) A third party delivery licensee shall not have a pecuniary interest in a Class B retail dealer, as set forth in this article. A third party delivery licensee may only charge a convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third party licensee may not collect a percentage of the delivery order for the delivery of nonintoxicating beer or nonintoxicating craft beer, but may continue to collect a percentage of the delivery order directly related to food. The convenience fee charged by the third party delivery licensee to the purchasing person may not be greater than ~~five dollars~~ \$20 per delivery order.

For any third party licensee also licensed for wine delivery as set forth in §60-8-6f of this code the total convenience fee for any order, sale, and delivery of sealed wine may not exceed ~~five dollars.~~ \$20.

(e) *Delivery Requirements.* —

(1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older. A Class B retail dealer and a third party licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A Class B retail dealer and a third party licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and submit the certification of the training to the commissioner;

(3) The Class B retail dealer or third party delivery licensee shall hold a retail transportation permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft beer pursuant to §11-16-6f(g) of this code: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of the licensure;

(4) A Class B retail dealer and a third party licensee may deliver food and sealed nonintoxicating beer or nonintoxicating craft beer orders in the county where the Class B retail dealer is located;

(5) A Class B retail dealer and a third party licensee may only deliver food and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class B retail dealer and a third party licensee shall pay and account for all sales and municipal taxes;

(6) A Class B retail dealer and a third party licensee may not deliver food and nonintoxicating beer or nonintoxicating craft beer to any other Class B licensee;

(7) Deliveries of food and sealed nonintoxicating beer or nonintoxicating craft beer are only for personal use, and not for resale; and

(8) A Class B retail dealer and a third party licensee shall not deliver and leave food and sealed nonintoxicating beer or nonintoxicating craft beer at any address without verifying a person's age and identification as required by this section.

*(f) Telephone, mobile ordering application, or web-based software requirements. —*

(1) The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the food and nonintoxicating beer or nonintoxicating craft beer delivery. The delivery is subject to age verification upon delivery with the delivery person's visual review and age verification ~~and, as applicable, requires a stored scanned image of the purchasing person's legal identification;~~

(2) Any mobile ordering application or web-based software used must create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification ;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(4) All records are subject to inspection by the commissioner. A Class B retail dealer and a third party licensee shall retain all records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer shall be issued a retail transportation permit in accordance with §11-16-6f(g) of this code.

(g) *Retail Transportation Permit.* —

(1) A Class B retail dealer and a third party licensee shall obtain and maintain a retail transportation permit for the delivery of food and nonintoxicating beer or nonintoxicating craft beer.

(2) A Class B retail dealer or a third party licensee shall apply for a permit and provide vehicle and driver information, required by the commissioner. Upon any change in vehicles or drivers, Class B retail dealer and a third party licensee shall update the vehicle and driver information with the commissioner within 10 days of the change.

(h) *Enforcement.* —

(1) The Class B retail dealer and a third party licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple Class B retail dealers or third party licensees, employees, or independent contractors.

(2) A license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the Class B retail dealer or third party licensee, their employees, or independent contractors.

(3) It is a violation for any Class B retail dealer or third party licensee, their employees, or independent contractors to break the seal of a growler subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, or accepting delivery of orders are considered to be purchasers.

**§11-16-8. Form of application for license; fee and bond; refusal of license.**



(a) A license may be issued by the commissioner to any person who submits an application, accompanied by a license fee and, where required, a bond, and states under oath:

(1) The name and residence of the applicant, the duration of ~~such~~ the residency, and that the applicant is 21 years of age. If the applicant is a firm, association, partnership, limited partnership, limited liability company, or corporation, the application shall include the residence of the members or officers. If a person, firm, partnership, limited partnership, limited liability company, association, corporation, or trust applies for a license as a distributor, the person, or in the case of a firm, partnership, limited partnership, limited liability company, association or trust, the members, officers, trustees, or other persons in active control of the activities of the limited liability company, association, or trust relating to the license, shall include the residency for these persons on the application. All applicants and licensees ~~must~~ shall include a manager on the applicant's license application, or a licensee's renewal application, who ~~must~~ shall meet all other requirements of licensure. ~~including, but not limited to, The applicant shall be a United States citizenship or naturalization citizen or a naturalized citizen, passing~~ pass a background investigation, ~~being~~ be at least 21 years of age, ~~being a suitable person, being of good morals and character and~~ meet other requirements, all as set forth in this article and the rules promulgated thereunder, all in the interest of protecting public health and safety and being a suitable applicant or licensee. In order to maintain licensure, a licensee shall notify the commissioner immediately of a change in managers. If the applicant is a trust or has a trust as an owner, the trustees, or other persons in active control of the activities of the trust relating to the license, shall provide a certification of trust as described in §44D-10-1013 of this code. This certification of trust shall include the excerpts described in §44D-10-1013(e) of this code and shall further state, under oath, the names, addresses, Social Security numbers, and birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of age, the certification of trust ~~must~~ shall state that the beneficiary's interest in the trust is represented by a trustee, parent, or legal guardian who is 21 years of age and

who will direct all actions on behalf of the beneficiary related to the trust with respect to the distributor until the beneficiary is 21 years of age. Any beneficiary who is not 21 years of age or older shall have his or her trustee, parent, or legal guardian include in the certification of trust and state under oath his or her name, address, Social Security number, and birth date;

(2) The place of birth of the applicant, that he or she is a citizen of the United States and of good moral character and, if a naturalized citizen, when and where naturalized. If the applicant is a corporation organized or authorized to do business under the laws of the state, the application ~~must~~ shall state when and where incorporated, the name and address of each officer, and that each officer is a citizen of the United States and a person of good moral character. If the applicant is a firm, association, limited liability company, partnership, limited partnership, trust, or has a trust as an owner, the application shall provide the place of birth of each member of the firm, association, limited liability company, partnership or limited partnership and of the trustees, beneficiaries, or other persons in active control of the activities of the trust relating to the license and that each member or trustee, beneficiary, or other persons in active control of the activities of the trust relating to the license is a citizen of the United States, and if a naturalized citizen, when and where naturalized, each of whom ~~must~~ shall qualify and sign the application;

(3) The particular place for which the license is desired and a detailed description thereof;

(4) The name of the owner of the building and, if the owner is not the applicant, that the applicant is the actual and bona fide lessee of the premises;

(5) That the ~~place~~ premises or building in which ~~is proposed~~ the applicant proposes to do business conforms to all applicable laws of health, fire, and zoning regulations and is a safe and proper place or building; not within ~~300~~ 200 feet of a school or church measured from front door to front door, along the street or streets. This requirement does not apply to a Class B license or to a place occupied by a beer licensee so long as it is continuously so

occupied. The prohibition ~~against locating a proposed business in a place or building within 300 feet of a school~~ does not apply to a college, ~~or university, or church~~ that has notified the commissioner, in writing, that it has no objection to the location of a proposed business in a place or building within ~~300~~ 200 feet of the college, ~~or university, or church~~;

(6) That the applicant is not incarcerated and has not, in the previous five years before application, (A) been convicted of a felony, (B) been convicted of a crime involving fraud, dishonesty or deceit, and/or (C) been convicted of a felony for violating alcohol-related distribution laws; ~~during the five years preceding the date of said application been convicted of a felony;~~

(7) That the applicant is the only person in any manner pecuniarily interested in the business ~~so asked~~ to be licensed and that no other person is in any manner pecuniarily interested during the continuance of the license; and

(8) That the applicant has not during five years preceding the date of the application had a nonintoxicating beer license revoked.

(b) In the case of an applicant that is a trust or has a trust as an owner, a distributor license may be issued only upon submission by the trustees or other persons in active control of the activities of the trust relating to the distributor license of a true and correct copy of the written trust instrument to the commissioner for his or her review. Notwithstanding any provision of law to the contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this section is confidential and is not a public record and is not available for release pursuant to the West Virginia Freedom of Information Act codified in §29B-1-1 *et seq.* of this code.

(c) The provisions and requirements of subsection (a) of this section are mandatory prerequisites for the issuance of a license and, if any applicant fails to qualify, the commissioner shall refuse to issue the license ~~shall be refused~~. In addition to the information furnished in any application, the commissioner may make ~~such~~ any additional and independent investigation of each applicant,

manager, and of the place to be occupied as necessary or advisable and, for this reason, all applications, with license fee and bond, ~~must~~ shall be submitted with all true and correct information. For the purpose of conducting ~~such~~ the independent investigation, the commissioner may withhold the granting or refusal to grant the license for a 30-day period or until the applicant has completed the conditions set forth in this section. If it appears that the applicant and manager meet the requirements in the code and the rules, including, but not limited to, has not been convicted of a felony in the previous five years before application, has not been convicted of a crime involving fraud, dishonesty or deceit in the previous five years before application, has not been convicted of a felony for violating any alcohol-related distribution laws; ~~being a suitable person of good reputation and morals;~~ having made no false statements or material misrepresentations; involving no hidden ownership; and having no persons with an undisclosed pecuniary interest contained in the application; and if there are no other omissions or failures by the applicant to complete the application, as determined by the commissioner, the commissioner shall issue a license authorizing the applicant to sell nonintoxicating beer or nonintoxicating craft beer.

(d) The commissioner may refuse a license to any applicant under the provisions of this article if the commissioner is of the opinion:

(1) That the applicant or manager has, within the previous five years before application, (A) been convicted of a felony within the previous five years, (B) been convicted of a crime involving fraud, dishonesty, or deceit, or (C) been convicted of a felony for violating any alcohol-related distribution laws; ~~is not a suitable person to be licensed;~~

(2) That the place to be occupied by the applicant is not a suitable place; or is within ~~300-200~~ feet of any school or church measured from front door to front door along the street or streets. This requirement does not apply to a Class B licensee or to a place now occupied by a beer licensee so long as it is continuously so occupied. The prohibition ~~against locating any such place within 300 feet of a school~~ does not apply to a college, or university, or

church that has notified the commissioner, in writing, that it has no objection to the location of any such place within ~~300~~200 feet;

(3) That the manager, owner, employee, or person is in a contractual relationship to provide goods or services to the applicant is an active employee of the commissioner; or

(4) That the license should not be issued for reason of conduct declared to be unlawful by this article.

## **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

### **ARTICLE 1. GENERAL PROVISIONS.**

#### **§60-1-3a. Off-premises sales not required to be bagged.**

Alcoholic liquors in this state are not required to be placed in a bag by a licensee who is licensed for off-premises sales of alcoholic liquors.

### **ARTICLE 3. SALES BY COMMISSIONER.**

#### **§60-3-26. Sale of certain liquors prohibited.**

(a) Upon the effective date of this section, the commissioner is hereby directed to divest the state of all stocks of alcoholic liquors in the commissioner's possession manufactured in the Russian Federation, or by any person or entity located therein, and to cease purchasing such products during the time this section is in effect.

(b) The commissioner, at the direction of the Governor, is hereby authorized to auction to the highest bidder or sell at a public event all stocks of alcohol liquors in the commissioner's possession which were either manufactured in the Russian Federation or by a person or entity located therein.

(c) The state's proceeds from the sale authorized by subsection (b) of this section shall be paid to a licensed, recognized charitable organization or organizations engaged in assisting the people of Ukraine.

(d) The provisions of this section shall expire three years from the effective date of the section or until the Governor lifts the ban established in subsection (a) of this section.

## **ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

### **§60-3A-3a. Liquor sampling.**

(a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee may, ~~with the written approval of the commissioner,~~ conduct a liquor sampling event on a designated sampling day.

(b) At least five business days prior to the liquor sampling, the Class A retail licensee shall submit a written proposal to the commissioner ~~requesting to~~ informing the Commissioner that the Class A licensee will hold a liquor sampling event, including:

- (1) The day of the event;
- (2) The location of the event;
- (3) The times for the event; and

(4) The specific brand and flavor of the West Virginia product to be sampled.

(c) Upon approval by the commissioner, a Class A retail licensee may serve a complimentary liquor sample of the approved brand and flavor of the West Virginia product that is purchased by the Class A retail licensee from the commissioner.

(d) The complimentary liquor samples on any sampling day shall not exceed:

- (1) One separate and individual sample serving per customer verified to be 21 years of age or older; and
  - (2) One ounce in total volume.
- (e) Servers at the liquor sampling event shall:

(1) Be employees of the Class A retail licensee; and

(2) Be at least 21 years of age or older; ~~and~~

~~(3) Have specific knowledge of the West Virginia product being sampled to convey to the customer.~~

(f) All servers at the liquor sampling event shall verify the age of the customer sampling liquor by requiring and reviewing proper forms of identification. Servers at the liquor sampling event may not serve any person who is:

(1) Under the age of 21 years;

(2) Intoxicated.

(g) A liquor sampling event shall:

(1) Occur only inside the Class A retail licensee's licensed premises; and

(2) Cease on or before 9:00 p.m. on any approved sampling day.

(h) Any liquor bottle used for sampling must be from the inventory of the licensee, and clearly and conspicuously labeled 'SAMPLE, NOT FOR RESALE'. If the seal is broken on any liquor bottle or if any liquor bottle is opened, then that liquor bottle must be removed from the licensed premises immediately following the event.

(i) Violations of this section are subject to the civil and criminal penalties set forth in sections twenty-four, twenty-five-a, twenty-six and twenty-seven of this article;

~~(j) To implement the provisions of this section, the commissioner may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty nine a of this code or propose rules for legislative approval in accordance with the provisions of article three, chapter twenty nine a of this code.~~

**§60-3A-3b. Private liquor delivery license for a retail liquor outlet or a third party; requirements; limitations; third party license fee; private liquor bottle delivery permit; requirements, and curbside in-person and in-vehicle delivery by a retail liquor outlet.**

(a) A retail liquor outlet that is licensed to sell liquor for off-premises consumption may apply for a private liquor delivery license permitting the order, sale, and delivery of sealed liquor bottles or cans in the original container. The order, sale, and delivery of sealed liquor bottles or cans in the original container is permitted for off-premises consumption when completed by the licensee to a person purchasing the sealed liquor bottles or cans through a telephone, a mobile ordering application, or a web-based software program, authorized by the licensee's license. There is no additional fee for a licensed retail liquor outlet to obtain a private liquor delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for liquor sales or distribution, may apply for a private liquor delivery license for the privilege of ordering and delivery of sealed liquor bottles or cans, from a licensed retail liquor outlet. The order and delivery of sealed liquor bottles or cans permitted for off-premises consumption by a third party licensee when a retail liquor outlet sells to a person purchasing the sealed liquor bottles or cans through telephone orders, a mobile ordering application, or a web-based software program. The private liquor delivery license non-prorated, nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private liquor delivery license application shall comply with licensure requirements in this article and shall provide any information required by the commissioner.

(d) Sale Requirements. -

(1) The purchase of sealed liquor bottles or cans in the original container may accompany the purchase of food and the completion



of the sale may be accomplished by the delivery of food and sealed liquor bottles or cans in the original container by the licensee or third party licensee;

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this chapter for the sale of alcoholic liquors and in §11-16-1 *et seq.* of the code, for nonintoxicating beer or nonintoxicating craft beer.

(3) ‘Food’, for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of up to five 750 milliliter sealed liquor bottles for each order: *Provided*, That the entire delivery order may not contain any combination of sealed liquor bottles or cans in the original container, where the combination is more than 128 fluid ounces of liquor total; and

(5) A third party delivery licensee shall not have a pecuniary interest in a retail liquor outlet, as set forth in this article. A third party private liquor delivery licensee may only charge a convenience fee for the delivery of any alcohol. The third party private liquor delivery licensee may not collect a percentage of the liquor delivery order, but may continue to collect a percentage of the delivery order directly related to food. The convenience fee charged by the third-party private liquor delivery licensee to the purchasing person shall be no greater than ~~five dollars~~ \$20 per delivery order where a sealed liquor bottle or can in the original container is ordered by the purchasing person. For any third party licensee also licensed for other nonintoxicating beer or nonintoxicating craft beer delivery pursuant to §11-16-1 *et seq.* of this code, wine delivery pursuant to §60-8-1 *et seq.* of this code, or a sealed craft cocktail growler delivery pursuant to §60-7-1 *et seq.* of this code, the total convenience fee of any order, sale, and delivery of sealed alcoholic liquor or nonintoxicating beer, or nonintoxicating craft beer shall not exceed ~~five dollars~~. \$20.

(c) *Private Liquor Delivery Requirements.* —

(1) Delivery persons employed for the delivery of a sealed liquor bottles or cans in the original container shall be 21 years of age or older and a retail liquor outlet and a third-party private liquor delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A retail liquor outlet and a third-party private liquor delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. A retail liquor outlet and a third-party private liquor delivery licensee shall submit certification of the training to the commissioner;

(3) The retail liquor outlet or third party private liquor delivery licensee shall hold a private liquor bottle delivery permit for each vehicle delivering a sealed liquor bottle or can in the original container pursuant to subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) A retail liquor outlet or third party private liquor delivery licensee shall deliver food and a sealed liquor bottle or can order in the original container in the market zone or contiguous market zone where the licensed retail liquor outlet is located;

(5) A retail liquor outlet or third party private liquor delivery licensee may only deliver food and a sealed liquor bottle or can in the original container to addresses located in West Virginia, The retail liquor outlet or third party private liquor delivery licensee shall pay and account for all sales and municipal taxes;

(6) A retail liquor outlet or third party private liquor delivery licensee may not deliver food and a sealed liquor bottle or can in the original container to any licensee licensed under §11-16-1 *et seq.* of this code, and under this chapter;

(7) Deliveries of food and a sealed liquor bottle or can in the original container are only for personal use, and not for resale; and

(8) A retail liquor outlet or third party private liquor delivery licensee shall not deliver and leave food and a sealed liquor bottle

or can in the original container at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements.* —

(1) The delivery person shall only permit the person who placed the order through a telephone order, a mobile ordering ~~application applicant~~, or web-based software to accept the food and a sealed liquor bottle or can in the original container for delivery which is subject to verification upon delivery with the delivery person's visual review and verification ~~and, as applicable, a stored scanned image of the purchasing person's legal identification;~~

(2) Any mobile ordering application or web-based software used shall ~~create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information~~ and delivery shall be subject to legal identification verification;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's ~~legal~~ identification and details of the sale, ~~accessible by the delivery driver for verification,~~ and shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(4) All records are subject to inspection by the commissioner. A retail liquor outlet or third party private liquor delivery licensee shall retain records for three years, and shall not unreasonably withhold the records from the commissioner's inspection; and

(5) The retail liquor outlet or third party delivery licensee shall hold a valid private liquor bottle delivery permit required by subsection (g) of this section for each vehicle that may offer delivery.

(g) *Private Liquor Bottle Delivery Permit.* —

(1) A retail liquor outlet or third party delivery licensee shall obtain and maintain a retail transportation permit for the delivery of and a sealed liquor bottle or can in the original container.

(2) A retail liquor outlet or third party private delivery licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) Subject to the requirement of §60-6-12 of this code, a private liquor bottle delivery permit shall meet the requirements of a transportation permit authorizing the permit holder to transport liquor subject to the requirements of this chapter.

(h) *Enforcement.* —

(1) The retail liquor outlet or the licensed third party are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a sealed liquor bottle. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this chapter.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

(i) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in the original container may provide for the sale and curbside in-person or in-vehicle pick-up of sealed liquor bottles or cans in the original container, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

(j) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in the original container may provide for the sale and delivery through a drive up or drive through structure, approved by the commissioner, of sealed liquor bottles or cans in the original container, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

**§60-3A-8. Retail license application requirements; retail licensee qualifications.**

(a) Prior to or simultaneously with the submission of a bid for a retail license or the payment of a purchase option for a Class A retail license, each applicant shall file an application with the commissioner, stating under oath, the following:

(1) If the applicant is an individual, his or her name and residence address;

(2) If the applicant is other than an individual, the name and business address of the applicant; the state of its incorporation or organization; the names and residence addresses of each executive officer and other principal officer, partner, or member of the entity; a copy of the entity's charter or other agreement under which the entity operates; the names and residence addresses of any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership, or other interests in the applicant; and all applicants and licensees must list a manager on the applicant's license application, or a licensee's renewal application, and further that the manager shall meet all other requirements of licensure, including, but not limited to, United States citizenship or naturalization, passing a background investigation, being at least 21 years of age, ~~being a suitable person, being of good morals and character,~~ and meet other requirements, all as set forth in the code and the legislative rules, in order for the manager to be able to meet and conduct any regulatory matters, including, but not limited to, licensure or enforcement matters related to the applicant or licensee all in the interest of protecting public health and safety ~~and being a suitable applicant or licensee~~. In order to maintain active licensure, any change by a licensee in any manager listed on an application

must be made immediately to the commissioner, in order to verify that the new manager meets licensure requirements;

(3) That the applicant and manager have ~~not never~~ (A) been convicted in this state or any other state of any felony in the five years preceding the date of application or (B) other crime involving moral turpitude fraud, dishonesty, or deceit in the five years preceding the date of application, or (C) been convicted of any felony in this or any other state court or any federal court for a violation of alcohol-related distribution laws any state or federal liquor law, and if the applicant is other than an individual, that none of its executive officers, other principal officers, partners, or members, or any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership, or other interests in the applicant, has been convicted; and

(4) That the applicant and the manager, each is a United States citizen of good moral character and, if a naturalized citizen, when and where naturalized; and, if a corporation organized and authorized to do business under the laws of this state, when and where incorporated, with the name and address of each officer; that each officer is a citizen of the United States and a person of good moral character; and if a firm, association, partnership, or limited partnership, that each member is a citizen of the United States and, if a naturalized citizen, when and where naturalized, each of whom must sign the application.

(b) An applicant and manager shall provide the commissioner any additional information requested by the commissioner including, but not limited to, authorization to conduct a criminal background and credit records check.

(c) Whenever a change occurs in any information provided to the commissioner, the change shall immediately be reported to the commissioner in the same manner as originally provided.

(d) The commissioner shall disqualify each bid submitted by an applicant under §60-3A-10 of this code and no applicant shall be issued or eligible to hold a retail license under this article, if:

(1) The applicant has been, within the five years preceding the date of application; (A) convicted in this state of any felony or (B) convicted of a ~~other~~ crime involving fraud, dishonesty, or deceit ~~moral turpitude~~ or (C) convicted of any felony in this or any other state court or any federal court for a violation of alcohol-related distribution laws ~~any state or federal liquor law~~; or

(2) Any executive officer or other principal officer, partner, or member of the applicant, or any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership, or other interests in the applicant, has been, within the five years preceding the date of application; (A) convicted in this state of any felony or (B) convicted of a ~~other~~ crime involving fraud, dishonesty, or deceit ~~moral turpitude~~ or (C) convicted of any felony in this or any other state court or any federal court for a violation of alcohol-related distribution laws ~~any state or federal liquor law~~.

(e) The commissioner shall not issue a retail license to an applicant which does not hold a license issued pursuant to federal law to sell liquor at wholesale.

**§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from state; transportation and storage; method of payment.**

(a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to retail licensees. The commissioner shall sell liquor, other than wine, to retail licensees according to a uniform pricing schedule. The commissioner shall obtain, if possible, upon request, any liquor requested by a retail licensee and those permitted to manufacture and sell liquor pursuant to ~~section three, article four of this chapter~~ §60-4-3 of this code.

(b) Wholesale prices shall be established in order to yield a net profit for the General Revenue Fund of not less than \$6,500,000 annually on an annual volume of business equal to the average for the past three years. The net revenue derived from the sale of alcoholic liquors shall be deposited into the General Revenue Fund in the manner provided in ~~section seventeen, article three of this chapter~~ §60-3-17 of this code.

(c) Notwithstanding any provision of this code to the contrary, the commissioner shall specify the maximum wholesale markup percentage which may be applied to the prices paid by the commissioner for all liquor, other than wine, in order to determine the prices at which all liquor, other than wine, will be sold to retail licensees. A retail licensee shall purchase all liquor, other than wine, for resale in this state only from the commissioner, and the provisions of ~~sections twelve and thirteen, article six of this chapter §60-6-12 and §60-6-13 of this code~~ shall not apply to the transportation of the liquor: *Provided*, That a retail licensee shall purchase wine from a wine distributor who is duly licensed under ~~article eight of this chapter. §60-8-1 et seq. of this code.~~ All liquor, other than wine, purchased by retail licensees shall be stored in the state at the retail outlet or outlets operated by the retail licensee: *Provided, however*, That the commissioner, in his or her discretion, may upon written request permit a retail licensee to store liquor at a site other than the retail outlet or outlets.

(d) The sale of liquor by the commissioner to retail licensees shall be paid by electronic funds transfer which shall be initiated by the commissioner on the business day following the retail licensees order or by money order, certified check, or cashier's check which shall be received by the commissioner at least 24 hours prior to the shipping of the alcoholic liquors: *Provided*, That if a retail licensee posts with the commissioner an irrevocable letter of credit or bond with surety acceptable to the commissioner from a financial institution acceptable to the commissioner guaranteeing payment of checks, then the commissioner may accept the retail licensee's checks in an amount up to the amount of the letter of credit.

(e) (1) A retail licensee may not sell liquor to persons licensed under the provisions of ~~article seven of this chapter §60-7-1 et seq. of this code~~ at less than ~~one hundred ten percent~~ 115 percent of the retail licensee's cost as defined in §47-11A-6 of this code.

(2) A retail licensee may not sell liquor to the general public at less than ~~one hundred ten percent~~ 110 percent of the retail licensee's cost as defined in §47-11A-6 of this code.



**ARTICLE 4. LICENSES.****§60-4-22. Wholesale representatives' licenses.**

(a) A person, firm or corporation may not be or act or serve as an agent, broker or salesman selling or offering to sell or soliciting or negotiating the sale of alcoholic liquor to the commission or to any distributor licensed pursuant to article eight of this chapter without first obtaining a license so to do in accordance with the provisions of this section. Only salaried employees of distilleries, manufacturers, producers or processors of alcoholic liquor may be licensed hereunder and no person may be licensed hereunder who sells or offers to sell alcoholic liquor to the commission or any distributor on a fee or commission basis. The commission shall be the licensing authority and may grant to persons of good moral character the license herein provided and may refuse to grant such license to any person (1) convicted of a felony, within ten five years prior to his or her application, for such license (2) convicted of a crime involving fraud, dishonesty, or deceit, within the previous five years before application, or (3) convicted of a felony violation of a state or federal liquor law within the previous five years before application; refuse to grant, suspend or revoke licenses. Licenses shall be on an annual basis for the period from July 1, until June 30 next following. New and renewal licenses shall be granted only upon verified application to the commission presented on forms provided by the commission. Any person representing more than one producer, manufacturer or distributor of alcoholic liquors shall file a separate application and shall obtain a separate license for each such representation. The annual license fee shall be \$100. The fee for any license granted for the remainder of any license year between January 1, and June 30 of the same calendar year shall be \$50.

~~No person who is the father, mother, son, daughter, brother, sister, uncle, aunt, nephew or niece of a member of the commission or of any elected or appointed state official, county official or municipal official, or who is the spouse of any such person so related to a member of the commission or to any elected or appointive state official, county official or municipal official, may be granted a license. No member of the Legislature or the spouse~~

~~of any such member may be granted a license. Nor may any member or officer of any political party executive committee of this state or the spouse of any such member or officer be granted a license.~~

(b) In addition to all other information which the commission may require to be supplied on the license application forms, each applicant shall be required to state his or her name and his or her residence address and the name and business address of the producer, manufacturer or distributor he or she represents; the name and address of each additional producer, manufacturer or distributor of alcoholic liquors he or she represents; the monetary total of all alcoholic liquor sales, if any, made by him or her to the commission or to any distributor licensed pursuant to article eight of this chapter during the fiscal year preceding the license year for which he or she is seeking a license; the monetary total of the gross income received by him or her on such sales, if any, during such fiscal year; whether he or she has, during such fiscal year, made or given, voluntarily or on request, any gift, contribution of money or property to any member or employee of the commission or of any distributor licensed pursuant to article eight of this chapter or to or for the benefit of any political party committee or campaign fund; and his or her relationship, if any, by blood or marriage, to any member of the commission or to any elected or appointive state official, county official or municipal official. All such applications shall be verified by oath of the applicant and shall be prepared and filed in duplicate. All such applications and a current list of all licensees hereunder shall be matters of public record and shall be available to public inspection at the commission's offices at the State Capitol. Every licensee who ceases to be an agent, broker or salesman, as herein contemplated, shall so advise the commission in writing and such person's name shall be immediately removed from the license list and his or her license shall be canceled and terminated.

(c) All persons licensed under this section shall be authorized representatives of the wineries, farm wineries, distilleries, mini-distilleries, manufacturers, producers, or processors of alcoholic liquor they represent. A licensed person may not share, divide, or

split his or her salary with any person other than his or her wife or some legal dependent, nor may he or she make any contribution to any political party campaign fund in this state.

(d) All licensees shall be subject to all other provisions of this chapter and to the lawful rules promulgated by the commission. Licenses may be refused, suspended, or revoked by the commission for cause, including any of the applicable grounds of revocation specified in section nineteen of this article. Provisions of this article relating to notice, hearing and appeals shall, to the extent applicable, govern procedures on suspension and revocation of licenses hereunder.

(e) Any person, firm or corporation violating any provision of this section, including knowingly making of any false statement in a verified application for a license shall be guilty of a misdemeanor offense and shall, upon conviction thereof, be fined not exceeding \$1,000 or imprisoned in jail not exceeding 12 months, or be subject to both such fine and imprisonment in the discretion of the court.

**§60-4-23. License to operate a facility where exotic entertainment is offered; definitions; restrictions, regulations and prohibitions; prohibitions against minors; application, renewal, license fee, restrictions on transfer; effective date; legislative rules; unlawful acts and penalties imposed.**

(a) For purposes of this section:

(1) ‘Exotic entertainment’ means live nude dancing, nude service personnel or live nude entertainment, and ‘nude’ means any state of undress in which male or female genitalia or female breasts are exposed.

(2) ‘Places set apart for traditional family-oriented naturism’ means family nudist parks, clubs and resorts chartered by the American association for nude recreation or the naturist society, including all of their appurtenant business components, and also including places temporarily in use for traditional family-oriented naturist activities.

(b) No person may operate any commercial facility where exotic entertainment is permitted or offered unless such person is granted a license by the commissioner to operate a facility where exotic entertainment may be offered. The provisions of this subsection apply whether or not alcoholic liquor, wine or nonalcoholic beer is legally kept, served, sold, or dispensed in a facility, or purchased for use in a facility, or permitted to be brought by others into a facility and whether or not such person holds any other license or permit issued pursuant to chapter 60 of this code.

(c) A licensee is subject to all the regulatory provisions of §60-7-1 *et seq.* of this code ~~chapter~~, whether or not the licensee is otherwise a private club. The commissioner shall have all the powers and authorization granted under §60-7-1 *et seq.* of this code ~~chapter~~ to regulate, restrict, and sanction a licensee under this section. No licensee may purchase, keep, sell, serve, dispense, or purchase for use in a licensed facility, or permit others to bring into the facility, any alcoholic liquor, wine, or nonintoxicating beer or nonintoxicating craft beer without having the appropriate license ~~therefor~~. No licensee may operate a private club without being licensed ~~therefor~~.

(d) No person or licensee may allow a person under the age of 18 years to perform as an exotic entertainer. No person under the age of 21 years, other than a performing exotic entertainer, may be allowed to be in a commercial facility on any day on which any exotic entertainment is offered therein. No licensee may hold special nonalcoholic entertainment events for persons under age 21 pursuant to the provisions of §60-7-8 of this code ~~chapter~~ in the licensed facility.

~~(e) Any person operating a commercial facility where exotic entertainment is offered on the effective date of this section may apply to the commissioner for a license to operate a facility where exotic entertainment may be offered. Applications must be filed with the commissioner on or before July 1, 2000; thereafter no application for license may be received by the commissioner. The commissioner may issue a license to a person complying with the provisions of this chapter. Upon application for renewal, the commissioner shall annually, on July 1, of each succeeding year,~~

~~renew the license of any licensee then in compliance with the provisions of this chapter. The commissioner shall specify the form of application and information required of applicants and licensees. No license which has lapsed, been revoked or expired without renewal may be reissued.~~

(~~f~~e) A person to whom a license is issued or renewed under the provisions of this section shall pay annually to the commissioner a license fee of \$3,000. A municipal corporation wherein any such licensee is located shall issue a municipal license to any person to whom the commissioner has issued a license and may impose a license fee not in excess of the state license fee.

(~~g~~f) A person shall not sell, assign, or otherwise transfer a license without the prior written approval of the commissioner. For purposes of this section, the merger of a licensee or the sale of more than 50 percent of the outstanding stock of or partnership interests in the licensee shall be deemed to be a sale, assignment, or transfer of a license under this section. A license shall not be transferred to another location, except within the county of original licensure. A transferee of a licensed facility may apply for reissuance of the transferor's license if the transferee applicant otherwise qualifies for a license. The commissioner is authorized to propose the promulgation of a legislative rule in accordance with the provisions of chapter 29A of this code, to implement the provisions of this subsection.

~~(h) This section shall be effective upon passage by the Legislature in the year 2000. On or before May 1, 2000, the commissioner shall promulgate an emergency legislative rule pursuant to the provisions of chapter twenty nine a of this code to effectuate the provisions of this section, and shall propose a legislative rule therefor, for consideration by the Legislature, prior to December 31, 2000.~~

(~~i~~g) Any person who violates any provision of this section, or principal of a firm or corporation which violates any provision of this section, or licensee, agent, employee, or member of any licensee who violates any provision of this section, or who violates any of the provisions of §60-7-12 of this code ~~chapter~~, on the

premises of a licensed facility, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000, or imprisoned for a period not to exceed one year, or both so fined and imprisoned.

(j~~h~~) The provisions of this section do not apply to places set apart for traditional family-oriented naturist activities.

## ARTICLE 6. MISCELLANEOUS PROVISIONS.

### §60-6-24. Requirement for posting informational sign.

~~Each store or outlet controlled or operated by the state Alcohol Beverage Control Commission, and any store, supermarket, club, restaurant, or~~ Any licensee licensed under this chapter to sell alcoholic liquors, including liquor, wine, hard cider, other facility selling alcoholic beverages or nonintoxicating beer or nonintoxicating craft beer for either on-premise on-premises or off-premise off-premises consumption, shall post in an open and prominent place within ~~such~~ the establishment, a blood-alcohol chart containing information showing the estimated percent of alcohol in the blood by the number of drinks in relation to body weight and time of consumption, ~~as follows:~~

~~FORM OMITTED~~

~~FORM OMITTED~~

~~The size of display and location of said blood alcohol chart shall be prescribed by the commissioner, by rule and regulation as provided in the chart available on the commissioner's website. Enforcement of the posting provisions of this section shall be carried out by the West Virginia nonintoxicating beer commissioner commissioner in establishments which are for all licensees required to post such the notice. but are not subject to the supervision of the West Virginia Alcohol Beverage Control Commissioner~~

## ARTICLE 7. LICENSES TO PRIVATE CLUBS.

**§60-7-2. Definitions; authorizations; requirements for certain licenses.**

Unless the context in which used clearly requires a different meaning, as used in this article:

~~(a)~~ (1) ‘Applicant’ means a private club applying for a license under the provisions of this article.

~~(b)~~ (2) ‘Code’ means the official Code of West Virginia, 1931, as amended.

~~(c)~~ (3) ‘Commissioner’ means the West Virginia Alcohol Beverage Control Commissioner.

~~(d)~~ (4) ‘Licensee’ means the holder of a license to operate a private club granted under this article, which remains unexpired, unsuspended, and unrevoked.

~~(e)~~ (5) ‘Private club’ means any corporation or unincorporated association which either: ~~(1)~~ (A) Belongs to or is affiliated with a nationally recognized fraternal or veterans’ organization which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly- elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests;

~~(2)~~ (B) Is a nonprofit social club, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly-elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable

kitchen and dining facility with related equipment for serving food to members and their guests;

(3) (C) Is organized and operated for legitimate purposes which has at least 100 duly- elected or approved dues-paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this state, to which club are admitted only duly- elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons for serving meals to members and their guests; or

(4) (D) Is organized for legitimate purposes and owns or leases a building or other delimited premises in any state, county, or municipal park, or at any airport, in which building or premises a club has been established, to which club are admitted only duly-elected and approved dues-paying members in good standing and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in connection with the club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in the club to the members and their guests.

(6) 'Private bakery' means an applicant for a private club or licensed private club license that has a primary function of operating a food preparation business that produces baked goods, including brownies, cookies, cupcakes, confections, muffins, breads, cakes, wedding cakes, and other baked goods. The applicant or licensee desires to sell baked goods infused with liquor, wine, or nonintoxicating beer or nonintoxicating craft beer, either: (A) In the icing, syrup, drizzle, or some other topping; (B) as an infusion where the alcohol is not processed or cooked out of the baked goods; or (C) the alcohol can be added by the purchaser from an infusion packet containing alcohol no greater than 10 milliliters. This applicant or licensee may not sell liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for on or off-



premises consumption. This applicant or licensee may sell the baked goods with alcohol added as authorized for on and off-premises consumption. Further, the applicant or licensee shall meet the criteria set forth in this subdivision which:

(i) Has at least 50 members;

(ii) Operates a kitchen that produces baked goods, as specified in this subdivision, including at least: (I) A baking oven and a four-burner range or hot plate; (II) a sink with hot and cold running water; (III) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (IV) baking utensils and pans, kitchen utensils, and other food consumption apparatus as determined by the commissioner; and (V) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(iii) Maintains, at any one time, \$750 of food inventory capable of being prepared in the private bakery's kitchen. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, pre-packaged foods, baking items such as flour, sugar, icing, and other confectionary items, or canned prepared foods;

(iv) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private bakery are not sold items containing alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, or wine, and a person under 21 years of age may enter the shop and purchase other items not containing alcoholic liquors; and

(v) Meet and be subject to all other private club requirements.

(7) 'Private cigar shop' means an applicant for a private club or licensed private club licensee that has a primary function of operating a cigar shop for sales of premium cigars for consumption on or off the licensed premises. Where permitted by law, indoor

on-premises cigar consumption is permitted with a limited food menu, which may be met by utilizing a private caterer, for members and guests while the private club applicant or licensee is selling and serving liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for on-premises consumption. Further, the applicant or licensee shall meet the criteria set forth in this subdivision which:

(A) Has at least 50 members;

(B) Operates a cigar shop and bar with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (iv) kitchen utensils and other food consumption apparatus as determined by the commissioner; and (v) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintains, at any one time, \$500 of food inventory capable of being prepared in the private club bar's kitchen or has on hand at least \$150 in food provided by a private caterer. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private club bar are accompanied by a parent or legal guardian, and if a person under 21 years of age is not accompanied by a parent or legal guardian, that person may not be admitted as a guest; and

(E) Meets and is subject to all other private club requirements.

~~(7)~~ (8) 'Private caterer' means a licensed private club restaurant, private hotel, or private resort hotel authorized by the commissioner to cater and serve food and sell and serve alcoholic liquors, or non-intoxicating beer or non-intoxicating craft beer. A

private caterer shall purchase wine sold or served at a catering event from a wine distributor. A private caterer shall purchase nonintoxicating beer and nonintoxicating craft beer sold or served at the catering event from a licensed beer distributor. A private caterer shall purchase liquor from a retail liquor outlet authorized to sell in the market zone, where the catering event is held. The private caterer or the persons or entity holding the catering event shall:

~~(1)~~ (A) Have at least 10 members and guests attending the catering event;

~~(2)~~ (B) Have obtained an open container waiver or have otherwise been approved by a municipality or county in which the event is being held;

~~(3)~~ (C) Operate a private club restaurant on a daily operating basis;

~~(4)~~ (D) Only use its employees, independent contractors, or volunteers to sell and serve alcoholic liquors who have received certified training in verifying the legal identification, the age of a purchasing person, and the signs of visible, noticeable, and physical intoxication;

~~(5)~~ (E) Provide to the commissioner, at least ~~7~~ seven days before the event is to take place:

~~(A)~~ (i) The name and business address of the unlicensed private venue where the private caterer is to provide food and alcohol for a catering event;

~~(B)~~ (ii) The name of the owner or operator of the unlicensed private venue;

~~(C)~~ (iii) A copy of the contract or contracts between the private caterer, the person contracting with the caterer, and the unlicensed private venue;

~~(D)~~ (iv) A floorplan of the unlicensed private venue to comprise the private catering premises, which shall only include

spaces in buildings or rooms of an unlicensed private venue where the private caterer has control of the space for a set time period where the space safely accounts for the ingress and egress of the stated members and guests who will be attending the private catering event at the catering premises. The unlicensed private venue's floorplan during the set time period as stated in the contract shall comprise the private caterer's licensed premises, which is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer and nonintoxicating craft beer, and wine throughout the licensed private catering premises: *Provided*, That the unlicensed private venue shall: ~~(i)~~ (I) Be inside a building or structure, ~~(ii)~~ (II) have other facilities to prepare and serve food and alcohol, ~~(iii)~~ (III) have adequate restrooms and sufficient building facilities for the number of members and guests expected to attend the private catering event, and ~~(iv)~~ (IV) otherwise be in compliance with health, fire, safety, and zoning requirements;

~~(6)~~ (F) Not hold more than 15 private catering events per calendar year. Upon reaching the 16th event, the unlicensed venue shall obtain its own private club license;

~~(7)~~ (G) Submit to the commissioner, evidence that any noncontiguous area of an unlicensed venue is within 150 feet of the private caterer's submitted floorplan and may submit a floorplan extension for authorization to permit alcohol and food at an outdoor event;

~~(8)~~ (H) Meet and be subject to all other private club requirements; and

~~(9)~~ (I) Use an age verification system approved by the commissioner.

~~(g)~~ (9) 'Private club bar' means an applicant for a private club or licensed private club licensee that has a primary function for the use of the licensed premises as a bar for the sale and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when licensed for ~~such~~ those sales, while providing a

limited food menu for members and guests, and meeting the criteria set forth in this ~~subsection~~ subdivision which:

(~~1~~) (A) Has at least 100 members;

(~~2~~) (B) Operates a bar with a kitchen, including at least: (~~A~~) (i) A two-burner hot plate, air fryer, or microwave oven; (~~B~~) (ii) a sink with hot and cold running water; (~~C~~) (iii) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (~~D~~) (iv) kitchen utensils and other food consumption apparatus as determined by the commissioner; and (~~E~~) (v) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(~~3~~) (C) Maintains, at any one time, \$500 of food inventory capable of being prepared in the private club bar's kitchen. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, prepackaged foods, or canned prepared foods;

(~~4~~) (D) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 18 who are in the private club bar are accompanied by a parent or legal guardian, and if a person under 18 years of age is not accompanied by a parent or legal guardian that person may not be admitted as a guest; and

(~~5~~) (E) Meets and is subject to all other private club requirements.

(10) 'Private food truck' means an applicant for a private club, licensed private club licensee, or licensed private manufacturer's club licensee that has a primary function of operating a food preparation business using an industrial truck, van, or trailer to prepare food and meals for sale at various locations within the state while utilizing a propane or electric generator powered kitchen. The private food truck applicant shall obtain county or municipal approval to operate for food and liquor, wine, and nonintoxicating

beer or nonintoxicating craft beer sales and service, while providing a food menu for members and guests. The private food truck applicant shall meet the criteria set forth in this subdivision which:

(A) Has at least 10 members;

(B) Operates with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) at least a 10 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; and (iv) plastic or metal kitchen utensils and other food consumption apparatus as determined by the commissioner;

(C) Maintains, at any one time, \$500 of food inventory that is fit for human consumption and capable of being prepared and served from the private food truck's kitchen during all hours of operation;

(D) Shall be sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private food truck is to be located and operate, and further each location shall have a bounded and defined area and set hours for private food truck operations, sales, and consumption of alcohol that are not greater than a private club's hours of operation;

(E) Provides the commissioner with a list of all locations, including a main business location, where the private food truck operates, and is approved for sales pursuant to subsection (D) of this section, and immediately update the commissioner when new locations are approved by a county or municipality;

(F) Requires all nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section to be purchased from the licensed distributor where the private food truck has its home location or from a resident brewer acting in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code.

(G) Requires wine or hard cider sold, furnished, tendered, or served pursuant to the license created by this section to be purchased from a licensed distributor, winery, or farm winery in accordance with §60-8-1 *et seq.* of this code.

(H) Requires liquor sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private food truck has its main business location, all in accordance with §60-3A-1 *et seq.* of this code.

(I) A licensee authorized by this section shall utilize bona fide employees to sell, furnish, tender, or serve the nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

(J) A brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery may obtain a private food truck license;

(K) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor broker representatives may attend a location where a private food truck is located and discuss their respective products but may not engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

(L) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private club bar are not permitted to be served any alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, or wine but may be permitted to purchase food or other items;

(M) Obtains all permits required by §60-6-12 of this code; and

(N) Meets and is subject to all other applicable private club requirements.

~~(H)~~ (11) ‘Private club restaurant’ means an applicant for a private club or licensed private club licensee that has a primary

function of using the licensed premises as a restaurant for serving freshly prepared meals and dining in the restaurant area. The private club restaurant may have a bar area separate from or commingled with the restaurant, seating requirements for members and guests ~~must~~ shall be met by the restaurant area. The applicant for a private club restaurant license which: ~~shall meet the criteria set forth in this subsection which:~~

(1) ~~(A)~~ Has at least 100 members;

(2) ~~(B)~~ Operate a restaurant and full kitchen with at least: ~~(A)~~ (i) Ovens and four-burner ranges; ~~(B)~~ (ii) refrigerators or freezers, or some combination of refrigerators and freezers greater than 50 cubic feet, or a walk-in refrigerator or freezer; ~~(C)~~ (iii) other kitchen utensils and apparatus as determined by the commissioner; and ~~(D)~~ (iv) freshly prepared food fit for human consumption available to be served during all hours of operation on the licensed premises;

(3) ~~(C)~~ Maintains, at any one time, \$1,000 of fresh food inventory capable of being prepared in the private club restaurant's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(4) ~~(D)~~ Uses an age verification system approved by the commissioner for the purpose of verifying that persons under 18 years of age who are in the bar area of a private club restaurant are accompanied by a parent or legal guardian. The licensee may not seat a person in the bar area who is under the age of 18 years and who is not accompanied by a parent or legal guardian, but may allow that person, as a guest, to dine for food and nonalcoholic beverage purposes in the restaurant area of a private club restaurant:

(5) ~~(E)~~ May uncork and serve members and guests up to two bottles of wine that a member purchased from a wine retailer, wine specialty shop, an applicable winery or farm winery when licensed for retail sales, or a licensed wine direct shipper when the purchase



is for personal use and, not for resale. The licensee may charge a corkage fee of up to \$10 dollars per bottle. In no event may a member or a group of members and guests exceed two sealed bottles or containers of wine to carry onto the licensed premises for uncorking and serving by the private club restaurant and for personal consumption by the member and guests. A member or guest may cork and reseal any unconsumed wine bottles as provided in §60-8-3(j) of this code and the legislative rules for carrying unconsumed wine off the licensed premises;

~~(6) (F) Must have~~ Has at least two restrooms for members and their guests: *Provided*, That this requirement may be waived by the local health department upon supplying a written waiver of the requirement to the commissioner: *Provided, however*, That the requirement may also be waived for a historic building by written waiver supplied to commissioner of the requirement from the historic association or district with jurisdiction over a historic building: *Provided, further* That in no event ~~shall~~ may a private club restaurant have less than one restroom; and

~~(7) (G) Shall meet and be~~ Meets and is subject to all other private club requirements.

~~(i) (12)~~ ‘Private manufacturer club’ means an applicant for a private club or licensed private club licensee which is also licensed as a distillery, mini-distillery, micro-distillery, winery, farm winery, brewery, or resident brewery that manufacturers liquor, wine, nonintoxicating beer or nonintoxicating craft beer, which may be sold, served, and furnished to members and guests for on-premises consumption at the licensee’s licensed premises and in the area or areas denoted on the licensee’s floorplan, and which: ~~meets the criteria set forth in this subsection and which:~~

~~(1) (A)~~ Has at least 100 members;

~~(2) (B)~~ Offers tours, may offer complimentary samples, and may offer space as a conference center or for meetings;

~~(3) (C)~~ Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer, or some combination of a

refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) (D) Maintains, at any one time, \$500 of fresh food inventory capable of being prepared in the private manufacturer club's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(5) (E) Owns or leases, controls, operates, and uses acreage amounting to at least one acre which is contiguous bounded or fenced real property that would be listed on the licensee's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) (F) Lists the entire property from ~~subdivision (5) paragraph (E) of this subsection~~ subdivision and all adjoining buildings and structures on the private manufacturer club's floorplan that would comprise the licensed premises, which would be authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, and wine throughout the licensed premises, whether these activities were conducted in a building or structure or outdoors while on the private manufacturer club's licensed premises, and as noted on the private manufacturer club's floorplan;

(7) (G) Identifies a person, persons, an entity, or entities who or which has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(8) (H) Uses an age verification system approved by the commissioner; and

(9) (I) Meets and is subject to all other private club requirements.

(j) (13) 'Private fair and festival' means an applicant for a private club or a licensed private club meeting the requirements of

§60-7-8a of this code for a temporary event, and the criteria set forth in this ~~subsection~~ subdivision which:

~~(1)~~ (A) Has at least 100 members;

~~(2)~~ (B) Has been sponsored, endorsed, or approved, in writing, by the governing body (or its duly elected or appointed officers) of either the municipality or of the county in which the festival, fair, or other event is to be conducted;

~~(3)~~ (C) Prepares, provides, or engages a food vendor to provide adequate freshly prepared food or meals to serve its stated members and guests who will be attending the temporary festival, fair, or other event, and further shall provide any documentation or agreements ~~of such~~ to the commissioner prior to approval;

~~(4)~~ (D) Does not use third-party entities or individuals to purchase, sell, furnish, or serve alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer;

~~(5)~~ (E) Provides adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the festival, fair, or other event;

~~(6)~~ (F) Provides a floorplan for the proposed premises with a defined and bounded area to safely account for the ingress and egress of stated members and guests who will be attending the festival, fair, or other event;

~~(7)~~ (G) Uses an age verification system approved by the commissioner; and

~~(8)~~ (H) Meets and is subject to all other private club requirements.

~~(k)~~ (14) 'Private hotel' means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

~~(1)~~ (A) Has at least 2,000 members;

(2) (B) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 30 separate bedrooms, and also offers a conference center for meetings;

(3) (C) Operates a restaurant and full kitchen with ovens, four-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 20 hours per week;

(4) (D) Maintains, at any one time, \$2,500 of fresh food inventory capable of being prepared in the private hotel's full kitchen and in calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

(5) (E) Owns or leases, controls, operates, and uses acreage amounting to more than one acre but fewer than three acres, which are contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for hotel and conferences and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) (F) Lists the entire property from ~~subdivision (5) paragraph (E) of this subsection~~ subdivision and all adjoining buildings and structures on the private hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private hotel's licensed premises and as noted on the private hotel's floorplan;

(7) (G) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(8) (H) Uses an age verification system approved by the commissioner; ~~and~~

(9) (I) Meets and is subject to all other private club requirements; and

(J) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have secure access via key or key card to an in-room mini-bar in their rented short-term accommodation; the mini-bar may be a small refrigerator not in excess of 1.6 cubic feet for the sale of nonintoxicating beer or nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 72 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding 750 ml of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, and 200 ml, with any combination of those liquor bottles not exceeding 750 ml; and (iv) any combination of canned or packaged food valued at least \$50. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, wine, and liquor. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

(4) (15) 'Private resort hotel' means an applicant for a private club or licensed private club licensee which: ~~meeting the criteria set forth in this subsection which:~~

(4) (A) Has at least 5,000 members;

(2) (B) Offers short term, daily rate accommodations or lodging for members and their guests amounting to at least 50 separate bedrooms;

(3) (C) Operates a restaurant and full kitchen with ovens, six-burner ranges, walk-in freezers, and other kitchen utensils and

apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 25 hours per week;

(4) ~~(D)~~ Maintains, at any one time, \$5,000 of fresh food inventory capable of being prepared in the private resort hotel's full kitchen. ~~and~~ In calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

~~(5)~~ (E) Owns or leases, controls, operates, and uses acreage amounting to at least 10 contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for destination, resort, and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

~~(6)~~ (F) Lists the entire property from ~~subdivision (5) paragraph (E) of this subsection~~ subdivision and all adjoining buildings and structures on the private resort hotel's floorplan ~~which would comprise~~ comprising the licensed premises, ~~which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private resort hotel's licensed premises; and as noted on the private resort hotel's floorplan;~~

~~(7)~~ (G) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

~~(8)~~ (H) Uses an age verification system approved by the commissioner;

~~(9)~~ (I) Meets and is subject to all other private club requirements; ~~and~~

~~(10)~~ (J) May have a separately licensed resident brewer with a brewpub license inner-connected via a walkway, doorway, or entryway, all as determined and approved by the commissioner, for

limited access during permitted hours of operation for tours and complimentary samples at the resident brewery; and

(K) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have access via key or key card to an in-room mini-bar in their rented short-term accommodation. The mini-bar may be a small refrigerator not in excess of 3.2 cubic feet for the sale of nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 144 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding one and a half liters of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, 200 ml, and 375 ml with any combination of such liquor bottles not exceeding one and a half liters; and (iv) any combination of canned or packaged food valued at least \$100. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, wine, and liquor. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

~~(m)~~ (16) 'Private golf club' means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this ~~subsection~~ subdivision which:

~~(1)~~ (A) Has at least 100 members;

~~(2)~~ (B) Maintains at least one 18-hole golf course with separate and distinct golf playing holes, not reusing nine golf playing holes to comprise the 18 golf playing holes, and a clubhouse;

(3) (C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) (D) Owns or leases, controls, operates, and uses acreage amounting to at least 80 contiguous acres of bounded or fenced real property which would be listed on the private golf club's floorplan and could be used for golfing events and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(5) (E) Lists the entire property from ~~subdivision (4) paragraph D~~ of this subsection and all adjoining buildings and structures on the private golf club's floorplan ~~which would comprise~~ comprising the licensed premises, ~~which~~ would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private golf club's licensed premises; ~~and as noted on the private golf club's floorplan;~~

(6) (F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property, buildings, and structures located on the proposed licensed premises;

(7) (G) Uses an age verification system approved by the commissioner; and

(8) (H) Meets and is subject to all other private club requirements.

(17) (I) 'Private nine-hole golf course' means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this ~~subsection~~ subdivision which:

(1) (A) Has at least 50 members;

(2) (B) Maintains at least one nine-hole golf course with separate and distinct golf playing holes;



(3) (C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) (D) Owns or leases, controls, operates, and uses acreage amounting to at least 30 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole golf course's floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(5) (E) Lists the entire property from ~~subdivision (4) paragraph (D) of this subsection~~ subdivision and all adjoining buildings and structures on the private nine-hole golf course's floorplan ~~which would comprise~~ comprising the licensed premises, ~~which would be~~ authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private nine-hole golf course's licensed premises; ~~and as noted on the private nine-hole golf course's floorplan;~~

(6) (F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) (G) Uses an age verification system approved by the commissioner; and

(8) (H) Meets and is subject to all other private club requirements.

(9) (18) 'Private tennis club' means an applicant for a private club or licensed private club licensee ~~meeting the criteria set forth in this subsection~~ subdivision which:

(1) (A) Has at least 100 members;

(2) (B) Maintains at least four separate and distinct tennis courts, either indoor or outdoor, and a clubhouse or similar facility;

(3) (C) Has a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and is capable of serving freshly prepared food;

(4) (D) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property which would be listed on the private tennis club's floorplan and could be used for tennis events and large events such as weddings, reunions, conferences, tournaments, meetings, and sporting or recreational events;

(5) (E) Lists the entire property from ~~subdivision (4) paragraph (D) of this subsection~~ subdivision and all adjoining buildings and structures on the private tennis club's floorplan ~~that would comprise~~ comprising the licensed premises, ~~which~~ would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private tennis club's licensed premises; ~~and as noted on the private tennis club's floorplan;~~

(6) (F) Has identified a person, persons, an entity, or entities who or which has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) (G) Meets and is subject to all other private club requirements; and

(8) (H) Uses an age verification system approved by the commissioner.

(19) 'Private college sports stadium' means an applicant for a private club or licensed private club licensee that operates a college or university stadium or coliseum for Division I, II, or III and involves a college public or private or university that is a member of the National Collegiate Athletic Association, or its successor, and uses the facility for football, basketball, baseball, soccer, or other Division I, II, or III sports, reserved weddings, reunions, conferences, meetings, or other special events and does not

maintain daily or regular operating hours as a bar or restaurant. The licensee may sell alcoholic liquors when conducting or temporarily hosting non-collegiate sporting events. This license may be issued in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary food and beverage vendor under contract with that college or university. All alcohol sales shall take place within the confines of the college stadium: *Provided*, That any outside area approved for alcohol sales shall be surrounded by a fence or other barrier prohibiting entry except upon the college or university's express permission, and under the conditions and restrictions established by the college or university, so that the alcohol sales area is closed in order to prevent entry and access by the general public. Further the applicant shall:

(A) Have at least 100 members;

(B) Maintain an open-air or closed-air stadium or coliseum venue primarily used for sporting events, such as football, basketball, baseball, soccer, or other Division I, II, or III sports, and also weddings, reunions, conferences, meetings, or other events where parties shall reserve the college stadium venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens and equipment that is equivalent or greater than a private club restaurant, as determined by the commissioner, on the licensed premises and capable of serving freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private college sports stadium;

(D) Own or lease, control, operate, and use acreage amounting to at least two contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private college stadium's floorplan and could be used for contracted-for temporary non-collegiate sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the

private college sports stadium's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private college sports stadium's licensed premises and as noted on the private college sports stadium's floorplan;

(F) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

~~(p)~~ (20) 'Private professional sports stadium' means an applicant for a private club or licensed private club licensee that is only open for professional sporting events when ~~such~~ the events are affiliated with or sponsored by a professional sporting association, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may not sell alcoholic liquors when conducting or hosting non-professional sporting events, and further the applicant shall:

~~(1)~~ (A) Have at least 1,000 members;

~~(2)~~ (B) Maintain an open-air or closed-air stadium venue primarily used for sporting events, such as football, baseball, soccer, auto racing, or other professional sports, and also weddings, reunions, conferences, meetings, or other events where parties ~~must~~ reserve the stadium venue in advance of the event;

~~(3)~~ (C) Operate a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and capable of serving freshly prepared food or meals to serve its stated

members, guests, and patrons who will be attending the event at the private professional sports stadium;

(4) (D) Own or lease, control, operate, and use acreage amounting to at least three contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the professional sports stadium's floorplan and could be used for contracted- for professional sporting events, group-type weddings, reunions, conferences, meetings, or other events;

~~(5) (E) List the entire property from subdivision (4) paragraph (D) of this subsection subdivision and all adjoining buildings and structures on the private professional sports stadium's floorplan which would comprise comprising the licensed premises, which would~~ and be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private professional sports stadium's licensed premises; ~~and as noted on the private professional sports stadium's floorplan;~~

~~(6) (F)~~ Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

~~(7) (G)~~ Meet and be subject to all other private club requirements; and

~~(8) (H)~~ Use an age verification system approved by the commissioner.

~~(e) (21)~~ 'Private farmers market' means an applicant for a private club or licensed private club licensee that operates as an association of bars, restaurants, retailers who sell West Virginia-made products among other products, and other stores who open primarily during daytime hours of 6:00 a.m. to 6:00 p.m., but may operate in the day or evenings for special events where the sale of food and alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer may occur for on-premises consumption, such as reserved weddings, reserved dinners, pairing

events, tasting events, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant, and all ~~business~~ businesses that are members of the association have agreed in writing to be liable and responsible for all sales, service, furnishing, tendering, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer occurring on the entire licensed premises of the private farmer's market, including indoor and outdoor bounded areas, and further the applicant shall:

~~(1)~~ (A) Have at least 100 members;

~~(2)~~ (B) Have one or more members operating a private club restaurant and full kitchen with ovens, four-burner ranges, a refrigerator or freezer or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 15 hours per week;

~~(3)~~ (C) Have one or more members operating who maintain, at any one time, \$1,000 of fresh food inventory capable of being prepared for events conducted at the private farmers market in the private club restaurant's full kitchen, and in calculating the food inventory the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

~~(4)~~ (D) Have an association that owns or leases, controls, operates, and uses acreage amounting to more than one acre, which is contiguous acreage of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for large contracted-for reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events;

~~(5)~~ (E) Have an association that lists in the application for licensure the entire property and all adjoining buildings and structures on the private farmers market's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and

nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private farmers market's licensed premises and as noted on the private farmers market's floorplan;

~~(6)~~ (F) Have an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

~~(7)~~ (G) Have at least two separate and unrelated vendors applying for the license and certifying that all vendors in the association have agreed to the liability responsibility associated with a private farmers market license;

~~(8)~~ (H) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer or nonintoxicating craft beer;

~~(9)~~ (I) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private farmers market;

~~(10)~~ (J) Provide a copy of a written agreement between all the vendors of the association that is executed by all vendors stating that each vendor is jointly and severally liable for any violations of this chapter committed during the event;

~~(11)~~ (K) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members, patrons, and guests ages, to verify whether a member, patron, or guest is intoxicated and to provide for the public health and safety of members, patrons, and guests;

~~(12)~~ (L) Use an age verification system approved by the commissioner; and

~~(13)~~ (M) Meet and be subject to all other private club requirements.

(~~+~~) (22) 'Private wedding venue or barn' means an applicant for a private club or licensed private club licensee that is only open for reserved weddings, reunions, conferences, meetings, or other events and does not maintain daily or regular operating hours, and which:

(1) (A) Has at least 25 members;

(2) (B) Maintains a venue, facility, barn, or pavilion primarily used for weddings, reunions, conferences, meetings, or other events where parties ~~must~~ reserve or contract for the venue, facility, barn, or pavilion in advance of the event;

(3) (C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises ~~and that~~ is capable of serving freshly prepared food, or may engage a food caterer to provide adequate freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private wedding venue or barn. The applicant or licensee shall provide written documentation including a list of food caterers or written agreements regarding any food catering operations to the commissioner prior to approval of a food catering event;

(4) (D) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property. The applicant or licensee shall verify that, the property is not less than two acres and is remotely located, subject to the commissioner's approval. The bounded or fenced real property may be listed on the private wedding venue's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, or other events;

(5) (E) Lists the entire property from ~~subdivision (4) paragraph (D) of this subsection~~ subdivision and all adjoining buildings and structures on the private wedding venue or barn's floorplan that would comprise the licensed premises, ~~which and~~ would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors



while on the private wedding venue or barn's licensed premises;  
~~and as noted on the private wedding venue or barn's floorplan;~~

(6) (F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) (G) Meets and is subject to all other private club requirements; and

(8) (H) Uses an age verification system approved by the commissioner.

(s) (23) 'Private multi-sport complex' means an applicant for a private club or licensed private club licensee that is open for multiple sports events to be played at the complex facilities, reserved weddings, concerts, reunions, conferences, meetings, or other special events, and which:

(1) (A) Has at least 100 members;

(2) (B) Maintains an open-air multi-sport complex primarily for use for sporting events, such as baseball, soccer, basketball, tennis, frisbee, or other sports, but may also conduct weddings, concerts, reunions, conferences, meetings, or other events where parties ~~must~~ reserve the parts of the sports complex in advance of the sporting or other event;

(3) (C) Operates a restaurant and full kitchen with ovens in the licensee's main facility, as determined by the commissioner, on the licensed premises and capable of serving freshly prepared food, or meals to serve its stated members, guests, and patrons who will be attending the event at the private ~~professional sports stadium~~ multi-sport complex. A licensee may contract with temporary food vendors or food trucks for food sales only, but not on a permanent basis, in areas of the multi-sport complex not readily accessible by the main facility;

(4) (D) Maintains, at any one time, \$1,000 of fresh food inventory capable of being prepared in the private multi-sport complex's full kitchen. In calculating the food inventory, the

commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(5) (E) Owns or leases, controls, operates, and uses acreage amounting to at least 50 contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private multi-sport complex's floorplan and could be used for contracted-for sporting events, group-type weddings, concerts, reunions, conferences, meetings, or other events;

(6) (F) Lists the entire property from ~~subdivision (5) paragraph (E) of this subsection~~ subdivision and all adjoining buildings and structures on the private multi-sport complex's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private multi-sport complex's licensed premises and as noted on the private multi-sport complex's floorplan. The licensee may sell alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer from a golf cart or food truck owned or leased by the licensee and also operated by the licensee when the golf cart or food truck is located on the private multi-sport complex's licensed premises;

(7) (G) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(8) (H) Meets and is subject to all other private club requirements; and

(9) (I) Uses an age verification system approved by the commissioner.

The Department of Natural Resources, the authority governing any county or municipal park, or any county commission, municipality, other governmental entity, public corporation, or public authority operating any park or airport may lease, as lessor, a building or portion thereof or other limited premises in any park

or airport to any corporation or unincorporated association for the establishment of a private club pursuant to this article.

**§60-7-2a. Dual licensing permitted; conditions.**

(a) Any licensee defined in §60-7-2 of this code is authorized to apply for and hold additional licenses for the purpose of holding events, such as fairs and festivals, and creating tourism opportunities that will show case businesses in this state.

(b) A licensee may host an event on the licensee's licensed premises if the licensee is in good standing with the Commissioner and the licensee submits to the Commissioner its floorplan of the licensed venue in which the event would be held to comprise the event's lawful premises, which shall only include spaces in buildings or rooms of the licensed premises where the licensee has control of the space for the set time period where the space safely accounts for the ingress and egress of the stated members and guests who will be attending the event at the licensed premises. The venue's floorplan during the set time period as stated in the contract shall comprise the licensed premises for the event, which is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer and nonintoxicating craft beer, and wine throughout the licensed premises; *Provided, That the venue shall:*

(1) Have facilities to prepare and serve food and alcohol,

(2) have adequate restrooms, and sufficient building facilities for the number of members and guests expected to attend the event, and

(3) otherwise be in compliance with health, fire, safety, and zoning requirements.

(c) A licensee defined in §60-7-2 of this code may not be limited or restricted in any way as to the number of events that may be held on the premises so long as the licensee continues to operate its primary business in good standing with the Commissioner.

**§60-7-6. Annual license fee; partial fee; and reactivation fee.**

(a) The annual license fee for a license issued under the provisions of this article to a fraternal or veterans' organization or a nonprofit social club is \$750.

(b) The annual license fee for a license issued under the provisions of this article to a private club other than a private club of the type specified in subsection (a) of this section is \$1,000 if the private club bar or restaurant has fewer than 1,000 members; \$1,000 for a private club restaurant, private hotel, or private resort hotel to be licensed as a private caterer as defined in §60-7-2 of this code; \$500 if the private club is a private bakery; \$1,500 if the private club is a private wedding venue or barn or a private cigar shop; \$2,000 if the private club is a private nine-hole golf course, private farmers market, private food truck, private college sports stadium, private professional sports stadium, private multi-sport complex, private manufacturer club, or a private tennis club as defined in §60-7-2 of this code; \$2,500 if the private club bar or private club restaurant has 1,000 or more members; \$4,000 if the private club is a private hotel with three or fewer designated areas or a private golf club as defined in §60-7-2 of this code; and further, if the private club is a private resort hotel as defined in §60-7-2 of this code, the private resort hotel may designate areas within the licensed premises for the lawful sale, service, and consumption of alcoholic liquors as provided for by this article. The annual license fee for a private resort hotel with five or fewer designated areas is \$7,500 and the annual license fee for a private resort hotel with at least six, but no more than 10 designated areas is \$12,500. The annual license fee for a private resort hotel with at least 11, but no more than 15 designated areas shall be \$17,500. The annual license fee for a private resort hotel with no fewer than 15 nor more than 20 designated areas is \$22,500. A private resort hotel that obtained the license and paid the \$22,500 annual license fee may, upon application to and approval of the commissioner, designate additional areas for a period not to exceed seven days for an additional fee of \$150 per day, per designated area.

(c) The fee for any license issued following January 1 of any year that expires on June 30 of that year is one half of the annual license fee prescribed by subsections (a) and (b) of this section.

(d) A licensee that fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, after initial application, shall be charged an additional \$150 reactivation fee. The fee payment may not be prorated or refunded, and the reactivation fee shall be paid prior to the processing of any renewal application and payment of the applicable full year annual license fee. A licensee who continues to operate upon the expiration of its license is subject to all fines, penalties, and sanctions available in §60-7-13 and §60-7-13a of this code, all as determined by the commissioner.

(e) The commissioner shall pay the fees to the State Treasurer ~~and credited to~~ for deposit into the General Revenue Fund of the state.

(f) The Legislature finds that the hospitality industry has been particularly damaged by the COVID-19 pandemic and that some assistance is warranted to promote reopening and continued operation of private clubs and restaurants licensed under this article. Accordingly, the fees set forth in subsections (a) and (b) of this section are temporarily modified as follows;

(1) License fees for the license period beginning July 1, 2021, shall be reduced to one third of the rate set forth in subsections (a) and (b) of this section;

(2) License fees for the license period beginning July 1, 2022, shall be two thirds of the rate set forth in subsections (a) and (b) of this section; and

(3) License fees for the license period beginning July 1, 2023, and beyond, shall be as set forth in subsections (a) and (b) of this section.

**§60-7-8a. Special license for a private fair and festival; licensee fee and application; license fee; license subject to provisions of article; exception.**

(a) There is hereby created a special license designated Class S2 private fair and festival license for the retail sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer for on-premises consumption.

(b) To be eligible for the license authorized by subsection (a) of this section, the private fair and festival or other event shall:

(1) Be sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private fair and festival or other event is located;

(2) Shall make application with the commission at least 15 days pursuant to the private fair, festival, or other event;

(3) Pay a nonrefundable nonprorated license fee of ~~\$750~~ \$500; and

(4) Be approved by the commissioner to operate the private fair, festival, or other event. (c) A private fair and festival license under this section shall be for a duration of no more than 10 consecutive days ~~and no more than six licenses may be issued to the same person or entity in a calendar year.~~

(d) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section must be purchased from the licensed distributor that services the area in which the private fair and festival is held or from a resident brewer acting in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code. Sales of sealed containers of nonintoxicating beer or nonintoxicating craft beer may be sold for off-premises consumption if the nonintoxicating beer and nonintoxicating craft beer are purchased from the licensed distributor that services the area in which the private fair, festival, or other event is being held and such licensed distributor agrees to offer such sales prior to the start of the private fair, festival, or other event.

(e) Wine sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed distributor, winery, or farm winery in accordance with §60-8-1 *et*

seq. of this code. Sales of sealed containers of wine may be sold for off-premises consumption if the wine is purchased from a licensed distributor, winery, or farm winery and the licensed distributor, winery, or farm winery agrees to offer sales prior to the start of the private fair, festival, or other event.

(f) Liquor sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private fair or festival is occurring, all in accordance with §60-3A-1 *et seq.* of this code. Sales of sealed containers of liquor may be sold for off-premises consumption if the liquor is purchased from the licensed retail liquor outlet in the market zone or contiguous market zone where the private fair, festival, or other event is occurring and the licensed retail liquor outlet agrees to offer such sales prior to the start of the private fair, festival, or other event.

(g) A licensee authorized by this section may utilize bona fide employees or volunteers to sell, furnish, tender, or serve the nonintoxicating beer, nonintoxicating craft beer, wine, or liquor.

(h) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, and liquor broker representatives may attend a private fair and festival and discuss their respective products but shall not engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer, nonintoxicating craft beer, wine, or liquor.

(i) A license issued under this section and the licensee are subject to all other provisions of this article and the rules and orders of the commissioner: *Provided*, That the commissioner may by rule or order allow certain waivers or exceptions with respect to those provisions, rules, or orders as the circumstances of each private fair and festival require, including without limitation, the right to revoke or suspend immediately any license issued under this section prior to any notice or hearing, notwithstanding §60-7-13a of this code: *Provided, however*, That under no circumstances may

the provisions of §60-7-12 of this code be waived or an exception granted with respect thereto.

(j) During events authorized by this section, licensees may also sell promotional and other items relating to promoting their business and its products.

**§60-7-8f. Private delivery license for a licensed private club restaurant, private manufacturer club, or a third party; requirements; limitations; third party license fee; private cocktail delivery permit; and requirements.**

(a) A licensed private club restaurant or private manufacturer club licensed to sell liquor for on-premises consumption may apply for a private delivery license permitting the order, sale, and delivery of liquor and a nonalcoholic mixer or beverage in a sealed craft cocktail growler, when separately licensed for craft cocktail growler sales. The order, sale, and delivery of a sealed craft cocktail growler is permitted for off-premises consumption when completed by the licensee to a person purchasing the craft cocktail growler through a telephone, a mobile ordering application, or web-based software program, authorized by the licensee's license. There is no additional fee for a licensed private club restaurant or private manufacturer club to obtain a private delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for liquor sales or distribution, may apply for a private delivery license for the privilege of ordering and delivery of craft cocktail growlers, from a licensee with a craft cocktail growler license. The order and delivery of a sealed craft cocktail growler is permitted by a third party who obtains a license under this section when a private club restaurant or private manufacturer club sells to a person purchasing the sealed craft cocktail growler through telephone orders, a mobile ordering application, or a web-based software program. The private delivery license nonprorated, nonrefundable annual fee is \$200 for each third party entity, with no limit on the number of drivers and vehicles.



(c) The private delivery license application shall comply with licensure requirements in this article and shall require any information required by the commissioner; *Provided*, That the license application may not require a third party applicant to furnish information pursuant to §60-7-12 of this code.

(d) *Sale Requirements.* —

(1) The craft cocktail growler purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of the prepared food or a meal, and craft cocktail growler by the licensed private club restaurant, private manufacturer club, or third party private delivery licensee;

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this chapter for the sale of alcoholic liquors and as set forth in §11-16-1 *et seq.* of the code for nonintoxicating beer or nonintoxicating craft beer.

(3) ‘Prepared food or a meal’ for this article, means food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of multiple sealed craft cocktail growlers for each order of food or meal; *Provided*, That the entire delivery order may not contain any combination of craft cocktail growlers of more than 128 fluid ounces total; and

(5) A third party private delivery licensee shall not have a pecuniary interest in a private club restaurant or private manufacturer club licensee, as set forth in this article. A third party private delivery licensee may only charge a convenience fee for the delivery of any alcohol. The third party private delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol, but may continue to collect a percentage of the delivery order directly related to the prepared food or a meal. The

convenience fee charged by the third-party private delivery licensee to the purchasing person shall be no greater than ~~five dollars~~ \$20 per delivery order where a craft cocktail growler is ordered by the purchasing person. For any third party licensee also licensed for wine growler delivery as set forth in §60-8-6c of the code, or nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed ~~five dollars~~ \$20.

*(e) Craft Cocktail Growler Delivery Requirements. —*

(1) Delivery persons employed for the delivery of a sealed craft cocktail growler shall be 21 years of age or older. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. The licensee shall submit certification of the training to the commissioner;

(3) The third party delivery licensee or the private club restaurant or private manufacturing club shall hold a private cocktail delivery permit for each vehicle delivering a craft cocktail growler pursuant to subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure.

(4) Prepared food or a meal, and a sealed craft cocktail growler order delivered by a third party private delivery licensee, a private club restaurant, or private manufacturer club may occur in the county or contiguous counties where the licensed private club restaurant or private manufacturer club is located;

(5) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee may only deliver prepared food or a meal, and a sealed craft cocktail growler to

addresses located in West Virginia. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall account for and pay all sales and municipal taxes;

(6) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee may not deliver prepared food or a meal, and a sealed craft cocktail growler to any other licensee;

(7) Deliveries of prepared food or a meal, and a sealed craft cocktail growler are only for personal use, and not for resale; and

(8) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall not deliver and leave the prepared food or a meal, and a sealed craft cocktail growler at any address without verifying a person's age and identification as required by this section.

*(f) Telephone, mobile ordering application, or web-based software requirements. —*

(1) The delivery person may only permit the person who placed the order through a telephone order, a mobile ordering application, or web-based software to accept the prepared food or meal and a craft cocktail growler delivery, subject to age verification upon delivery with the delivery person's visual review and age verification ~~and, as application, a stored scanned image of the purchasing person's legal identification;~~

(2) Any mobile ordering application or web-based software used ~~shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and~~ shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's ~~legal~~ identification and details of the sale, accessible by the delivery driver for verification, ~~and~~ shall

include the delivery driver's name and vehicle information, and delivery shall be subject to legal identification verification;

(4) All records are subject to inspection by the commissioner. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall retain records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) The third party private delivery licensee or the private club restaurant or private manufacturing club shall hold a valid private cocktail delivery permit under subsection (g) of this section for each vehicle used for delivery: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure.

*(g) Private Cocktail Delivery Permit. —*

(1) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and a sealed craft cocktail growler, subject to the requirements of this article.

(2) A third party private delivery licensee, a private club restaurant, or private manufacturer club licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private cocktail delivery permit shall meet the requirements of a transportation permit authorizing the permit holder to transport liquor subject to the requirements of this chapter.

*(h) Enforcement. —*

(1) The third party private delivery licensee, the private club restaurant, or the private manufacturers club licensed by this section are responsible for any violations committed by their

employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a craft cocktail growler. The licensees in violation are subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

#### **§60-7-17. Repealer.**

[Repealed.]

### **ARTICLE 8. SALE OF WINES.**

#### **§60-8-6c. Winery and farm winery license to sell wine growlers and provide complimentary samples prior to purchasing a wine growler.**

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of wine and its industry in this state to protect the public health, welfare, and safety of the citizens of this state, and promote hospitality and tourism. Therefore, this section authorizes a licensed winery or farm winery with its principal place of business and manufacture located in this state to have certain abilities to promote the sale of wine manufactured in this state for the benefit of the citizens of this state, the state's growing wine industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of wine.* — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may, when licensed under this section, offer only wine manufactured by the licensed winery or farm winery for retail sale to customers from the winery or farm winery's licensed premises for consumption off of the licensed premises only in the form of original container sealed wine kegs, wine bottles, or wine cans, or also a sealed wine growler for personal consumption, and not for resale. A licensed winery or farm winery may not sell, give, or furnish wine for consumption on the premises of the principal place of business and manufacture located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (c) of this section or unless separately licensed as a private wine restaurant or a private manufacturer club.

(c) *Complimentary samples.* — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may offer complimentary samples of wine as set forth in §60-4-3b of this code.

(d) *Retail sales.* — Every licensed winery or farm winery under this section shall comply with all the provisions of this article as applicable to wine retailers when conducting wine growler sales and is subject to all applicable requirements and penalties in this article.

(e) *Payment of taxes and fees.* — A winery or farm winery licensed under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and shall meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) *Advertising.* — A winery or farm winery under this section may advertise a particular brand or brands of wine produced by the licensed winery or farm winery and the price of the wine subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(g) *Wine Growler defined.* — For purposes of this section and section §60-8-6d of the code, 'wine growler' means a container or

jug that is made of glass, ceramic, metal, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and is capable of being securely sealed. The growler may be used by an authorized licensee for purposes of off-premises sales only of wine for personal consumption, and not for resale. The wine served and sold in a sealed wine growler may include ice or water mixed with the wine to create a frozen alcoholic beverage. Any frozen alcoholic beverage machine used for filling wine growlers shall be sanitized daily and shall be under control and served by the licensee from the secure area. Notwithstanding any other provision of this code to the contrary, a securely sealed wine growler is not an open container under state and local law. A wine growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. For purpose of this article, a secure seal means using a tamper evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of wine growler to form a seal that ~~must~~ shall be broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the wine growler is opened.

(h) *Wine Growler requirements.* — A winery or farm winery licensed under this section shall prevent patrons from accessing the secure area where the winery or farm winery fills a wine growler and prevent patrons from filling a wine growler. A licensed winery or farm winery under this section shall sanitize, fill, securely seal, and label any wine growler prior to its sale. A licensed winery or farm winery under this section may refill a wine growler subject to the requirements of this section. A winery or farm winery shall visually inspect any wine growler before filling or refilling it. A winery or farm winery may not fill or refill any wine growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

(i) *Wine Growler labeling.* — A winery or farm winery licensed under this section selling wine growlers shall affix a conspicuous label on all sold and securely sealed wine growlers listing the name of the licensee selling the wine growler, the brand of the wine in the wine growler, the alcohol content by volume of

the wine in the wine growler, and the date the wine growler was filled or refilled. All labeling on the wine growler shall be consistent with all federal labeling and warning requirements.

(j) *Wine Growler sanitation.* — A licensed winery or farm winery authorized under this section shall clean and sanitize all wine growlers it fills or refills in accordance with all state and county health requirements prior to its filling and sealing. In addition, the licensed winery or farm winery shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under this article.

(k) *Fee.* — There is no additional fee for a licensed winery or farm winery authorized under this section to sell wine growlers, but the licensee shall meet all other requirements of this section.

(l) *Limitations on licensees.* — To be authorized under this section, a licensed winery or farm winery may not produce more than 10,000 gallons of wine per calendar year at the winery or farm winery's principal place of business and manufacture located in the State of West Virginia. A licensed winery or farm winery authorized under this section is subject to the applicable penalties under this article for violations of this section.

(m) *Rules.* — The commissioner, in consultation with the Bureau for Public Health, may propose legislative rules concerning sanitation for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

**§60-8-6e. Private wine delivery license for a licensed Class A wine licensee or a third party; requirements; limitations; third party license fee; private retail transportation permit; and requirements.**

(a) A Class A wine licensee who is licensed to sell wine for on-premises consumption may apply for a private wine delivery license permitting the order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine



growlers, when separately licensed for wine growler sales. The order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the wine through a telephone, mobile ordering application, or web-based software program, authorized by the licensee's license. There is no additional fee for a Class A wine licensee to obtain a private wine delivery license. The order, sale, and delivery process must meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for wine sales or distribution, may apply for a private wine delivery license for the privilege of ordering and delivery of wine in the original container of sealed bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted by a third party licensee when sold by a Class A wine licensee to a person purchasing the wine through telephone orders, mobile ordering application, or web-based software program for off-premises consumption. The private wine delivery license non-prorated, nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private wine delivery license application shall comply with licensure requirements in this article and shall contain any information required by the commissioner.

(d) *Sale Requirements.* —

(1) The wine purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of prepared food or a meal, and sealed wine by the licensee or third-party licensee.

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of wine.

(3) 'Prepared food or a meal' for this article, means food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of no more than 384 fluid ounces of wine per delivery order; and

(5) A third-party private wine delivery licensee may not have a pecuniary interest in a Class A wine licensee, as set forth in this article. A third-party private wine delivery licensee may only charge a convenience fee for the delivery of wine as provided in this section. The third-party private wine delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol but may collect a percentage of the delivery order directly related to prepared food or a meal. The convenience fee charged by the third-party private wine delivery licensee to the purchasing person may be no greater than ~~five dollars~~ \$20 per delivery order where wine is ordered by the purchasing person. For any third-party private wine delivery licensee also licensed for nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed ~~five dollars.~~ \$20.

*(e) Private Wine Delivery Requirements. —*

(1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or older. The third-party private wine delivery licensee or a Class A wine licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The third-party private wine delivery licensee or the Class A wine licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. The third-party private wine delivery licensee shall submit certification of the training to the commissioner;

(3) The third party private wine delivery licensee or Class A wine licensee shall hold a retail transportation permit for each vehicle delivering sealed wine per subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) Delivery of food or a meal, and sealed wine orders by a third-party private wine delivery licensee or Class A wine licensee may occur in the county or contiguous counties where the wine licensee is located;

(5) The third-party private wine delivery licensee or Class A wine licensee may only deliver prepared food or a meal and sealed wine to addresses located in West Virginia. The third-party private wine delivery licensee or Class A wine licensee shall account for and pay all sales and municipal taxes;

(6) The third-party private wine delivery licensee or Class A wine licensee may not deliver prepared food or a meal, and sealed wine to any other wine licensees;

(7) Deliveries of food or a meal, and sealed wine are only for personal use, and not for resale; and

(8) The third-party private wine delivery licensee or Class A wine licensee shall not deliver and leave deliveries of prepared food or a meal, and sealed wine any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements.* —

(1) The delivery person shall only permit the person who placed the order through a telephone order, a mobile ordering application, or web-based software to accept the prepared food or meal, and wine delivery which is subject to age verification upon delivery with the delivery person's visual review and verification ~~and, as applicable, a stored scanned image of the purchasing person's legal identification;~~

(2) Any mobile ordering application or web-based software used ~~shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and~~ shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's ~~legal~~ identification and details of the sale, accessible by the delivery driver for verification, ~~and~~ shall include the delivery driver's name and vehicle information, and delivery shall be subject to legal identification verification;

(4) All records are subject to inspection by the commissioner, and the third-party private wine delivery licensee and Class A wine licensee shall retain the records for inspection for three years. The third-party private wine delivery licensee or Class A wine licensee may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering wine shall be issued a private wine retail transportation permit per subsection (g) of this section.

*(g) Private Wine Retail Transportation Permit. —*

(1) A Class A wine licensee or a third-party private wine delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and sealed wine.

(2) A Class A wine licensee or a third-party private wine delivery licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private wine retail transportation permit shall meet the requirements of a transportation permit authorizing the permit holder to transport wine subject to the requirements of this chapter.

*(h) Enforcement. —*

(1) The licensee or the third-party private wine delivery licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a wine bottle, wine can, or wine growler. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

**§60-8-6f. Private wine delivery license for a licensed Class B wine licensee or a third party; requirements; limitations; third party license fee; private retail transportation permit; and requirements.**

(a) A Class B wine licensee who is licensed to sell wine for on-premises consumption may apply for a private wine delivery license permitting the order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers, when separately licensed for wine growler sales. The order, sale, and delivery of wine in the original container of sealed bottles, cans, or sealed wine growlers is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the wine through a telephone order, a mobile ordering application, or web-based software program, as authorized by the licensee's license. There is no additional fee for a Class B wine licensee to obtain a private wine delivery license. The order, sale, and delivery process shall meet

the requirements of this section, and subject to the penalties of this article.

(b) A third party, not licensed for wine sales or distribution, may apply for a private wine delivery license for the privilege of the ordering and delivery of wine in the original container of sealed bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted for off-premises consumption by a third party licensee when sold by a Class B wine licensee to a person purchasing the wine through telephone orders, mobile ordering application, or web-based software program. The private wine delivery license non-prorated, nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private wine delivery license application shall comply with licensure requirements in this article and shall contain any information required by the commissioner.

(d) *Sale Requirements.* —

(1) The wine purchase may accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and sealed wine by the licensee or third-party private wine delivery licensee.

(2) Any purchasing person must be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of wine.

(3) Food, for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of food and any combination of sealed wine bottles, cans, or growlers shall not be in excess of 384 fluid ounces of wine; and

(5) A third-party private wine delivery licensee shall not have a pecuniary interest in a Class B wine licensee, as set forth in this article. A third-party private wine delivery licensee may only charge a convenience fee for the delivery of wine. The third-party private wine delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol but may collect a percentage of the delivery order directly related to food only. ~~The convenience fee charged by the third-party private wine delivery licensee to the purchasing person shall be no greater than five dollars per delivery order where wine is ordered by the purchasing person. For any third-party licensee also licensed for nonintoxicating beer or nonintoxicating craft beer delivery as set forth in §11-16-6f of the code, the total convenience fee of any order, sale, and delivery shall not exceed five dollars. The~~ The convenience fee charged by the third-party private wine delivery licensee to the purchasing person shall be no greater than \$20 per delivery order where wine is ordered by the purchasing person. For any third-party licensee also licensed for nonintoxicating beer or nonintoxicating craft beer delivery as set forth in §11-16-6f of the code, the total convenience fee of any order, sale, and delivery shall not exceed \$20.

*(e) Private Wine Delivery Requirements. —*

(1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or older. The third-party private wine delivery licensee or a Class B wine licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The third-party private wine delivery licensee or Class B wine licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and certification. The third-party private wine delivery licensee or Class B wine licensee shall submit certification of the training to the commissioner;

(3) The third party delivery licensee or Class B wine licensee must hold a retail transportation permit for each vehicle delivering sealed wine as required by subsection (g) of this section: *Provided,*

That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) The third-party private wine delivery licensee or Class B wine licensee may only deliver food and sealed wine orders by a third-party private wine delivery licensee or Class B wine licensee in the county where the wine licensee is located;

(5) The third-party private wine delivery licensee or Class B wine licensee may only deliver food and sealed wine to addresses located in West Virginia with all sales and municipal taxes accounted for and paid;

(6) A third-party private wine delivery licensee or Class B wine licensee may not deliver food and sealed wine to any other wine licensees;

(7) Deliveries of food and sealed wine are only for personal use, and not for resale; and

(8) A third-party private wine delivery licensee or Class B wine licensee shall not deliver and leave food and sealed wine at any address without verifying a person's age and identification as required by this section.

*(f) Telephone, mobile ordering application, or web-based software requirements. —*

(1) The delivery person shall only permit the person who placed the order through a telephone, a mobile ordering application, or web-based software to accept the food and wine delivery which is subject to age verification upon delivery with the delivery person's visual review and verification ~~and, as applicable, a stored scanned image of the purchasing person's legal identification;~~

(2) Any mobile ordering application or web-based software used shall ~~create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall~~ include the delivery



driver's name and vehicle information and delivery shall be subject to legal identification verification;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's ~~legal~~ identification and details of the sale, accessible by the delivery driver for verification, ~~and~~ must include the delivery driver's name and vehicle information, and delivery shall be subject to legal identification verification;

(4) All records are subject to inspection by the commissioner. The third-party private wine delivery licensee or Class B wine licensee shall retain the records for inspection for three years. The third-party private wine delivery licensee or Class B wine licensee may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering wine shall be issued a private wine retail transportation permit under subsection (g) of this section.

*(g) Private Wine Retail Transportation Permit. —*

(1) A Class B wine licensee or third party private wine delivery licensee shall obtain and maintain a retail transportation permit for the delivery of food and wine.

(2) A Class B wine licensee or third party private wine delivery licensee shall provide vehicle and driver information requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private wine retail transportation permit shall meet the requirements of a transportation permit authorizing the permit holder to transport wine subject to the requirements of this chapter.

*(h) Enforcement. —*

(1) The licensee or third-party private wine delivery licensee are each responsible for any violations committed by their employees or agents under this article, and more than one violation

may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a wine bottle, wine can, or wine growler. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY, AND DECENCY.**

#### **§61-8-27. Unlawful admission of children to dance house, etc.; penalty.**

Any proprietor or any person in charge of a dance house, concert saloon, theater, museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors are sold or given away, or any place of entertainment injurious to health or morals who admits or permits to remain therein any minor under the age of 18 years, unless accompanied by his or her parent or guardian, is guilty of a misdemeanor and, ~~on~~ upon conviction thereof, shall be punished by a fine not exceeding \$200: *Provided*, That there is exemption from this prohibition for: (a) A private bakery, private cigar shop, private caterer, private club restaurant, private manufacturer club, private fair and festival, private resort hotel, private hotel, private golf club, private food truck, private nine-hole golf course, private tennis club, private wedding venue or barn, private outdoor dining and private outdoor street dining, private multi-vendor fair and festival license, private farmers

market, private college sports stadium or coliseum, private professional sports stadium, and a private multi-sports complex licensed pursuant to §60-7-1 *et seq.* of this code and in compliance with ~~§60-7-2(f)(115), §60-7-2(h)(42), §60-7-2(i)(8), §60-7-2(j)(7), §60-7-2(k)(84), §60-7-2(l)(8), §60-7-2(m)(7), §60-7-2(n)(78), §60-7-2(o)(8), §60-7-2(p)(87), §60-7-2(q)(128), §60-7-2(r)(8), §60-7-2(s)(97), §60-7-2(6)(iv), §60-7-2(7)(D), §60-7-2(8)(I), §60-7-2(10)(L), §60-7-2(11)(D), §60-7-2(12)(H), §60-7-2(13)(6), §60-7-2(14)(H), §60-7-2(15)(H), §60-7-2(16)(G), §60-7-2(17)(G), §60-7-2(18)(H), §60-7-2(19)(H), §60-7-2(20)(H), §60-7-2(21)(L), §60-7-2(22)(H), §60-7-2(23)(H), §60-7-8c(b)(14), §60-7-8d, and §60-8-32a~~ of this code; or (b) a private club with more than 1,000 members that is in good standing with the Alcohol Beverage Control Commissioner, that has been approved by the Alcohol Beverage Control Commissioner; and which has designated certain seating areas on its licensed premises as nonalcoholic liquor and nonintoxicating beer areas, as noted in the licensee's floorplan, by using a mandatory carding or identification program by which all members or guests being served or sold alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer are asked and required to provide their proper identification to verify their identity and further that they are of legal drinking age, 21 years of age or older, prior to each sale or service of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer."

And,

The further title amendment sponsored by Delegate Steele, amending the title of the bill to read as follows:

**H. B. 4848** – "A Bill to repeal §60-7-17 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-16-5a, to amend and reenact §11-16-6d, §11-16-6f, and §11-16-8 of said code; to amend said code by adding thereto a new section designated §60-1-3a; to amend said code by adding thereto a new section, designated §60-3-26; to amend and reenact §60-3A-3a, §60-3A-3b, §60-3A-8, and §60-3A-17 of said code; to amend and reenact §60-4-22 and §60-4-23 of said code; to amend and reenact §60-6-24 of said code; to amend and reenact §60-7-2, §60-7-6, §60-7-8a, and 60-7-8f of said code;

to amend said code by adding thereto a new section designated §60-7-2a; to amend and reenact §60-8-6c, §60-8-6e, and §60-8-6f of said code; and to amend and reenact §61-8-27 of said code, all relating to nonintoxicating beer, wine, and liquor licenses and requirements; clarifying that licenses are not required to place nonintoxicating beer, wine, and liquor in a bag after purchase; removing requirement that servers at a sampling have specific knowledge of the West Virginia product being sampled; providing for modification of the 300 foot requirement to 200 feet with the option for a college, university, or church to provide a written waiver; directing the Commissioner of the Alcoholic Beverage Control Administration to discontinue the state's acquisition of alcoholic liquors manufactured in the Russian Federation or by any person or entity located therein; establishing duration of the ban; authorizing the commissioner, at the Governor's direction, to sell or auction alcoholic liquors made in the Russian Federation or under the authority of a business located within the federation with the proceeds going to charitable organizations assisting the people of Ukraine; increasing the maximum convenience fee charge for delivery of nonintoxicating beer and alcoholic liquors to \$20; removing delivery provisions requiring storage of a scanned image of legal identification but requiring review of legal identification for nonintoxicating beer and alcoholic liquors; increasing the markup to private clubs from 110 percent to 115 percent; clarifying licensure requirements for nonintoxicating beer and alcoholic liquors; clarifying licensure requirements for wholesale representatives; removing prohibition against an elected official or his or her relative being employed as a wholesale representative; repealing an exotic entertainment; revising the blood alcohol chart; creating a license for a private bakery to produce confections with alcohol added, setting forth license requirements and setting a license fee; creating a license for a private cigar shop to, where legally permissible, permit the sale of alcohol, food, and cigars for on-premises consumption, setting forth license requirements and setting a license fee; creating a license for a private college sports stadium for alcohol sales in certain areas of Division I, II, or III sports stadiums, setting forth license requirements, and setting a license fee; allowing private multi-sport complex to also serve nonintoxicating beer and nonintoxicating craft beer from a golf

cart; creating a license for a private food truck to conduct food and alcohol sales at various locations where permitted by a county or municipality, setting forth license requirements and setting a license fee; permitting private hotels and private resort hotels to apply for a private caterer license; authorizing private hotels and private resort hotels to utilize in-room mini bars for limited nonintoxicating beer and alcoholic liquor sales to adults 21 years of age or over, and setting forth requirements; removing language automatically repealing inconsistent code language; authorizing wine growler sales where wine may be mixed with ice and water by the licensee to produce a frozen alcoholic beverage for sale by the licensee in sealed wine growlers, and additional requirements; and providing additional exceptions to the criminal penalty for the unlawful admission of children to a dance house or other places of entertainment for certain private clubs with an age verification system.”

Delegate Hansen requested that the amendment be read.

Subsequently, in the absence of objection, the request by Delegate Hansen as well as a motion to not have the amendment read were withdrawn.

On adoption on the motion to concur with further amendment, the same was put and prevailed.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 662**), and there were—yeas 58, nays 37, absent and not voting 5, with the nays and the absent and not voting being as follows:

Nays: Barnhart, Boggs, Burkhammer, Conley, Cooper, Fast, Ferrell, Griffith, Hanna, Haynes, Honaker, Hott, D. Jeffries, J. Jeffries, Jennings, Keaton, D. Kelly, Kessinger, Kimble, Kimes, Longanacre, Mandt, Mazzocchi, McGeehan, Miller, Pack, Paynter, Pinson, Rohrbach, Rowan, Toney, Wamsley, B. Ward, G. Ward, Worrell, Zatezalo and Hanshaw (Mr. Speaker).

Absent and Not Voting: Bridges, Capito, Fleischauer\*, Martin and Walker.

[\*Note: Delegate Fleischauer subsequently announced that her “Yea” vote did not register on Roll No. 662 and the Speaker directed that it be noted in the Journal.]

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4848) passed.

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

A message from the Senate, by

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

**Com. Sub. for S. B. 6**, Establishing common law ‘veil piercing’ claims not be used to impose personal liability.

On motion of Delegate Kessinger, the House of Delegates concurred in the following Senate title amendment:

**Com. Sub. for S. B. 6** – “A Bill to amend and reenact §31B-3-303 of the Code of West Virginia, 1931, as amended, relating to the applicability of ‘corporate veil piercing’ analysis to impose personal liability on a member or manager of a limited liability company; clarifying that members or managers of a limited liability company are not personally liable for fines, fees, or penalties individually assessed against another member or manager for unrelated acts; establishing the intent and policy of the Legislature to modify the applicability of ‘corporate veil piercing’ analysis adopted in *Joseph Kubican v. The Tavern, LLC*, 232 W.Va. 268, 752 S.E.2d 299 (2013) with respect to certain claims against a limited liability company; clarifying circumstances in which members of a limited liability company may be held liable in their capacity as members for debts, obligations, or liabilities of the company; establishing criteria required for court to apply

‘corporate veil piercing analysis’ in certain claims asserted against a limited liability company; providing for liability of non-human members of a limited liability company under doctrine of joint enterprise liability; providing for liability of a member of a limited liability company as a tortfeasor; authorizing a creditor of a limited liability company to seek ‘clawback’ from a member of limited liability company under certain circumstances; and defining terms.”

The bill, as amended by the House, and further amended by the Senate, was put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 663**), and there were—yeas 77, nays 18, absent and not voting 5, with the nays and the absent and not voting being as follows:

Nays: Barach, Brown, Diserio, Doyle, Fast, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Lovejoy, Pushkin, Skaff, Thompson, Williams, Young and Zukoff.

Absent and Not Voting: Bridges, Martin, Smith, Summers and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 6) passed.

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

A message from the Senate, by

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

**S. B. 253**, Relating to voting precincts and redistricting.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

**§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map.**

(a) The precinct is the basic territorial election unit. The county commission shall divide each magisterial district of the county into election precincts, shall number the precincts, shall determine, and establish the boundaries thereof and shall designate one voting place in each precinct, which place shall be established as nearly as possible at the point most convenient for the voters of the precinct. Each magisterial district shall contain at least one voting precinct and each precinct shall have but one voting place therein.

Each precinct within any urban center shall contain not less than 300, nor more than 1,500 registered voters. Each precinct in a rural or less thickly settled area shall contain not less than 200, nor more than 700 registered voters. A county commission may permit the establishment or retention of a precinct less than the minimum numbers allowed in this subsection upon making a written finding that to do otherwise would cause undue hardship to the voters. If, at any time the number of registered voters ~~exceeds~~ the maximum number specified, the county commission shall rearrange the precincts within the political division so that the new precincts each contain a number of registered voters within the designated limits: *Provided*, That any precincts with polling places that are within a one-mile radius of each other on or after July 1, 2014, may be consolidated, at the discretion of the county clerk and county commission into one or more new precincts that contain not more than 3,000 registered voters in any urban center, nor more than 1,500 registered voters in a rural or less thickly settled area: *Provided, however*, That no precincts may be consolidated pursuant to this section if the consolidation would create a geographical barrier or path of travel between voters in a precinct and their proposed new polling place that would create an undue hardship to voters of any current precinct.



If a county commission fails to rearrange the precincts as required, any qualified voter of the county may apply for a writ of mandamus to compel the performance of this duty: *Provided*, That when in the discretion of the county commission, there is only one place convenient to vote within the precinct and when there are more than 700 registered voters within the existing precinct, the county commission may designate two or more precincts with the same geographic boundaries and which have voting places located within the same building. The county commission shall designate alphabetically the voters who are eligible to vote in each precinct so created. Each precinct shall be operated separately and independently with separate voting booths, ballot boxes, election commissioners and clerks, and whenever possible, in separate rooms. No two precincts may use the same standard receiving board, except as permitted by the provisions of §3-1-30(j) of this code.

(b) In order to facilitate the conduct of local and special elections and the use of election registration records therein, precinct boundaries shall be established to coincide with the boundaries of any municipality of the county and with the wards or other geographical districts of the municipality, except in instances where found by the county commission to be wholly impracticable so to do. Governing bodies of all municipalities shall provide accurate and current maps of their boundaries to the clerk of any county commission of a county in which any portion of the municipality is located.

(c) To facilitate the federal and state redistricting process, precinct boundaries shall be comprised of intersecting geographic physical features or municipal boundaries recognized by the U. S. Census Bureau. For purposes of this subsection, geographic physical features include streets, roads, streams, creeks, rivers, railroad tracks, and mountain ridge lines. The county commission of every county shall modify precinct boundaries to follow geographic physical features or municipal boundaries recognized by the U.S. Census Bureau and submit changes to the ~~Joint Committee on Government and Finance by June 30, 2007, and by June 30, every ten calendar years thereafter~~ Secretary of State in

accordance with this section. The county commission shall also submit precinct boundary details to the U.S. Census Bureau upon request

(d) To facilitate the state's receipt of decennial census data from the U.S. Census Bureau which will include tabulation geography that supports the needs of the Legislature during the federal congressional and state legislative redistricting process, and the needs of county commissions during the magisterial district and precinct redistricting process:

(1) The Secretary of State shall serve as the Legislature's agent to the U.S. Census Bureau, the county commissions, and the clerks of the county commissions for purposes of Block Boundary Suggestion Project (Phase I), Voting District Project (Phase II), and Collection of Census Redistricting Plans (Phase IV), or their equivalents, of the U.S. Census Bureau's Redistricting Data Program for the federal decennial census. The Secretary of State may designate and utilize staff within his or her office to perform the technical responsibilities of this role.

(2) Each county commission shall submit on an ongoing basis to the Secretary of State its updated precincts and such other information as is sufficient to participate in the Block Boundary Suggestion Project (Phase I) and Voting District Project (Phase II), or their equivalents, of the Redistricting Data Program, including any verification phases. The Secretary of State shall coordinate with all counties for the submission and verification of such information. The Secretary of State shall compile the information submitted by the counties and shall submit and verify such information to the U.S. Census Bureau in compliance with the deadlines established by the U.S. Census Bureau for the Redistricting Data Program. The Secretary of State shall provide copies of such submission to the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Delegates, and the Minority Leader of the House of Delegates.

(3) Upon the conclusion of any federal congressional or state legislative redistricting process, the Legislature shall provide updated maps and accompanying technical files to the Secretary of

State. The Secretary of State shall submit such maps and accompanying technical files to the U.S. Census Bureau during its Collection of Census Redistricting Plans (Phase IV) of the Redistricting Data Program. The Secretary of State shall keep available at all times on its website, and during business hours in its office at the Capitol at a place convenient for public inspection, all current maps and accompanying technical files submitted by the Legislature. The Secretary of State shall maintain previous maps and technical files submitted by the Legislature in its records.

~~(d)~~ (e) The Each county commission shall keep available at all times during business hours in the courthouse at a place convenient for public inspection a map or maps of the county and municipalities with the current boundaries of all precincts and magisterial districts. Each county commission shall submit current maps and accompanying technical files to the Secretary of State upon updating its precincts and magisterial districts. The Secretary of State shall keep available at all times on its website, and during business hours in its office at the Capitol at a place convenient for public inspection, all current maps and accompanying technical files submitted by the counties. The Secretary of State shall maintain previous maps and accompanying technical files submitted by the counties in its records.”

And,

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

**S. B. 253** – “A Bill to amend and reenact §3-1-5 of the Code of West Virginia, 1931, as amended, relating to voting precincts and redistricting; relating generally to voting precincts and redistricting; requiring county commissions to submit precinct boundary modifications to the Secretary of State; designating the Secretary of State as the Legislature’s agent to the U.S. Census Bureau, county commissions, and clerks of county commissions during certain phases of the U.S. Census Bureau’s Redistricting Data Program; authorizing the Secretary of State to delegate technical responsibilities to staff; requiring county commissions to submit certain information to the Secretary of State on ongoing basis; requiring the Secretary of State to coordinate with counties;

requiring the Secretary of State to compile, submit, and verify certain information to the U.S. Census Bureau in compliance with certain deadlines; requiring the Secretary of State to provide copies to Legislative leadership; requiring the Legislature to provide certain maps and files to the Secretary of State at conclusion of federal congressional or state legislative redistricting; requiring the Secretary of State to provide updated maps and files to the U.S. Census Bureau; requiring the Secretary of State to make certain maps and files publicly available in physical office and on website; requiring the Secretary of State to maintain certain maps and files in its records; requiring county commissions to include magisterial districts in publicly available maps; and requiring county commissions to submit certain maps and files to Secretary of State.”

The bill, as amended by the House, and further amended by the Senate, was put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 664**), and there were—yeas 94, nays 2, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Fleischauer and Pushkin.

Absent and Not Voting: Kessinger, Martin, Walker and Young.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 253) passed.

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

A message from the Senate, by

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

**Com. Sub. for S. B. 312**, Authorization for Department of Revenue to promulgate legislative rules.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

On page four, section one, lines seventy-nine and eighty, by striking out the words “W.Va. Code §29A-3-1, then filed in the State Register.” and inserting in lieu thereof the following: “W.Va. Code §29A-3-1 *et seq.*, then filed in the State Register. The Commission is authorized to promulgate an emergency rule in the event of price changes from vendors affecting the routine warehousing charges.”

The bill, as amended by the House, and further amended by the Senate, was put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 665**), and there were—yeas 91, nays 6, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Burkhammer, Fast, Haynes, Miller, Paynter and Pinson.

Absent and Not Voting: Martin, Walker and Young.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 312) passed.

Delegate Summers moved that the bill take effect July 1, 2022.

On this question, the yeas and nays were taken (**Roll No. 666**), and there were—yeas 95, nays 1, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Fast.

Absent and Not Voting: Martin, Steele, Walker and Young.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 312) takes effect July 1, 2022.

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

A message from the Senate, by

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

**Com. Sub. for S. B. 487**, Relating to Revenue Shortfall Reserve Fund and Revenue Shortfall Reserve Fund – Part B.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 2. STATE BUDGET OFFICE.**

**§11B-2-20. Reduction of appropriations; powers of Governor; Revenue Shortfall Reserve Fund and permissible expenditures therefrom.**

(a) Notwithstanding any provision of this section, the Governor may reduce appropriations according to any of the methods set forth in sections twenty-one and twenty-two of this article. The Governor may, in lieu of imposing a reduction in appropriations, request an appropriation by the Legislature from the Revenue Shortfall Reserve Fund established in this section.

(b) The Revenue Shortfall Reserve Fund is continued within the State Treasury. The Revenue Shortfall Reserve Fund shall be funded continuously and on a revolving basis in accordance with this subsection up to an aggregate amount not to exceed thirteen percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended. The Revenue Shortfall Reserve Fund shall be funded as set forth in this subsection from surplus revenues, if any, in the State Fund, General Revenue, as the surplus revenues may accrue from time to time.

Within sixty days of the end of each fiscal year, the secretary shall cause to be deposited into the Revenue Shortfall Reserve Fund such amount of the first fifty percent of all surplus revenues, if any, determined to have accrued during the fiscal year just ended, as may be necessary to bring the combined balance of the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B to ~~thirteen~~ twenty percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended. If at the end of any fiscal year the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B ~~is~~ are funded at an a combined amount equal to or exceeding ~~thirteen~~ twenty percent of the state's General Revenue Fund budget for the fiscal year just ended, then there shall be no further deposit by the secretary under the provisions of this section of any surplus revenues as set forth in this subsection until ~~that the time that the~~ the combined balances of the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B ~~balance~~ is less than ~~thirteen~~ twenty percent of the total appropriations from the State Fund, General Revenue.

(c) Not earlier than November 1 of each calendar year, if the state's fiscal circumstances are such as to otherwise trigger the authority of the Governor to reduce appropriations under this section or section twenty-one or twenty-two of this article, then in that event the Governor may notify the presiding officers of both houses of the Legislature in writing of his or her intention to convene the Legislature pursuant to section nineteen, article VI of the Constitution of West Virginia for the purpose of requesting the introduction of a supplementary appropriation bill or to request a supplementary appropriation bill at the next preceding regular session of the Legislature to draw money from the surplus Revenue Shortfall Reserve Fund to meet any anticipated revenue shortfall. If the Legislature fails to enact a supplementary appropriation from the Revenue Shortfall Reserve Fund during any special legislative session called for the purposes set forth in this section or during the next preceding regular session of the Legislature, then the Governor may proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article. Should any amount drawn from the Revenue Shortfall Reserve Fund pursuant

to an appropriation made by the Legislature prove insufficient to address any anticipated shortfall, then the Governor may also proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article.

(d) Upon the creation of the fund, the Legislature is authorized and may make an appropriation from the Revenue Shortfall Reserve Fund for revenue shortfalls, for emergency revenue needs caused by acts of God or natural disasters or for other fiscal needs as determined solely by the Legislature.

(e) Prior to October 31 in any fiscal year in which revenues are inadequate to make timely payments of the state's obligations, the Governor may, by executive order, after first notifying the presiding officers of both houses of the Legislature in writing, borrow funds from the Revenue Shortfall Reserve Fund: *Provided*, That for the fiscal year 2014, pursuant to this subsection and subject to all other conditions, requirements and limitations set forth in this section, the Governor may borrow funds from the Revenue Shortfall Reserve Fund prior to the first day of April. The amount of funds borrowed under this subsection shall not exceed one and one-half percent of the general revenue estimate for the fiscal year in which the funds are to be borrowed, or the amount the Governor determines is necessary to make timely payment of the state's obligations, whichever is less. Any funds borrowed pursuant to this subsection shall be repaid, without interest, and redeposited to the credit of the Revenue Shortfall Reserve Fund within ninety days of their withdrawal.

(f) The Revenue Shortfall Reserve Fund – Part B is continued within the State Treasury. The Revenue Shortfall Reserve Fund – Part B shall consist of moneys transferred from the West Virginia Tobacco Settlement Medical Trust Fund pursuant to the provisions of section two, article eleven-a, chapter four of this code, repayments made of the loan from the West Virginia Tobacco Settlement Medical Trust Fund to the Physician's Mutual Insurance Company pursuant to the provisions of article twenty-f, chapter thirty-three of this code and all interest and other return earned on the moneys in the Revenue Shortfall Reserve Fund – Part B. Moneys in the Revenue Shortfall Reserve Fund – Part B may be



expended solely for the purposes set forth in subsection (d) of this section, subject to the following conditions:

(1) No moneys in the Revenue Shortfall Reserve Fund – Part B nor any interest or other return earned thereon may be expended for any purpose unless all moneys in the Revenue Shortfall Reserve Fund described in subsection (b) of this section have first been expended, except that the interest or other return earned on moneys in the Revenue Shortfall Reserve Fund – Part B may be expended as provided in subdivision (2) of this subsection;

(2) Notwithstanding any other provision of this section to the contrary, the Legislature may appropriate any interest and other return earned thereon that may accrue on the moneys in the Revenue Shortfall Reserve Fund – Part B after June 30, 2025, for expenditure for the purposes set forth in section three, article eleven-a, chapter four of this code; and

(3) Any appropriation made from Revenue Shortfall Reserve Fund – Part B shall be made only in instances of revenue shortfalls or fiscal emergencies of an extraordinary nature.

(g) Subject to the conditions upon expenditures from the Revenue Shortfall Reserve Fund – Part B prescribed in subsection (f) of this section, in appropriating moneys pursuant to the provisions of this section, the Legislature may in any fiscal year appropriate from the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B a total amount up to, but not exceeding, ten percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended.

(h) (1) Of the moneys in the Revenue Shortfall Reserve Fund, \$100 million, or such greater amount as may be certified as necessary by the Director of the Budget Office for the purposes of subsection (e) of this section, shall be made available to the West Virginia Board of Treasury Investments for management and investment of the moneys in accordance with the provisions of article six-c, chapter twelve of this code. All other moneys in the Revenue Shortfall Reserve Fund shall be made available to the West Virginia Investment Management Board for management and

investment of the moneys in accordance with the provisions of article six, chapter twelve of this code. Any balance of the Revenue Shortfall Reserve Fund, including accrued interest and other return earned thereon at the end of any fiscal year, does not revert to the General Fund but shall remain in the Revenue Shortfall Reserve Fund for the purposes set forth in this section.

(2) All of the moneys in the Revenue Shortfall Reserve Fund – Part B shall be made available to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of article six, chapter twelve of this code. Any balance of the Revenue Shortfall Reserve Fund – Part B, including accrued interest and other return earned thereon at the end of any fiscal year, shall not revert to the General Fund but shall remain in the Revenue Shortfall Reserve Fund – Part B for the purposes set forth in this section.”

And,

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

**Com. Sub. for S. B. 487-** “A Bill to amend and reenact §11B-2-20 of the Code of West Virginia, 1931, as amended, relating to the threshold which the secretary of the department of revenue is to annually deposit up to the first fifty percent of all surplus revenues, if any, determined to have accrued during the fiscal year just ended; raising the percentage of the threshold; and combining the totals of the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B Revenue for calculation of threshold.”

The bill, as amended by the House, and further amended by the Senate, was put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 667**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Walker and Young.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 487) passed.

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

On this question, the yeas and nays were taken (**Roll No. 668**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Walker and Young.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 487) takes effect from its passage.

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

### **Conference Committee Report**

Delegate Steele, from the committee of conference on matters of disagreement between the two houses, as to

**Eng. House Bill No. 4097**, To prohibit nonpublic funding sources for election administration and related expenses without prior written approval by the State Election Commission.

Submitted the following report, which was received:

Your committee of conference on the disagreeing votes of the two houses as to the amendments of the Senate to Engrossed House Bill No. 4097 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That the House agree to the amendments of the Senate to the bill and its title.

Respectfully submitted,

Brandon Steele  
*Chair.*

Josh Holstein  
Phillip Diserio

Ryan Weld  
*Chair.*

Mike Azinger  
Mike Woelfel

*Conferees on the part  
of the House of Delegates.*

*Conferees on the part of the  
Senate.*

Delegate Rowe arose to Point of Order regarding Joint Rule 3A.

The Speaker ruled that the point was not well taken.

On the question of adoption of the report of the Committee of Conference, the same was put and prevailed.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 669**), and there were—yeas 95, nays 1, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Fast.

Absent and Not Voting: Cooper, Hardy, Lovejoy and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (H. B. 4097) passed.

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

Delegate Foster, from the committee of conference on matters of disagreement between the two houses, as to

**Eng. Com. Sub for House Bill No. 4333**, Relating to the sunset of the Board of Hearing-Aid Dealers and Fitters.

Submitted the following report, which was received:

Your committee of conference on the disagreeing votes of the two houses as to the amendment of the Senate to House Bill 4333 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the Senate, striking out everything after the enacting clause, and agree to the same as follows:

**“ARTICLE 26. HEARING-AID DEALERS AND FITTERS.**

**§30-26-21. Sunset and transfer of duties provision; effective date.(a) The State Board of Hearing-Aid Dealers and Fitters established in this article shall terminate on June 30, 2023, unless continued by the Legislature. Pursuant to §4-10-12 and §4-10-13 of this code, the board shall commence all necessary activities pertinent to the wind-up of all board-related activities. Notwithstanding the termination of the board, the regulation and licensure of hearing aid fitters engaged in the practice of dealing in or fitting of hearing aids under §30-26-1 et seq. of this code shall continue with the exception of §30-26-17(6) of this code.**

**(b) Upon termination of the board, the West Virginia Board of Examiners for Speech-Language Pathology and Audiology shall supervise, regulate, and control the practice of dealing in or fitting of hearing aids in this state. Notwithstanding any other provision of code, hearing aids, mean any wearable device or instrument intended to aid, improve, or compensate for defective or impaired human hearing, may be advertised for mail-order sale in any advertising medium and sold by mail-order sale to any person in this state upon the effective date of this legislation.**

**ARTICLE 32. SPEECH LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.**

**§30-32-5. Board of Examiners for Speech-Language Pathology and Audiology.**

(a) The West Virginia Board of Examiners for Speech-Language Pathology and Audiology is continued. The members of the board in office on July 1, 2013, may, unless sooner removed, continue to serve until their respective terms expire or until their successors have been appointed and qualified.

(b) The board consists of the following members appointed by the Governor by and with the advice and consent of the Senate:

(1) ~~Two~~ Three persons who are licensed speech-language pathologists;

(2) Two persons who are licensed audiologists; ~~and~~

(3) One person who is a licensed hearing aid fitter; and

~~(3)~~ (4) One citizen member who is not licensed or registered under this article.

(c) The terms are for three years. No member may serve for more than two consecutive terms.

(d) Each licensed member of the board, at the time of his or her appointment, must have held a license in this state for at least three years.

(e) Each member of the board must be a resident of this state during the appointment term.

(f) No board member may serve as an officer of the West Virginia Speech Language and Hearing Association concurrently with his or her service on the board.

(g) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant.

(h) The Governor may remove any member from the board for neglect of duty, incompetency, or official misconduct.

(i) A licensed member of the board immediately and automatically forfeits membership to the board if his or her license or registration to practice is suspended or revoked.

(j) A member of the board immediately and automatically forfeits membership to the board if he or she is convicted of a felony under the laws of any jurisdiction or becomes a nonresident of this state.

(k) The board shall elect annually one of its members as chairperson and one of its members as secretary-treasurer who shall serve at the will and pleasure of the board.

(l) Each member of the board is entitled to receive compensation and expense reimbursement in accordance with §30-1-1 *et seq.* of this code.

(m) A majority of the members of the board constitutes a quorum.

(n) The board shall hold at least one annual meeting. Other meetings shall be held at the call of the chairperson or upon the written request of four members, at the time and place as designated in the call or request.

(o) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

(p) Board members are immune from civil liability for the performance of their official duties so long as they act in good faith.

### **§30-32-7. Rulemaking.**

(a) The board shall propose rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code, to implement the provisions of this article, including:

(1) Standards and requirements for licenses and registrations;

(2) Requirements, qualifications and designation of third parties to establish educational requirements and to prepare and/or administer examinations and reexaminations;

(3) Procedures for the issuance and renewal of a license, registration and provisional license;

(4) A fee schedule;

(5) Continuing education and competency requirements for licensees and registrants;

(6) Establishment of competency standards;

(7) The procedures for denying, suspending, revoking, reinstating or limiting the practice of a licensee or registrant;

(8) Requirements for reinstatement of revoked licenses and registrations;

(9) Guidelines for telepractice;

(10) Rules to define the role of the speech-language pathology assistant or audiology assistant, including, but not limited to:

(A) The supervision requirements of licensees;

(B) The ratio of assistants to licensees;

(C) The scope of duties and restrictions of responsibilities of assistants;

(D) The frequency, duration and documentation of supervision required under the provisions of this article; and

(E) The quantity and content of pre-service and in-service instruction.

(11) Professional conduct and ethical standards of practice; and

(12) Any other rules necessary to effectuate the provisions of this article.



(b) The board may promulgate emergency rules in accordance with §29A-3-15 of this code to establish requirements and procedures for telepractice in accordance with the provisions of this article, including the scope of duties and restrictions of assistants in telepractice.

(c) All rules in effect on January 1, 2013 shall remain in effect until they are amended or repealed, and references to provisions of former enactments of this article are interpreted to mean provisions of this article.

(d) All rules in effect upon the sunset or termination of the Board of Hearing Aid Dealers and Fitters shall remain in effect until those rules are amended or repealed by the Board of Examiners of Speech Language Pathology and Audiology in accordance with the provisions of §29A-3-1 of this code.

**§30-32-10a. Application for licensure; qualification for licensure; examination.**

(a) Each person desiring to obtain a license from the board to engage in the practice of dealing in or fitting of hearing aids shall make application to the board. The application shall be made in such manner and form as prescribed by the board and shall be accompanied by the prescribed fee. The application shall state under oath that the applicant:

(1) Is a resident of this state;

(2) Is free of a felony conviction bearing a rational nexus to the profession pursuant to §30-1-24 of this code

(3) Is 18 years of age or older;

(4) Has an education equivalent to a four-year course in an accredited high school; and

(5) Is free of chronic infectious or contagious diseases.

(b) The board, after first determining that the applicant is qualified and eligible to take the examination, shall notify the

applicant that he or she has fulfilled all of the qualifications and eligibility requirements as required and shall advise him or her of the date, time, and place for him or her to appear to be examined as required by the provisions of this article and the regulations promulgated by the board pursuant to this article. The board may promulgate rules relating to the frequency of examinations and other such related topics pursuant to §29A-3-1 of this code.

(c) Before obtaining a license to engage in the practice of dealing in or fitting of hearing- aids, an applicant must meet the following requirements:

(1) The applicant must pass the International Licensing Examination for Hearing Healthcare Professionals, prepared by the International Hearing Society, or an equivalent examination selected by the board.

(2) The applicant must pass a practical examination, which shall be a nationally recognized test selected by the board, or a test designed by the board to test the applicant's proficiency in the following techniques as they pertain to the fitting of hearing aids:

(A) Pure tone audiometry, including air conduction testing;

(B) Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing; and

(C) Masking when indicated and effective masking.

(3) The applicant must pass an examination, which shall be developed by the board, to test an applicant's competency in the following subjects:

(A) Ability to counsel the person or family who will receive the hearing aid relative to the care and use of the instrument;

(B) Knowledge regarding the medical and rehabilitative facilities for hearing-handicapped children and adults in the area being served;

(C) Knowledge and understanding of the grounds for revocation, suspension, or probation of a license as outlined in this article or in rule; and

(D) Knowledge and understanding of criminal offenses relating to the profession.

(d) The board may promulgate rules to implement the requirements of this section, including emergency rules promulgated pursuant to the provisions of §29A-3-1 of this code.

(e) The provisions of this section will take effect upon the sunset or termination of the Board of Hearing Aid Dealers and Fitters, which in no event will be later than July 1, 2023.

And,

That both houses recede from their respective positions as to the title of the bill, and agree to a new title, to read as follows:

**Eng. Com. Sub. for House Bill 4333** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-26-21; to amend and reenact §30-32-5 and §30-32-7 of said code; and to amend said code by adding thereto a new section, designated §30-32-10a, all relating to sunsetting the Board of Hearing-Aid Dealers and Fitters; directing wind up and termination of board; continuing licensure and regulation of hearing aid dealers and fitters under board until date of termination, with certain exception; permitting mail order or online sales of hearing aids; transferring licensure and regulation of hearing aid dealers and fitters to West Virginia Board of Examiners for Speech-Language Pathology and Audiology upon termination of Board of Hearing-Aid Dealers and Fitters; revising composition of Board of Examiners for Speech-Language Pathology and Audiology; providing for rules of Board of Hearing-Aid Dealers and Fitters in effect at board’s termination to remain in effect until amended or repealed by Board of Examiners for Speech-Language Pathology and Audiology; establishing process and qualifications for licensure of hearing aid dealers and fitters by Board of Examiners for Speech-Language Pathology and Audiology upon

termination or sunset of Board of Hearing-Aid Dealers and Fitters; and authorizing advertising and sale of hearing aids by mail upon effective date of legislation.”

Respectfully submitted,

Geoff Foster, *Chair*  
Doug Smith,  
Kayla Young,  
*Conferees on the part of*  
*the House of Delegates.*

Tom Takubo, *Chair*  
Jack Woodrum  
Robert H. Plymale,  
*Conferees on the part of*  
*the Senate.*

On the question of adoption of the report of the Committee of Conference, the same was put and prevailed.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 670**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Barrett, Burkhammer, Cooper, Hardy, Summers and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4333) passed.

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

At 10:08 p.m., the House of Delegates recessed for fifteen minutes.

### **Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4688**, Relating to Emergency Medical Services Retirement System Act.

On motion of Delegate Summers, the House concurred in the following amendment by the Senate, with further title amendment:

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

**ARTICLE 5V. EMERGENCY MEDICAL SERVICES  
RETIREMENT SYSTEM ACT.**

**§16-5V-2. Definitions.**

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) ‘Accrued benefit’ means on behalf of any member two and six 10ths percent per year of the member’s final average salary for the first 20 years of credited service. Additionally, two percent per year for 21 through 25 years and one and one-half percent per year for each year over 25 years will be credited with a maximum benefit of 67 percent. A member’s accrued benefit may not exceed the limits of section 415 of the Internal Revenue Code and is subject to the provisions of ~~section 12 of this article~~ §16-5V-12 of this code.

(1) The board may, upon the recommendation of the board’s actuary, increase the employees’ contribution rate to 10 and five-tenths percent should the funding of the plan not reach 70 percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and one-half percent once the plan funding reaches the 70 percent support objective as of any later actuarial valuation date.

(2) Upon reaching the 75 percent actuarial funded level, as of an actuarial valuation date, the board shall increase the two and six-tenths percent to two and three-quarter percent for the first 20 years of credited service. The maximum benefit will also be increased from 67 percent to 90 percent.

(b) 'Accumulated contributions' means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

(c) 'Active military duty' means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) 'Actuarial equivalent' means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article.

(e) 'Annual compensation' means the wages paid to the member during covered employment within the meaning of section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and section 401(a)(17) of the Internal Revenue Code.

(f) 'Annual leave service' means accrued annual leave.

(g) 'Annuity starting date' means the first day of the month for which an annuity is payable after submission of a retirement application. For purposes of this subsection, if retirement income payments commence after the normal retirement age, 'retirement' means the first day of the month following or coincident with the latter of the last day the member worked in covered employment

or the member's normal retirement age and after completing proper written application for retirement on an application supplied by the board.

(h) 'Board' means the Consolidated Public Retirement Board.

(i) 'Contributing service' or 'contributory service' means service rendered by a member while employed by a participating public employer for which the member made contributions to the plan.

(j) 'County commission or political subdivision' has the meaning ascribed to it in this code.

(k) 'Covered employment' means either: (1) Employment as a full-time emergency medical technician, emergency medical technician/paramedic or emergency medical services/registered nurse and the active performance of the duties required of emergency medical services officers; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by an emergency medical services officer in a job or jobs in addition to his or her employment as an emergency medical services officer where the secondary employment requires the emergency medical services officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the emergency medical services officer contributes to the fund created in this article the amount specified as the member's contribution in §16-5V-8 of this code.

(l) 'Credited service' means the sum of a member's years of service, active military duty, disability service and accrued annual and sick leave service.

(m) 'Dependent child' means either:

(1) An unmarried person under age 18 who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age 23:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(n) 'Dependent parent' means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(o) 'Disability service' means service received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(p) 'Early retirement age' means age 45 or over and completion of 20 years of contributory service.

(q) 'Effective date' means January 1, 2008.

(r) 'Emergency medical services officer' means an individual employed by the state, county or other political subdivision as a medical professional who is qualified to respond to medical emergencies, aids the sick and injured and arranges or transports to medical facilities, as defined by the West Virginia Office of Emergency Medical Services. This definition is construed to include employed ambulance providers and other services such as law enforcement, rescue or fire department personnel who



primarily perform these functions and are not provided any other credited service benefits or retirement plans. These persons may hold the rank of emergency medical technician/basic, emergency medical technician/paramedic, emergency medical services/registered nurse, or others as defined by the West Virginia Office of Emergency Medical Services and the Consolidated Public Retirement Board.

(s) ‘Employer error’ means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required. ~~A deliberate act contrary to the provisions of this article by a participating public employer does not constitute employer error.~~

(t) ‘Final average salary’ means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member’s last 10 years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member’s attainment of normal retirement age and during that period the member received disability benefits under this article, then ‘final average salary’ means the average of the monthly salary determined paid to the member during that period as determined under §16-5V-19 of this code multiplied by 12. Final average salary does not include any lump sum payment for unused, accrued leave of any kind or character.

(u) ‘Full-time employment’ means permanent employment of an employee by a participating public employer in a position which normally requires 12 months per year service and requires at least 1040 hours per year service in that position.

(v) ‘Fund’ means the West Virginia Emergency Medical Services Retirement Fund created by this article.

(w) 'Hour of service' means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §16-5V-19 or §16-5V-20 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission or political subdivision, irrespective of mitigation of damages. The same hours of service shall not be credited both under subdivision (1) or (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(x) 'Member' means a person first hired as an emergency medical services officer by an employer which is a participating public employer of the Public Employees Retirement System or the Emergency Medical Services Retirement System after the effective date of this article, as defined in subsection (q) of this section, or an emergency medical services officer of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to the effective date and who elects to become a member pursuant to this article. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(y) 'Monthly salary' means the W-2 reportable compensation received by a member during the month.

(z) 'Normal form' means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(aa) 'Normal retirement age' means the first to occur of the following:

(1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service, excluding active military duty, disability service and accrued annual and sick leave service;

(2) While still in covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory years of service equals or exceeds 70 years;

(3) While still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or

(4) Attainment of age 62 years and completion of five or more years of regular contributory service.

(bb) 'Participating public employer' means any county commission or political subdivision in the state which has elected to cover its emergency medical services officers, as defined in this article, under the West Virginia Emergency Medical Services Retirement System.

(cc) ~~'Political subdivision' means a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties,~~

~~cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any public corporation established under section four, article fifteen, chapter seven of this code is considered a political subdivision solely for the purposes of this article~~

~~(dd)~~ 'Plan' means the West Virginia Emergency Medical Services Retirement System established by this article.

~~(ee)~~ (dd) 'Plan year' means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

(ee) 'Political subdivision' means a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any public corporation established under §7-15-4 of this code is considered a political subdivision solely for the purposes of this article.

(ff) 'Public Employees Retirement System' means the West Virginia Public Employee's Retirement System created by West Virginia Code.

(gg) 'Regular interest' means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(hh) 'Required beginning date' means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age ~~seventy and one half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise separates from covered employment.

(ii) 'Retirant' means any member who commences an annuity payable by the plan.

(jj) 'Retire' or 'retirement' means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the plan.

(kk) 'Retirement income payments' means the monthly retirement income payments payable under the plan.

(ll) 'Spouse' means the person to whom the member is legally married on the annuity starting date.

(mm) 'Surviving spouse' means the person to whom the member was legally married at the time of the member's death and who survived the member.

(nn) 'Totally disabled' means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

For purposes of this subsection:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as an emergency medical services officer but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration.

(2) 'Physical or mental impairment' is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require

submission of a member's annual tax return for purposes of monitoring the earnings limitation.

(oo) 'Year of service' means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

| Hours of Service | Year of Service Credited. |
|------------------|---------------------------|
| Less than 500    | 0                         |
| 500 to 999       | 1/3                       |
| 1,000 to 1,499   | 2/3                       |
| 1,500 or more    | 1                         |

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §16-5V-19 or §16-5V-20 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date.

Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §16-5V-18 of this code or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section §16-5V-18 of this code or has prior to the effective date made the repayment pursuant to §5-10-18 of this code.

#### **§16-5V-6. Members.**

(a) Any emergency medical services officer first employed by a county or political subdivision in covered employment after the

effective date of this article or 911 personnel hired on or after July 1, 2022, by a participating public employer shall be a member of this retirement plan as a condition of employment and upon membership does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment: *Provided*, That any emergency medical services officer or 911 personnel who has concurrent employment in an additional job or jobs which would require the emergency medical services officer or 911 personnel to be a member of the West Virginia Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement System, or the West Virginia Natural Resources Police Officer Retirement System shall participate in only one retirement system administered by the board, and the retirement system applicable to the concurrent employment for which the employee has the earliest date of hire shall prevail.

(b) Any emergency medical services officer employed in covered employment by an employer which is currently a participating public employer of the Public Employees Retirement System shall notify in writing both the county commission in the county or officials in the political subdivision in which he or she is employed and the board of his or her desire to become a member of the plan by December 31, 2007. Any emergency medical services officer who elects to become a member of the plan ceases to be a member or have any credit for covered employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the emergency medical services officer remains employed in covered employment by an employer which is currently a participating public employer of this plan: *Provided*, That any emergency medical services officer who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is, from time to time, offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

(c) Any emergency medical services officer who was employed as an emergency medical services officer prior to the

effective date, but was not employed on the effective date of this article, shall become a member upon rehire as an emergency medical services officer. For purposes of this section, the member's years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless the emergency medical services officer has not received the return of his or her accumulated contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The member may request in writing to have his or her accumulated contributions and employer contributions from covered employment in the Public Employees Retirement System transferred to the plan. If the conditions of this subsection are met, all years of the emergency medical services officer's covered employment shall be counted as years of service for the purposes of this article.

(d) Any emergency medical services officer employed in covered employment on the effective date of this article who has timely elected to transfer into this plan as provided in subsection (b) of this section shall be given credited service at the time of transfer for all credited service then standing to the emergency medical services officer's service credit in the Public Employees Retirement System regardless of whether the credited service (as that term is defined in §5-10-2 of this code) was earned as an emergency medical services officer. All credited service standing to the transferring emergency medical services officer's credit in the Public Employees Retirement System at the time of transfer into this plan shall be transferred into the plan created by this article and the transferring emergency medical services officer shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring emergency medical services officer would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring emergency medical services officer receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article: *Provided*, That any member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection



(b) of this section may not, after having transferred into and becoming an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods in which the member was not in covered employment as an emergency medical services officer and which service was withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(e) Once made, the election made under this section is irrevocable. All emergency medical services officers employed by an employer which is a participating public employer of the Public Employees Retirement System after the effective date and emergency medical services officers electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by this article.

(f) Notwithstanding any other provisions of this article, any individual who is a leased employee is not eligible to participate in the plan. For purposes of this plan, a 'leased employee' means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

#### **§16-5V-6a. County Firefighter Members.**

(a) Notwithstanding any other provision of this article to the contrary, a person employed as a county firefighter may be a member of this retirement plan subject to the provisions of this section. Full-time employment as a county firefighter satisfies the definition of 'covered employment' as defined in this article.

(b) Any county firefighter first employed by a county after the effective date of the revisions to this article made in the 2022 legislative session, shall be a member of this retirement plan by virtue of that employment and upon membership does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered

employment: *Provided*, That if a member has concurrent employment in an additional job or jobs the relevant concurrent employment provisions of this code shall apply.

(c) Any county firefighter employed in covered employment by an employer which is currently a participating public employer of the Public Employees Retirement System shall notify in writing both the county commission in the county in which he or she is employed and the board of his or her desire to become a member of the plan by December 31, 2022. Any county firefighter who elects to become a member of the plan ceases to be a member or have any credit for covered employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the county firefighter remains employed in covered employment by an employer which is currently a participating public employer of this plan: *Provided*, That any county firefighter who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is, from time to time, offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire as a county firefighter.

(d) Any county firefighter who was employed as a county firefighter prior to the effective date, but was not employed on the effective date of this article, shall become a member upon rehire as a county firefighter. For purposes of this section, the member's years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless the county firefighter has not received the return of his or her accumulated contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The member may request in writing to have his or her accumulated contributions and employer contributions from covered employment in the Public Employees Retirement System transferred to the plan. If the conditions of this subsection are met, all years of the county firefighter's covered employment shall be counted as years of service for the purposes of this article.

(e) Any county firefighter employed in covered employment on the effective date of this article who has timely elected to transfer into this plan as provided in subsection (c) of this section shall be given credited service at the time of transfer for all credited service then standing to the county firefighter's service credit in the Public Employees Retirement System regardless of whether the credited service, as defined in §5-10-2 of this code, was earned as a county firefighter. All credited service standing to the transferring county firefighter's credit in the Public Employees Retirement System at the time of transfer into this plan shall be transferred into the plan created by this article and the transferring county firefighter shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring county firefighter would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring county firefighter receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article: *Provided*, That any member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (c) of this section may not, after having transferred into and becoming an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods in which the member was not in covered employment as a county firefighter and which service was withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(f) Once made, the election made under this section is irrevocable. All county firefighters employed by an employer which is a participating public employer of the Public Employees Retirement System after the effective date and county firefighters electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by this article.

**§16-5V-6b. Transfer of county firefighter member assets from Public Employees Retirement System.**

(a) The Consolidated Public Retirement Board shall, within one hundred eighty days of January 1, 2023, transfer assets from the Public Employees Retirement System Trust Fund into the West Virginia Emergency Medical Services Trust Fund.

(b) The amount of assets to be transferred for each transferring county firefighter shall be computed as of January 1, 2023, using July 1, 2022, actuarial valuation of the Public Employees Retirement System, and updated with 7.25 percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring county firefighter in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred the board shall:

(1) Compute the market value of the Public Employees Retirement System assets as of July 1, 2022, actuarial valuation date under the actuarial valuation approved by the board;

(2) Compute the actuarial accrued liabilities for all Public Employees Retirement System retirees, beneficiaries, disabled retirees and terminated inactive members as of July 1, 2022, actuarial valuation date;

(3) Compute the market value of active member assets in the Public Employees Retirement System as of July 1, 2022, by reducing the assets value under subdivision (1) of this subsection by the inactive liabilities under subdivision (2) of this subsection;

(4) Compute the actuarial accrued liability for all active Public Employees Retirement System members as of July 1, 2022, actuarial valuation date approved by the board;

(5) Compute the funded percentage of the active members' actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2022, by dividing the active members' market value of assets under subdivision (3) of this subsection by the active members' actuarial accrued liabilities under subdivision (4) of this subsection;

(6) Compute the actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2022, for active emergency medical services officers transferring to the Emergency Medical Services Retirement System;

(7) Determine the assets to be transferred from the Public Employees Retirement System to the Emergency Medical Services Retirement System by multiplying the active members' funded percentage determined under subdivision (5) of this subsection by the transferring active members' actuarial accrued liabilities under the Public Employees Retirement System under subdivision (6) of this subsection and adjusting the asset transfer amount by interest at 7.25 percent for the period from the calculation date of July 1, 2022, through the first day of the month in which the asset transfer is to be completed.

(c) Once a county firefighter has elected to transfer from the Public Employees Retirement System, transfer of that amount as calculated in accordance with the provisions of subsection (b) of this section by the Public Employees Retirement System shall operate as a complete bar to any further liability to the Public Employees Retirement System and constitutes an agreement whereby the transferring county firefighter forever indemnifies and holds harmless the Public Employees Retirement System from providing him or her any form of retirement benefit whatsoever until that emergency medical services officer obtains other employment which would make him or her eligible to reenter the Public Employees Retirement System with no credit whatsoever for the amounts transferred to the Emergency Medical Services Retirement System

**§16-5V-3131 How a county commission or political subdivision becomes a participating public employer. How a county commission, political subdivision, or county 911 public safety answering point becomes a participating public employer.**

Any county commission, or political subdivision, or county 911 public safety answering point employing emergency medical services officers or 911 personnel may by a three-fifths vote of its

governing body, or by a majority vote of its electors, elect to become a participating public employer and thereby include its emergency medical services officers and 911 personnel in the membership of the plan. The clerk or secretary of each such county commission, or political subdivision, or county 911 public safety answering point governing board electing to become a participating public employer shall certify the determination of the county commission, or political subdivision, or county 911 public safety answering point governing board to the Consolidated Public Retirement Board within 10 days from and after the vote of the governing body or the canvass of votes upon such action. Once a county commission, or political subdivision, or county 911 public safety answering point governing board elects to participate in the plan, the action is final and it may not, at a later date, elect to terminate its participation in the plan.”

And,

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

**Com. Sub. for H. B. 4688** – “A Bill to amend and reenact §16-5V-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5V-6 and §16-5V-31 of said code, all relating to the inclusion of newly hired 911 personnel as members of the Emergency Medical Services Retirement System; and to amend said code by adding thereto two new sections, designated §16-5V-6a and §16-5V-6b, authorizing county firefighters to be members of the Emergency Medical Services Retirement System; providing for transfer of assets pertaining to county firefighters; requiring certain computations to be made by the Consolidated Public Retirement Board; and terminating liability of the Public Employees Retirement System.”

With the further title amendment sponsored by Delegate Summers, amending the title of the bill to read as follows:

**Com. Sub. for H. B. 4688** – “A Bill to amend and reenact §16-5V-2, §16-5V-6 and §16-5V-31 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §16-5V-6a and §16-5V-6b, all relating to

the Emergency Medical Services Retirement System; defining terms; updating terms to comply with federal laws; authorizing certain 911 personnel and county firefighters to be members of the Emergency Medical Services Retirement System under certain circumstances; providing for transfer of assets pertaining to county firefighters; requiring certain computations to be made by the Consolidated Public Retirement Board; and terminating liability of the Public Employees Retirement System.”

The bill, as amended by the Senate, and further amended by the House, was put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 671**), and there were—yeas 92, nays none, absent and not voting 8, with the absent and not voting being as follows:

Absent and Not Voting: Brown, Cooper, Diserio, Fluharty, Hamrick, Thompson, Walker and Young.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4688) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 2910**, To modify the allowable number of magistrate judges per county.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 1. COURTS AND OFFICERS.****§50-1-2. Number of magistrates.**

(a) The number of magistrates to be elected in each county of this state shall be determined in accordance with the provisions of this section.

~~(b) The number of magistrates serving in each county of the state shall comport with the numbers certified by the Supreme Court of Appeals to the ballot commissioners of each county on or before January 31, 2000, for purposes of the primary and general elections to be held in the year 2000.~~

(b) The Supreme Court of Appeals shall conduct or otherwise arrange for a caseload study of the magistrate courts of this state for the purpose of determining how many magistrates are needed in each county. Based upon the results of this study and upon consideration of county population data from the most recent decennial census, the Supreme Court of Appeals shall enter an administrative order on or before January 5, 2023, containing the Supreme Court’s recommendations as to the number of magistrates who are needed in each of the state’s 55 counties for the four-year terms of office to be filled by election in the year 2024. The administrative order shall allocate no more than 170 magistrates for the entire State of West Virginia, nor shall the allocation reduce the number of magistrates in any county below that in effect on the effective date of the amendments to this section enacted during the 2022 regular session of the Legislature. Attested copies of the administrative order shall be provided to the President of the West Virginia Senate, the Clerk of the Senate, the Clerk and the Speaker of the West Virginia House of Delegates, and the West Virginia Secretary of State.

~~(c)(1) The Legislature finds that there exists among the various counties large and unwarranted disparities of caseload between the magistrate courts. The Legislature further finds that the disparity causes an inequity with regard to magistrate court resources and the ability of the courts to effectively meet the needs of the citizens of this state who need to avail themselves of this judicial resource.~~



~~The Legislature further finds that the system currently in place for allocating magistrate court resources which has been in effect since the year 1991 produces certain anomalies which cause quadrennial reallocation of magistrate resources based upon said anomalies which in turn cause a waste of funds, inequitable workloads, unnecessary shifting of resources and confusion among the various counties.~~

(c) The West Virginia Legislature may, in the regular session of the Legislature, 2023, reject the allocation of magistrates recommended by the Supreme Court and allocate magistrates for the four-year terms commencing in January of 2025 and serving through December of 2028, as the Legislature may choose by enactment of a bill containing such an allocation.

(d) If the Legislature does not enact a different allocation of the magistrates to be elected in 2024 pursuant to subsection (c) of this section, then the administrative order of the Supreme Court of Appeals required by subsection (b) of this section shall become the certification to the ballot commissioners of each county in this state of the number of magistrates to be elected in each county of this state at the judicial elections to be held concurrently with the primary election in 2024.

(e) The process set forth in this section shall be repeated every four years in the first and second years immediately preceding the quadrennial election of magistrates.

#### **§50-1-2a. Addition of magistrate in Berkeley County.**

(a) The Legislature hereby finds that, according to the statistics compiled by the administrative office of the Supreme Court of Appeals of West Virginia, the caseload in the magistrate court of Berkeley County in the year 2020 was as follows:

|                        |               |
|------------------------|---------------|
| <u>Civil cases:</u>    | <u>4,139</u>  |
| <u>Criminal cases:</u> | <u>7,782</u>  |
| <u>Total:</u>          | <u>11,921</u> |

With five elected magistrates in Berkeley County, each magistrate had a caseload of 2,384 cases in 2020. This caseload per magistrate is substantially higher than the statewide average total caseload of 957 cases per magistrate and is higher than the caseload per magistrate in any other county in West Virginia in 2020.

(b) Notwithstanding any other provisions of this article to the contrary, the allowable number of magistrates serving in the county of Berkeley as of March 1, 2022, shall be increased by one, effective July 1, 2022. The initial appointment for the position shall be made in accordance with the provisions of §50-1-6 of this code.

~~(2) The office of Legislative Services is hereby directed to undertake a comprehensive study of the magistrate courts of the various counties to determine, among other things, the work performed by various personnel in the magistrate court system; how work time is spent by said employees and to report its findings no later than December 10, 2001, to the joint standing committee on the judiciary.~~

~~(3) The division of criminal justice and highway safety shall, in conjunction with the administrative office of the West Virginia Supreme Court of Appeals, compile for consideration by the Legislature statistical information and documentation regarding caseloads, cases handled per year per magistrate, cases per county, cases per circuit and provide to the President of the Senate and the Speaker of the House of Delegates no later than the first day of the 2002 regular session of the Legislature, their recommendations for improving the magistrate process, better utilization of court resources, including, but not limited to, categorizing the various types of cases heard in magistrate court and developing a new weighted formula to evaluate types of cases by the amount of time necessary to bring said cases to a resolution.~~

~~(d) Notwithstanding the other provisions of this section, the allowable number of magistrates serving the counties of Berkeley and Nicholas on March 1, 2001, shall be increased by one in each county, effective July 1, 2001. The initial appointment to the position shall be made in accordance with the provisions of section six of this article.~~

**§50-1-3. Salaries of magistrates.**

~~(a) The Legislature finds and declares that:~~

~~(1) The West Virginia Supreme Court of Appeals has held that a salary system for magistrates which is based upon the population that each magistrate serves does not violate the equal protection clause of the Constitution of the United States;~~

~~(2) The West Virginia Supreme Court of Appeals has held that a salary system for magistrates which is based upon the population that each magistrate serves does not violate section 39, article VI, of the Constitution of West Virginia;~~

~~(3) The Administrative Office of the Supreme Court of Appeals of West Virginia has stated that the utilization of a two-tiered salary schedule for magistrates is no longer an equitable and rational manner by which magistrates should be compensated for work performed;~~

~~(4) Organizing the two tiers of the salary schedule into one tier for magistrates serving less than 7,300 in population and a second tier for magistrates serving 7,300 or more in population is no longer rational and equitable given current statistical information relating to population and caseload; and~~

~~(5) That, by January 1, 2017, all magistrates should be compensated equally.~~

~~(b) The salary of each magistrate shall be paid by the state. Magistrates who serve fewer than 7,300 in population shall be paid annual salaries of \$51,125 and magistrates who serve 7,300 or more in population shall be paid annual salaries of \$57,500.~~

~~(c) For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. For the purpose of this article, the population of each county is the population as determined by the last preceding decennial census taken under the authority of the United States government.~~

~~(d) Notwithstanding any provision of this code to the contrary, the amendments made to this section during the 2013 First Extraordinary Session are effective upon passage and are retroactive to January 1, 2013.~~

~~(e) On or before July 1, 2013, the Joint Committee on Government and Finance shall request a study by the National Center for State Courts, working in conjunction with the Administrative Office of the Supreme Court of Appeals of West Virginia, to review the weighted caseloads in each of the magistrate courts in this state, and present recommendations as to how the present resources and personnel in the magistrate court system could be better apportioned to equitably and timely meet the collective needs of the magistrate court system in West Virginia. Based on the findings and data generated by that study, the National Center for State Courts shall make recommendations as to the equitable redistribution of personnel and resources, by temporary or permanent reassignment, to better meet the needs and weighted loads that are demonstrated to exist in the various magistrate courts in this state. This study shall be presented to the Joint Committee on Government and Finance no later than December 1, 2014, and shall include recommendations and proposed legislation resulting from such study and shall also include a plan to continue the efficient delivery of justice by the magistrate court system and the justification for equalization of pay for all magistrates. As a part of the submitted study, the plan shall consider the reassignment of magistrates or the extension of their duties and jurisdiction to include holding court or delivering services to adjacent counties with higher caseloads, as part of their regular duties, or being on call as needed to serve other needs in other adjacent counties or within the same judicial circuit.~~

~~On or before January 15, 2015, the Supreme Court of Appeals of West Virginia shall present its recommendations to the Legislature regarding how to allocate or assign a maximum of 158 magistrates throughout this state to improve the magistrate process, and more equitably distribute the magistrate court resources to efficiently and effectively meet the needs of the citizens of this state.~~

~~(f) Notwithstanding any provision of this code to the contrary, beginning January 1, 2017, all magistrates shall be compensated equally and the annual salary of all magistrates shall be \$57,500.~~

~~(g)~~ Notwithstanding any provisions of this code to the contrary, beginning July 1, 2021, the annual salary of a magistrate shall be \$60,375, and beginning July 1, 2022, the annual salary of a magistrate shall be \$63,250.

### **§50-1-13. Temporary service within or outside of county.**

(a) The Chief Justice of the Supreme Court of Appeals or judge of the circuit court of the county in which a magistrate is elected, or the chief judge thereof if there is more than one judge of the circuit court, may order a magistrate to serve temporarily at locations within the county other than at the regular office or offices of the magistrate.

(b) The Chief Justice of the Supreme Court of Appeals may by order direct a magistrate to serve on a temporary basis outside the county of his or her election or appointment while giving due consideration to travel time and geographic circumstance. ~~or A~~ judge of the circuit court of the county in which a magistrate is elected, or the chief judge thereof if there is more than one judge of the circuit court, may by order direct a magistrate to serve temporarily in any other county within the judicial circuit for ~~such~~ any purposes as directed by the judge may direct. The magistrate's authority, to the extent ordered by the chief justice or judge, shall be equal to the jurisdiction and authority of a magistrate elected in the county to which the magistrate is ordered to serve. The temporary assignment may not exceed 60 days in length in any given calendar year, except with the consent of the transferred magistrate.

~~(c) A magistrate who is temporarily assigned to a county with a higher salary schedule for magistrates than the salary schedule in the county from which the magistrate was elected, shall be reimbursed for the difference of the salary in the assigned county and the lower salary which the magistrate received in the county of election, prorated for the number of days of the temporary~~

~~assignment. An assigned magistrate may not be reimbursed on a pro rata basis for less than the salary received in the county of that magistrate's election~~

~~(d)~~ (c) A magistrate serving outside the county in which he or she is elected or appointed shall be reimbursed for reasonable expenses incurred in service outside of the county, as provided by rule of the Supreme Court of Appeals.

(d) The Supreme Court of Appeals is requested to develop a rule creating a system in which magistrates shall, on a periodic alternating basis, be assigned to preside over initial appearances, petitions for domestic violence, emergency protective orders, emergency mental health petitions, emergency juvenile delinquency petitions, and applications for the issuance of search warrants arising outside normal court hours or in an emergency on a circuit-wide or other regional basis as determined by the Supreme Court of Appeals. The authority of the after-hours or emergency magistrate shall be equal to the jurisdiction and authority of a magistrate elected or appointed in any county in which he or she is directed to preside.

(e) Nothing in this section may be construed to prohibit proceedings authorized by subsection (d) of this section being held remotely as determined appropriate by the Supreme Court of Appeals.”

And,

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

**Com. Sub. for H. B. 2910** – “A bill to amend and reenact §50-1-2, 50-1-2a, and 50-1-13 of the Code of West Virginia, 1931, as amended, all relating to the allocation of magistrates serving in each county; requiring the Supreme Court of Appeals to conduct or arrange for a caseload study of the state’s magistrate courts; requiring the court to enter an administrative order by January 5, 2023, containing its recommendations which allocate no more than 170 magistrates state-wide; directing that any allocation by the supreme Court not reduce the number of magistrates below the

allotted number as of the effective date of the 2022 amendments to § 50-1-2 of the West Virginia code; requiring attested copies of the order be provided to the Legislature; authorizing the Legislature to reject the recommended allocation and allocate the magistrates through legislation; providing that the court's administrative order be the certification to the ballot commissioners for each county if the Legislature does not reject the allocation; requiring process be repeated every four years; increasing the number of magistrates in Berkeley County by one, effective July 1, 2022; authorizing Chief Justice of the Supreme Court of Appeals to order a magistrate to serve outside the county where elected or appointed on a temporary basis; providing for reimbursement of reasonable expenses; requesting the court to develop a rule for assignment of magistrates to serve after hours or in an emergency on a circuit-wide or other regional basis for certain proceedings; providing for magistrates authority when presiding in these proceedings and clarifying that proceedings may be held remotely if determined appropriate by the Court."

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 672**), and there were—yeas 86, nays 10, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Barnhart, Boggs, Booth, Foster, Gearheart, Hanna, D. Kelly, Pethtel, Steele and Tully.

Absent and Not Voting: Brown, Cooper, Hamrick and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2910) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with a title amendment, to take effect July 1, 2022, a bill of the House of Delegates, as follows:

**H. B. 4571**, Modifying foundation allowance to account for transportation by electric powered buses.

On motion of Delegate Kessinger, the House of Delegates concurred in the following Senate title amendment:

**H. B. 4571** – “A Bill to amend and reenact §18-9A-7 of the Code of West Virginia, 1931, as amended, relating to increasing the foundation allowance for transportation cost for the portion of the county’s school bus system that is fully powered by electricity that is stored in an onboard rechargeable battery or other storage device and for the portion of its school bus system that is manufactured within the state of West Virginia.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 673**), and there were—yeas 91, nays 5, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: J. Jeffries, Kimble, McGeehan, Paynter and G. Ward.

Absent and Not Voting: Brown, Cooper, Hamrick and Walker.

So, a majority of the members elected having voted in the affirmative, the Speaker declared the bill (H. B. 4571) passed.

Delegate Kessinger moved that the bill take effect July 1, 2022.

On this question, the yeas and nays were taken (**Roll No. 674**), and there were—yeas 92, nays 5, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Foster, J. Jeffries, Kimble, Paynter and G. Ward.



Absent and Not Voting: Brown, Cooper and Walker.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4571) takes effect July 1, 2022.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4377**, To update the involuntary commitment process.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

**§27-5-1b. Pilot projects and other initiatives.**

(a) *Duties of the Department of Health and Human Resources.*—The Secretary shall, in collaboration with designees of the Supreme Court of Appeals, the Sheriff’s Association, the Prosecuting Attorney’s Association, the Public Defender Services, the Behavioral Health Providers Association, Disability Rights of West Virginia, and a designee of the Dangerousness Assessment Advisory Board, undertake an evaluation of the utilization of alternative transportation providers and the development of standards that define the role, scope, regulation, and training necessary for the safe and effective utilization of alternative transportation providers and shall further identify potential financial sources for the payment of alternative transportation providers. Recommendations regarding such evaluation shall be submitted to the President of the Senate and the Speaker of the House of Delegates on or before July 31, 2022. The Legislature

requests the Supreme Court of Appeals cooperate with the listed parties and undertake this evaluation.

(b) *Civil Involuntary Commitment Audits.* – The secretary shall establish a process to conduct retrospective quarterly audits of applications and licensed examiner forms prepared by certifiers for the involuntary civil commitment of persons as provided in §27-5-1 *et seq.* of this code. The process shall determine whether the licensed examiner forms prepared by certifiers are clinically justified and consistent with the requirements of this code and, if not, develop corrective actions to redress identified issues. The Legislature requests the Supreme Court of Appeals participate in this process with the secretary. The process and the findings thereof shall be confidential, not subject to subpoena, and not subject to the provisions of §6-9A-1 *et seq.* and §29B-1-1 *et seq.* of this code.

(i) *Duties of the Mental Health Center for Purposes of Evaluation for Commitment.* – Each mental health center shall make available as necessary a qualified and competent licensed person to conduct prompt evaluations of persons for commitment in accordance with §27-5-1 *et seq.* of this code. Evaluations shall be conducted in person, unless an in-person evaluation would create a substantial delay to the resolution of the matter, and then the evaluation may be conducted by videoconference. Each mental health center that performs these evaluations shall exercise reasonable diligence in performing the evaluations and communicating with the state hospital to provide all reasonable and necessary information to facilitate a prompt and orderly admission to the state hospital of any person who is or is likely to be involuntarily committed to such hospital. Each mental health center that performs these evaluations shall explain the involuntary commitment process to the applicant and the person proposed to be committed and further identify appropriate alternative forms of potential treatment, loss of liberty if committed, and the likely risks and benefits of commitment.

(k) Notwithstanding any provision of this code to the contrary, the Supreme Court of Appeals, mental health facilities, law enforcement, and the Department of Health and Human Resources may participate in pilot projects in Cabell, Berkeley, and Ohio

Counties to implement an involuntary commitment process. Further, notwithstanding any provision of this code to the contrary, no alternative transportation provider may be utilized until standards are developed and implemented that define the role, scope, regulation, and training necessary for an alternative transportation provider as provided in subsection (a) of this section.

**§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.**

(a) Any adult person may make an application for involuntary hospitalization for examination of an individual when the person making the application has reason to believe that the individual to be examined has a substance use disorder as defined by the most recent edition of the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, inclusive of substance use withdrawal, or is mentally ill and because of his or her substance use disorder or mental illness, the individual is likely to cause serious harm to himself, herself, or to others if allowed to remain at liberty while awaiting an examination and certification by a physician, psychologist, licensed professional counselor, licensed independent social worker, an advanced nurse practitioner, or physician assistant as provided in subsection (e) of this section: *Provided*, That a diagnosis of dementia, epilepsy, or intellectual or developmental disability alone may not serve as may not be a basis for involuntary commitment to a state hospital.

(b) Notwithstanding any language in this subsection to the contrary, if the individual to be examined under the provisions of this section is incarcerated in a jail, prison, or other correctional facility, then only the chief administrative officer of the facility holding the individual may file the application, and the application must include the additional statement that the correctional facility itself cannot reasonably provide treatment and other services necessary to treat for the individual's mental illness or substance use.

~~(b) The person making the application shall make the application under oath.~~

(c) Application for involuntary custody for examination may be made to the circuit court, magistrate court, or a mental hygiene commissioner of the county in which the individual resides, or of the county in which he or she may be found. A magistrate before whom an application or matter is pending may, upon the availability of a mental hygiene commissioner or circuit court judge for immediate presentation of an application or pending matter, transfer the pending matter or application to the mental hygiene commissioner or circuit court judge for further proceedings unless otherwise ordered by the chief judge of the judicial circuit.

(d) The person making the application shall give information and state facts in the application required by the form provided for this purpose by the Supreme Court of Appeals.

(e) The circuit court, mental hygiene commissioner, or magistrate may enter an order for the individual named in the application to be detained and taken into custody as provided in §27-5-1 and §27-5-10 of this code for the purpose of holding a probable cause hearing as provided in §27-5-2 of this code. ~~for the purpose of~~ An examination of the individual to determine whether the individual meets involuntary hospitalization criteria shall be conducted in person unless an in person examination would create a substantial delay in the resolution of the matter in which case the examination may be by video conference, and shall be performed by a physician, psychologist, a licensed professional counselor practicing in compliance with §30-31-1 *et seq.* of this code, a licensed independent clinical social worker practicing in compliance with §30-30-1 *et seq.* of this code, an advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this code, a physician's assistant practicing in compliance with §30-3-1 *et seq.* of this code, or a physician's assistant practicing in compliance with §30-3E-1 *et seq.* of this code: *Provided*, That a licensed professional counselor, a licensed independent clinical social worker, a physician's assistant, or an advanced nurse practitioner with psychiatric certification may only perform the examination if he or she has previously been authorized by an order of the circuit court to do so, the order having

found that the licensed professional counselor, the licensed independent clinical social worker, physician's assistant, or advanced nurse practitioner with psychiatric certification has particularized expertise in the areas of mental health and mental hygiene or substance use disorder sufficient to make the determinations required by the provisions of this section. The examination ~~is to~~ shall be provided or arranged by a community mental health center designated by the Secretary of the Department of Health and Human Resources to serve the county in which the action takes place. The order is to specify that the ~~hearing~~ evaluation be held ~~immediately~~ within a reasonable period of time not to exceed two hours ~~is to~~ and shall provide for the appointment of counsel for the individual: *Provided, however, That the order may allow the hearing to be held up to 24 hours after the person to be examined is taken into custody rather than immediately if the circuit court of the county in which the person is found has previously entered a standing order which establishes within that jurisdiction a program for placement of persons awaiting a hearing which assures the safety and humane treatment of persons: Provided further* That the time requirements set forth in this subsection only apply to persons who are not in need of medical care for a physical condition or disease for which the need for treatment precludes the ability to comply with the time requirements. During periods of holding and detention authorized by this subsection, upon consent of the individual or ~~in the event of~~ if there is a medical or psychiatric emergency, the individual may receive treatment. The medical provider shall exercise due diligence in determining the individual's existing medical needs and provide treatment the individual requires, including previously prescribed medications. As used in this section, 'psychiatric emergency' means an incident during which an individual loses control and behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or others. Where a physician, psychologist, licensed professional counselor, licensed independent clinical social worker, physician's assistant, or advanced nurse practitioner with psychiatric certification has, within the preceding 72 hours, performed the examination required by ~~the provisions of~~ this subsection the community mental health center may waive the duty to perform or arrange another

examination upon approving the previously performed examination. Notwithstanding ~~the provisions of this subsection,~~ §27-5-4(r) of this code applies regarding payment by the county commission for examinations at hearings. If the examination reveals that the individual is not mentally ill or has no substance use disorder, or is determined to be mentally ill or has a substance use disorder but not likely to cause harm to himself, herself, or others, the individual shall be immediately released without the need for a probable cause hearing and the examiner is not civilly liable for the rendering of the opinion absent a finding of professional negligence. The examiner shall immediately, but no later than 60 minutes after completion of the examination, provide the mental hygiene commissioner, circuit court, or magistrate before whom the matter is pending, and the state hospital to which the individual may be involuntarily hospitalized, the results of the examination on the form provided for this purpose by the Supreme Court of Appeals for entry of an order reflecting the lack of probable cause.

(f) A probable cause hearing ~~is to~~ shall be held promptly before a magistrate, the mental hygiene commissioner, or circuit judge of the county of which the individual is a resident or where he or she was found. If requested by the individual or his or her counsel, the hearing may be postponed for a period not to exceed 48 hours. Hearings may be conducted via videoconferencing unless the individual or his or her attorney object for good cause or unless the magistrate, mental hygiene commissioner, or circuit judge orders otherwise. The Supreme Court of Appeals is requested to develop regional mental hygiene collaboratives where mental hygiene commissioners can share on-call responsibilities, thereby reducing the burden on individual circuits and commissioners.

The individual ~~must~~ shall be present at the hearing and has the right to present evidence, confront all witnesses and other evidence against him or her, and examine testimony offered, including testimony by representatives of the community mental health center serving the area. Expert testimony at the hearing may be taken telephonically or via videoconferencing. The individual has the right to remain silent and to be proceeded against in accordance

with the Rules of Evidence of the Supreme Court of Appeals, except as provided in §27-1-12 of this code. At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge shall find and enter an order stating whether or not it is likely that deterioration will occur without clinically necessary treatment, or there is probable cause to believe that the individual, as a result of mental illness or substance use disorder, is likely to cause serious harm to himself or herself or to others. Any such order entered shall be provided to the state hospital to which the individual may or will be involuntarily hospitalized within 60 minutes of filing absent good cause.

(g) Probable cause hearings may occur in the county where a person is hospitalized. The judicial hearing officer may: Use videoconferencing and telephonic technology; permit persons hospitalized for substance use disorder to be involuntarily hospitalized only until detoxification is accomplished; and specify other alternative or modified procedures that are consistent with the purposes and provisions of this article to promote a prompt, orderly, and efficient hearing. The alternative or modified procedures shall fully and effectively guarantee to the person who is the subject of the involuntary commitment proceeding and other interested parties due process of the law and access to the least restrictive available treatment needed to prevent serious harm to self or others.

(h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable cause hearing or a mental hygiene commissioner or circuit judge at a final commitment hearing held pursuant to the provisions of §27-5-4 of this code finds that the individual, as a direct result of mental illness or substance use disorder is likely to cause serious harm to himself, herself, or others and because of mental illness or a substance use disorder requires treatment, the magistrate, mental hygiene commissioner, or circuit court judge may consider evidence on the question of whether the individual's circumstances make him or her amenable to outpatient treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement. At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge

shall find and enter an order stating whether or not it is likely that deterioration will occur without clinically necessary treatment, or there is probable cause to believe that the individual, as a result of mental illness or substance use disorder, is likely to cause serious harm to himself or herself or others. The agreement is to be in writing and approved by the individual, his or her counsel, and the magistrate, mental hygiene commissioner, or circuit court judge. If the magistrate, mental hygiene commissioner, or circuit court judge determines that appropriate outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be released to outpatient treatment upon the terms and conditions of the voluntary treatment agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary treatment agreement to comply with the terms of the voluntary treatment agreement constitutes evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental hygiene commissioner, or circuit judge on the issue of whether or not the individual failed or refused to comply with the terms and conditions of the voluntary treatment agreement and whether the individual as a result of mental illness or substance use disorder remains likely to cause serious harm to himself, herself, or others, the entry of an order requiring admission under involuntary hospitalization pursuant to ~~the provisions of~~ §27-5-3 of this code may be entered. Nothing in the provisions of this article regarding release pursuant to a voluntary treatment agreement or convalescent status may be construed as creating a right to receive outpatient mental health services or treatment, or as obligating any person or agency to provide outpatient services or treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary treatment agreement: *Provided*, That release pursuant to a voluntary treatment agreement may not be for a period of more than six months if the individual has not been found to be involuntarily committed during the previous two years and for a period of no more than two years if the individual has been involuntarily committed during the preceding two years. If in any proceeding held pursuant to this article the individual objects to the issuance or conditions and terms of an order adopting a voluntary treatment



agreement, then the circuit judge, magistrate, or mental hygiene commissioner may not enter an order directing treatment pursuant to a voluntary treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment agreement is ordered, the individual subject to the order may, upon request during the period the order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the individual may seek to have the order canceled or modified. Nothing in this section affects the appellate and habeas corpus rights of any individual subject to any commitment order.

~~Notwithstanding anything in this article to the contrary,~~ The commitment of any individual as provided in this article shall be in the least restrictive setting and in an outpatient community-based treatment program to the extent resources and programs are available, unless the clear and convincing evidence of the certifying professional under subsection (e) of this section, who is acting in a manner consistent with the standard of care establishes that the commitment or treatment of that individual requires an inpatient hospital placement. Outpatient treatment will be based upon a plan jointly prepared by the department and the comprehensive community mental health center or licensed behavioral health provider.

(i) If the certifying professional determines that an individual requires involuntary hospitalization for a substance use disorder as permitted by §27-5-2(a) of this code which, due to the degree of the disorder, creates a reasonable likelihood that withdrawal or detoxification will cause significant medical complications, the person certifying the individual shall recommend that the individual be closely monitored for possible medical complications. If the magistrate, mental hygiene commissioner, or circuit court judge presiding orders involuntary hospitalization, he or she shall include a recommendation that the individual be closely monitored in the order of commitment.

(j) The Supreme Court of Appeals and the Secretary of the Department of Health and Human Resources shall specifically develop and propose a statewide system for evaluation and adjudication of mental hygiene petitions which shall include

payment schedules and recommendations regarding funding sources. Additionally, the Secretary of the Department of Health and Human Resources shall also immediately seek reciprocal agreements with officials in contiguous states to develop interstate/intergovernmental agreements to provide efficient and efficacious services to out-of-state residents found in West Virginia and who are in need of mental hygiene services.

**§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.**

(a) *Admission to a mental health facility for examination.* — ~~Any~~ An individual ~~may~~ shall be admitted to a mental health facility for examination and treatment upon entry of an order finding probable cause as provided in §27-5-2 of this code. ~~upon a finding by a licensed physician that the individual is medically stable, and~~ Upon certification by a physician, psychologist, licensed professional counselor, licensed independent clinical social worker practicing in compliance with the provisions of §30-30-1 *et seq.* of this code, an advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this code, or a physician's assistant practicing in compliance with §30-3E-1 *et seq.* of this code with advanced duties in psychiatric medicine that he or she has examined the individual and is of the opinion that the individual is mentally ill or has a substance use disorder and, because of the mental illness or substance use disorder, is likely to cause serious harm to himself, herself, or to others if not immediately restrained and treated: *Provided*, That the opinions offered by an independent clinical social worker, an advanced nurse practitioner with psychiatric certification, or a physician's assistant with advanced duties in psychiatric medicine ~~must~~ shall be within his or her particular areas of expertise, as recognized by the order of the authorizing court.

(b) *Three-day time limitation on examination.* — If the examination does not take place within three days from the date the individual is taken into custody, the individual shall be released. If the examination reveals that the individual is not mentally ill or has a substance use disorder, the individual shall be released.

(c) *Three-day time limitation on certification.* — The certification required in §27-5-3(a) of this code is valid for three days. Any individual with respect to whom the certification has been issued may not be admitted on the basis of the certification at any time after the expiration of three days from the date of the examination.

(d) *Findings and conclusions required for certification.* — A certification under this section ~~must~~ shall include findings and conclusions of the mental examination, the date, time, and place of the examination, and the facts upon which the conclusion that involuntary commitment is necessary is based, including facts that less restrictive interventions and placements were considered but are not appropriate and available and that the risks and benefits were explained as required by §27-5-1(i) of this code.

(e) *Notice requirements.* — When an individual is admitted to a mental health facility or a state hospital pursuant to the provisions of this section, the chief medical officer of the facility shall immediately give notice of the individual's admission to the individual's spouse, if any, and one of the individual's parents or guardians or if there is no spouse and are no parents or guardians, to one of the individual's adult next of kin if the next of kin is not the applicant. Notice shall also be given to the community mental health facility, if any, having jurisdiction in the county of the individual's residence. The notices other than to the community mental health facility shall be in writing and shall be transmitted to the person or persons at his, her, or their last known address by certified mail, return receipt requested.

(f) *Three-day time limitation for examination and certification at mental health facility or state hospital.* — After the individual's admission to a mental health facility or state hospital, he or she may not be detained more than three days, excluding Sundays and holidays, unless, within the three-day period, the individual is examined by a staff physician and the physician certifies that in his or her opinion the patient is not suffering from a physical ailment manifesting behaviors which mimic mental illness but is mentally ill or has a substance use disorder and is likely to injure himself, herself, or others and requires continued commitment and

~~treatment. if allowed to be at liberty. In the event~~ If the staff physician determines that the individual does not meet the criteria for continued commitment, that the individual can be treated in an available outpatient community-based treatment program and poses no present danger to himself, herself or others, or that the individual has an underlying medical issue or issues that resulted in a determination that the individual should not have been committed, the staff physician shall release and discharge the individual as appropriate as soon as practicable.

(g) ~~Ten~~ *Twenty-day time limitation for institution of final commitment proceedings.* — If, in the opinion of the examining physician, the patient is mentally ill or has a substance use disorder and because of the mental illness or substance use disorder is likely to injure himself, herself, or others if allowed to be at liberty, the chief medical officer shall, within ~~40~~ 20 calendar days from the date of admission, institute final commitment proceedings as provided in §27-5-4 of this code. If the proceedings are not instituted within the ~~40-20~~-day period absent good cause, the individual shall be immediately released. After the request for hearing is filed, the hearing may not be canceled on the basis that the individual has become a voluntary patient unless the mental hygiene commissioner concurs in the motion for cancellation of the hearing.

(h) ~~Twenty~~ *Thirty-five day time limitation for conclusion of all proceedings.* — If all proceedings as provided in §27-3-1 *et seq.* and §27-4-1 *et seq.* of this code are not completed within ~~20~~ 35 days from the date of ~~institution of the proceedings~~ filing the Application for Involuntary Custody for Mental Health Examination, the individual shall be immediately released.

**§27-5-3a. Legal effect of commitment after determined not to be based on mental illness or addiction.**

(a) In the event that a person is involuntarily hospitalized, and it is determined after the entry of the order that the behavior which led to the entry of the order of involuntary hospitalization was caused by a physical condition or disorder rather than mental illness or addiction, the hospitalization shall not serve to make him

or her a proscribed person under state laws relating to firearms possession or to negatively affect a person's professional licensure, employment, employability, or parental rights. Furthermore, while it is clear that it is the government of the United States and not the government of West Virginia, which has authority under 18 U.S.C. 922(g)(4), to determine whether a person has been 'committed to a mental institution' the Legislature notes that 'federal courts often look to state law to help determine whether a commitment has occurred.' *United States v. Vertz*, 40 F. App'x 69 (6<sup>th</sup> Cir. 2002). Under such principles of interpretation, it is the express intent of the legislature to make clear that in circumstances under which there is a judicial determination that a person's involuntary hospitalization was necessitated and ordered as a result of a physical condition or disorder, the legislature does not deem this to be a 'commitment,' under state law, and the Legislature's determination that such an involuntary hospitalization is not a 'commitment' should be viewed by the government of the United States as consistent with the provisions of the amendments to the NICS Improvement Amendments Act of 2007, Public Law 110-180, Tit. 1, Sec 101(c)(1), 121 Stat. 2559, 2562-63 (2008).

(b) Consistent with subsection (a) of this section, whenever a mental hygiene commissioner, magistrate, or circuit judge is made aware that the circumstances addressed in subsection (a) of this section have occurred, the mental hygiene commissioner, magistrate, or circuit judge shall enter an order finding that the person was not suffering from a mental illness or addiction and not committed therefor.

#### **§27-5-4. Institution of final commitment proceedings; hearing requirements; release.**

(a) *Involuntary commitment.* — Except as provided in §27-5-2 and §27-5-3 of this code, no individual may be involuntarily committed to a mental health facility or state hospital except by order entered of record at any time by the circuit court of the county in which the person resides or was found, or if the individual is hospitalized in a mental health facility or state hospital located in a county other than where he or she resides or was found, in the county of the mental health facility and then only after a full

hearing on issues relating to the necessity of committing an individual to a mental health facility or state hospital. If the individual objects to the hearing being held in the county where the mental health facility is located, the hearing shall be conducted in the county of the individual's residence. Notwithstanding the provisions of this code to the contrary, all hearings for the involuntary final civil commitment of a person who is committed in accordance with §27-6A-1 et al. of this code shall be held by the circuit court of the county that has jurisdiction over the person for the criminal charges and such circuit court shall have jurisdiction over the involuntary final civil commitment of such person.

(b) *How final commitment proceedings are commenced.* — Final commitment proceedings for an individual may be commenced by the filing of a written application under oath by an adult person having personal knowledge of the facts of the case. The certificate or affidavit is filed with the clerk of the circuit court or mental hygiene commissioner of the county where the individual is a resident or where he or she may be found, or the county of a mental health facility if he or she is hospitalized in a mental health facility or state hospital located in a county other than where he or she resides or may be found. Notwithstanding anything any provision of this code to the contrary, all hearings for the involuntary final civil commitment of a person who is committed in accordance with §27-6A-1 et seq. of this code shall be commenced only upon the filing of a Certificate of the Licensed Certifier at the mental health facility where the person is currently committed.

(c) *Oath; contents of application; who may inspect application; when application cannot be filed.* —

(1) The person making the application shall do so under oath.

(2) The application shall contain statements by the applicant that the individual is likely to cause serious harm to self or others due to what the applicant believes are symptoms of mental illness or substance use disorder. The Except for persons sought to be committed as provided in §27-6A-1 et seq. of this code, the

applicant shall state in detail the recent overt acts upon which the ~~belief~~ clinical opinion is based.

(3) The written application, certificate, affidavit, and any warrants issued pursuant thereto, including any related documents, filed with a circuit court, mental hygiene commissioner, or magistrate for the involuntary hospitalization of an individual are not open to inspection by any person other than the individual, unless authorized by the individual or his or her legal representative or by order of the circuit court. The records may not be published unless authorized by the individual or his or her legal representative. Disclosure of these records may, however, be made by the clerk, circuit court, mental hygiene commissioner, or magistrate to provide notice to the Federal National Instant Criminal Background Check System established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, and the central state mental health registry, in accordance with §61-7A-1 *et seq.* of this code, and the sheriff of a county performing background investigations pursuant to §61-7-1 *et seq.* of this code. Disclosure may also be made to the prosecuting attorney and reviewing court in an action brought by the individual pursuant to §61-7A-5 of this code to regain firearm and ammunition rights.

(4) Applications ~~may not be accepted~~ shall be denied for individuals ~~who only have epilepsy, dementia, or an intellectual or developmental disability.~~ as provided in §27-5-2(a) of this code.

(d) *Certificate filed with application; contents of certificate; affidavit by applicant in place of certificate. —*

(1) The applicant shall file with his or her application the certificate of a physician or a psychologist stating that in his or her opinion the individual is mentally ill or has a substance use disorder and that because of the mental illness or substance use disorder, the individual is likely to cause serious harm to self or others ~~if allowed to remain at liberty and, therefore~~ and requires continued commitment and treatment, and should be hospitalized. Except for persons sought to be committed as provided in §27-6A-1 *et seq.* of this code, the certificate shall state in detail the recent overt acts on

which the conclusion is based, including facts that less restrictive interventions and placements were considered but are not appropriate and available. The applicant shall further file with his or her application the names and last known addresses of the persons identified in §27-5-4(e)(3) of this code.

(2) A certificate is not necessary when an affidavit is filed by the applicant showing facts and the individual has refused to submit to examination by a physician or a psychologist.

(e) *Notice requirements; eight days' notice required.* — Upon receipt of an application, the mental hygiene commissioner or circuit court shall review the application, and if it is determined that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, immediately fix a date for and have the clerk of the circuit court give notice of the hearing:

(1) To the individual;

(2) To the applicant or applicants;

(3) To the individual's spouse, one of the parents or guardians, or, if the individual does not have a spouse, parents or parent or guardian, to one of the individual's adult next of kin if the next of kin is not the applicant;

(4) To the mental health authorities serving the area;

(5) To the circuit court in the county of the individual's residence if the hearing is to be held in a county other than that of the individual's residence; and

(6) To the prosecuting attorney of the county in which the hearing is to be held.

(f) The notice shall be served on the individual by personal service of process not less than eight days prior to the date of the hearing and shall specify:

(1) The nature of the charges against the individual;



(2) The facts underlying and supporting the application of involuntary commitment;

(3) The right to have counsel appointed;

(4) The right to consult with and be represented by counsel at every stage of the proceedings; and

(5) The time and place of the hearing.

The notice to the individual's spouse, parents or parent or guardian, the individual's adult next of kin, or to the circuit court in the county of the individual's residence may be by personal service of process or by certified or registered mail, return receipt requested, and shall state the time and place of the hearing.

*(g) Examination of individual by court-appointed physician, psychologist, advanced nurse practitioner, or physician's assistant; custody for examination; dismissal of proceedings. —*

(1) Except as provided in subdivision (3) of this subsection, and except when a Certificate of the Licensed Examiner and an application for final civil commitment at the mental health facility where the person is currently committed has been completed and filed, within a reasonable time after notice of the commencement of final commitment proceedings is given, the circuit court or mental hygiene commissioner shall appoint a physician, psychologist, an advanced nurse practitioner with psychiatric certification, or a physician's assistant with advanced duties in psychiatric medicine to examine the individual and report to the circuit court or mental hygiene commissioner his or her findings as to the mental condition or substance use disorder of the individual and the likelihood of causing serious harm to self or others. Any such report shall include the names and last known addresses of the persons identified in §27-5-4-(e)(3) of this code.

(2) If the designated physician, psychologist, advanced nurse practitioner, or physician assistant reports to the circuit court or mental hygiene commissioner that the individual has refused to submit to an examination, the circuit court or mental hygiene commissioner shall order him or her to submit to the examination.

The circuit court or mental hygiene commissioner may direct that the individual be detained or taken into custody for the purpose of an immediate examination by the designated physician, psychologist, nurse practitioner, or physician's assistant. All orders shall be directed to the sheriff of the county or other appropriate law-enforcement officer. After the examination has been completed, the individual shall be released from custody unless proceedings are instituted pursuant to §27-5-3 of this code.

(3) If the reports of the appointed physician, psychologist, nurse practitioner, or physician's assistant do not confirm that the individual is mentally ill or has a substance use disorder and might be harmful to self or others, then the proceedings for involuntary hospitalization shall be dismissed.

*(h) Rights of the individual at the final commitment hearing; seven days' notice to counsel required. —*

(1) The individual shall be present at the final commitment hearing, and he or she, the applicant and all persons entitled to notice of the hearing shall be afforded an opportunity to testify and to present and cross-examine witnesses.

(2) ~~In the event~~ If the individual has not retained counsel, the court or mental hygiene commissioner, at least six days prior to hearing, shall appoint a competent attorney and shall inform the individual of the name, address, and telephone number of his or her appointed counsel.

(3) The individual has the right to have an examination by an independent expert of his or her choice and to present testimony from the expert as a medical witness on his or her behalf. The cost of the independent expert is paid by the individual unless he or she is indigent.

(4) The individual may not be compelled to be a witness against himself or herself.

*(i) Duties of counsel representing individual; payment of counsel representing indigent. —*

(1) Counsel representing an individual shall conduct a timely interview, make investigation, and secure appropriate witnesses, be present at the hearing, and protect the interests of the individual.

(2) Counsel representing an individual is entitled to copies of all medical reports, psychiatric or otherwise.

(3) The circuit court, by order of record, may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as provided in §29-21-1 *et seq.* of this code.

(j) *Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing.* —

(1) The circuit court or mental hygiene commissioner shall hear evidence from all interested parties in chamber, including testimony from representatives of the community mental health facility.

(2) The circuit court or mental hygiene commissioner shall receive all relevant and material evidence which may be offered.

(3) The circuit court or mental hygiene commissioner is bound by the rules of evidence promulgated by the Supreme Court of Appeals except that statements made to health care professionals appointed under subsection (g) of this section by the individual may be admitted into evidence by the health care professional's testimony, notwithstanding failure to inform the individual that this statement may be used against him or her. A health care professional testifying shall bring all records pertaining to the individual to the hearing. The medical evidence obtained pursuant to an examination under this section, or §27-5-2 or §27-5-3 of this code, is not privileged information for purposes of a hearing pursuant to this section.

(4) All final commitment proceedings shall be reported or recorded, whether before the circuit court or mental hygiene commissioner, and a transcript made available to the individual, his or her counsel or the prosecuting attorney within 30 days if requested for the purpose of further proceedings. In any case where

an indigent person intends to pursue further proceedings, the circuit court shall, by order entered of record, authorize, and direct the court reporter to furnish a transcript of the hearings.

(k) *Requisite findings by the court.* —

(1) Upon completion of the final commitment hearing and the evidence presented in the hearing, the circuit court or mental hygiene commissioner shall make findings as to the following based upon clear and convincing evidence:

(A) Whether the individual is mentally ill or has a substance use disorder;

(B) Whether, ~~because~~ as a result of illness or substance use disorder, the individual is likely to cause serious harm to self or others if allowed to remain at liberty and requires continued commitment and treatment;

(C) Whether the individual is a resident of the county in which the hearing is held or currently is a patient at a mental health facility in the county; and

(D) Whether there is a less restrictive alternative than commitment appropriate for the individual that is appropriate and available. The burden of proof of the lack of a less restrictive alternative than commitment is on the person or persons seeking the commitment of the individual: *Provided*, That for any commitment to a state hospital as defined by §27-1-6 of this code, a specific finding shall be made that the commitment of, or treatment for, the individual requires inpatient hospital placement and that no suitable outpatient community-based treatment program exists that is appropriate and available in the individual's area.

(2) The findings of fact shall be incorporated into the order entered by the circuit court and must be based upon clear, cogent, and convincing proof.

(l) *Orders issued pursuant to final commitment hearing; entry of order; change in order of court; expiration of order.* —

(1) Upon the requisite findings, the circuit court may order the individual to a mental health facility or state hospital for a period not to exceed 90 days except as otherwise provided in this subdivision. During that period and solely for individuals who are committed under §27-6A-1 *et seq.* of this code, the chief medical officer of the mental health facility or state hospital shall conduct a clinical assessment of the individual at least every 30 days to determine if the individual requires continued placement and treatment at the mental health facility or state hospital and whether the individual is suitable to receive any necessary treatment at an outpatient community-based treatment program. If at any time the chief medical officer, acting in good faith and in a manner consistent with the standard of care, determines that: (i) The individual is suitable for receiving outpatient community-based treatment; (ii) necessary outpatient community-based treatment is available in the individual's area as evidenced by a discharge and treatment plan jointly developed by the department and the comprehensive community mental health center or licensed behavioral health provider; and (iii) the individual's clinical presentation no longer requires inpatient commitment, the chief medical officer shall provide written notice to the court of record and prosecuting attorney as provided in subdivision (2) of this section that the individual is suitable for discharge. The chief medical officer may discharge the patient 30 days after the notice unless the court of record stays the discharge of the individual. In the event the court stays the discharge of the individual, the court shall conduct a hearing within 45 days of the stay, and the individual shall be thereafter discharged unless the court finds by clear and convincing evidence that the individual is a significant and present danger to self or others, and that continued placement at the mental health facility or state hospital is required.

If the chief medical officer determines that the individual requires commitment and treatment at the mental health facility or state hospital at any time for a period longer than 90 days, then the individual shall remain at the mental health facility or state hospital until the chief medical officer of the mental health facility or state hospital determines that the individual's clinical presentation no longer requires further commitment and treatment. The chief

medical officer shall provide notice to the court, ~~and the prosecuting attorney, the individual, and the individual's guardian or attorney, or both, if applicable,~~ that the individual requires commitment and treatment for a period in excess of 90 days and, in the notice, the chief medical officer shall describe ~~the reasons how the individual continues to meet commitment criteria and the need for ongoing commitment and treatment. In its discretion, the~~ The court, or prosecuting attorney, the individual, or the individual's guardian or attorney, or both, if applicable, may request any information from the chief medical officer that the court or prosecuting attorney considers appropriate to justify the need for the individual's ongoing commitment and treatment. The court may hold any hearing that it considers appropriate.

(2) Notice to the court of record and prosecuting attorney shall be provided by personal service or certified mail, return receipt requested. The chief medical officer shall make the following findings:

(A) Whether the individual has a mental illness or substance use disorder that does not require inpatient treatment, and the mental illness or serious emotional disturbance is in substantial remission;

(B) Whether the ~~individual's condition~~ individual has the independent ability to manage safely the risk factors resulting from his or her mental illness or substance use disorder and is not likely to deteriorate to the point that the individual will pose a likelihood of serious harm to self or others ~~unless~~ without continued commitment and treatment-is continued;

(C) Whether the individual is likely to participate in outpatient treatment with a legal obligation to do so;

(D) Whether the individual is not likely to participate in outpatient treatment unless legally obligated to do so;

(E) Whether the individual ~~is not a danger to self or others~~ is capable of surviving safely in freedom by himself or herself or with

the help of willing and responsible family members, guardian, or friends; and

(F) Whether mandatory outpatient treatment is a suitable, less restrictive alternative to ongoing commitment.

(3) The individual may not be detained in a mental health facility or state hospital for a period in excess of 10 days after a final commitment hearing pursuant to this section unless an order has been entered and received by the facility.

(4) An individual committed pursuant to §27-6A-3 of this code may be committed for the period he or she is determined by the court to remain an imminent danger to self or others.

(5) ~~In the event~~ If the commitment of the individual as provided under subdivision (1) of this subsection exceeds two years, the individual or his or her counsel may request a hearing and a hearing shall be held by the mental hygiene commissioner or by the circuit court of the county as provided in subsection (a) of this section.

(m) *Dismissal of proceedings.* — ~~In the event~~ If the individual is discharged as provided in subsection (l) of this section, the circuit court or mental hygiene commissioner shall dismiss the proceedings.

(n) *Immediate notification of order of hospitalization.* — The clerk of the circuit court in which an order directing hospitalization is entered, if not in the county of the individual's residence, shall immediately upon entry of the order forward a certified copy of the order to the clerk of the circuit court of the county of which the individual is a resident.

(o) *Consideration of transcript by circuit court of county of individual's residence; order of hospitalization; execution of order.* —

(1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization should be ordered but finds that the individual is not a resident of the county in which the hearing is held and the individual is not currently a resident of a mental health

facility or state hospital, a transcript of the evidence adduced at the final commitment hearing of the individual, certified by the clerk of the circuit court, shall immediately be forwarded to the clerk of the circuit court of the county of which the individual is a resident. The clerk shall immediately present the transcript to the circuit court or mental hygiene commissioner of the county.

(2) If the circuit court or mental hygiene commissioner of the county of the residence of the individual is satisfied from the evidence contained in the transcript that the individual should be hospitalized as determined by the standard set forth in subdivision one of this subsection, the circuit court shall order the appropriate hospitalization as though the individual had been brought before the circuit court or its mental hygiene commissioner in the first instance.

(3) This order shall be transmitted immediately to the clerk of the circuit court of the county in which the hearing was held who shall execute the order promptly.

(p) *Order of custody to responsible person.* — In lieu of ordering the individual to a mental health facility or state hospital, the circuit court may order the individual delivered to some responsible person who will agree to take care of the individual and the circuit court may take from the responsible person a bond in an amount to be determined by the circuit court with condition to restrain and take proper care of the individual until further order of the court.

(q) *Individual not a resident of this state.* — If the individual is found to be mentally ill or to have a substance use disorder by the circuit court or mental hygiene commissioner is a resident of another state, this information shall be immediately given to the Secretary of the Department of Health and Human Resources, or to his or her designee, who shall make appropriate arrangements for transfer of the individual to the state of his or her residence conditioned on the agreement of the individual, except as qualified by the interstate compact on mental health.



(r) *Report to the Secretary of the Department of Health and Human Resources.* —

(1) The chief medical officer of a mental health facility or state hospital admitting a patient pursuant to proceedings under this section shall immediately make a report of the admission to the Secretary of the Department of Health and Human Resources or to his or her designee.

(2) Whenever an individual is released from custody due to the failure of an employee of a mental health facility or state hospital to comply with the time requirements of this article, the chief medical officer of the mental health or state hospital facility shall immediately, after the release of the individual, make a report to the Secretary of the Department of Health and Human Resources or to his or her designee of the failure to comply.

(s) *Payment of some expenses by the state; mental hygiene fund established; expenses paid by the county commission.* —

(1) The state shall pay the commissioner's fee and the court reporter fees that are not paid and reimbursed under §29-21-1 *et seq.* of this code out of a special fund to be established within the Supreme Court of Appeals to be known as the Mental Hygiene Fund.

(2) The county commission shall pay out of the county treasury all other expenses incurred in the hearings conducted under the provisions of this article whether or not hospitalization is ordered, including any fee allowed by the circuit court by order entered of record for any physician, psychologist, and witness called by the indigent individual. The copying and mailing costs associated with providing notice of the final commitment hearing and issuance of the final order shall be paid by the county where the involuntary commitment petition was initially filed.

(3) Effective July 1, 2022, the Department of Health and Human Resources shall reimburse the Sheriff, the Department of Corrections and Rehabilitation, or other law enforcement agency

for the actual costs related to transporting a patient who has been involuntary committed.

**§27-5-10. Transportation for the mentally ill or persons with substance use disorder.**

(a) Whenever transportation of an individual is required under the provisions of §27-4-1 *et seq.* and §27-5-1 *et seq.* of this code, the sheriff shall provide immediate transportation to or from the appropriate mental health facility or state hospital as described in §27-5-19(d) of this code: *Provided*, That, where hospitalization occurs pursuant to §27-4-1 *et seq.* of this code, the sheriff may permit, upon the written request of a person having proper interest in the individual's hospitalization, for the interested person to arrange for the individual's transportation to the mental health facility or state hospital if the sheriff determines that those means are suitable given the individual's condition.

(b) Upon written agreement between the county commission on behalf of the sheriff and the directors of the local community mental health center and emergency medical services, an alternative transportation program may be arranged. The agreement shall clearly define the responsibilities of each of the parties, the requirements for program participation, and the persons bearing ultimate responsibility for the individual's safety and well-being.

(c) *Use of certified municipal law-enforcement officers.* — Sheriffs and municipal governments may enter into written agreements by which certified municipal law-enforcement officers may perform the duties of the sheriff as described in this article. The agreement shall determine jurisdiction, responsibility of costs, and all other necessary requirements, including training related to the performance of these duties, and shall be approved by the county commission and circuit court of the county in which the agreement is made. For purposes of this subsection, 'certified municipal law-enforcement officer' means any duly authorized member of a municipal law-enforcement agency who is empowered to maintain public peace and order, make arrests, and enforce the laws of this state or any political subdivision thereof,

other than parking ordinances, and who is currently certified as a law-enforcement officer pursuant to §30-29-1 *et seq.* of this code.

(d) In the event an individual requires transportation to a state hospital as defined by §27-1-6 of this code, the sheriff, or certified municipal law-enforcement officer shall contact the state hospital in advance of the transportation to determine if the state hospital has suitable bed capacity to place the individual.

~~(d) Any person executing any transportation or commitment order as provided in this chapter issued by any circuit court, mental hygiene commissioner, or magistrate shall not be declared as violating the provisions of §27-12-2 of this code.~~

~~(e) Nothing in this section is intended to alter security responsibilities for the patient by the sheriff unless mutually agreed upon as provided in subsection (c) of this section.~~

#### **§61-7A-2. Definitions.**

As used in this article and as the terms are deemed to mean in 18 U. S. C. § 922(g) and ~~section seven, article seven of this chapter~~ §61-7-7 of this code as each exists as of January 31, 2008:

(1) ‘A person adjudicated as a mental defective’ means a person who has been determined by a duly authorized court, tribunal, board or other entity to be mentally ill to the point where he or she has been found to be incompetent to stand trial due to mental illness or insanity, has been found not guilty in a criminal proceeding by reason of mental illness or insanity or has been determined to be unable to handle his or her own affairs due to mental illness or insanity. A child under fourteen years of age is not considered ‘a person adjudicated as a mental defective’ for purposes of this article.

(2) ‘Committed to a mental institution’ means to have been involuntarily committed for treatment pursuant to the provisions of ~~chapter twenty seven~~ §27-5-4(1) of this code. Children under ~~fourteen~~ 14 years of age are not considered ‘committed to a mental institution’ for purposes of this article. ‘Committed to a mental

institution' does not mean voluntary admission for mental health treatment.

(3) 'Mental institution' means any facility or part of a facility used for the treatment of persons committed for treatment of mental illness.

**§61-7A-4. Confidentiality; limits on use of registry information.**

(a) Notwithstanding any provision of this code to the contrary, the Superintendent of the State Police, the Secretary of the Department of Health and Human Resources, the circuit clerks, and the Administrator of the Supreme Court of Appeals may provide notice to the central state mental health registry and the National Instant Criminal Background Check System established pursuant to Section 103(d) of the Brady Handgun Violence Protection Act, 18 U. S. C. §922, that a person: (i) Has been involuntarily committed to a mental institution pursuant to §27-5-4(1); (ii) has been adjudicated as a mental defective ; or (iii) has regained the ability to possess a firearm by order of a circuit court in a proceeding under section five of this article.

(b) The information contained in the central state mental health registry is to be used solely for the purpose of records checks related to firearms purchases and for eligibility for a state license or permit to possess or carry a concealed firearm.

(c) Whenever a person's name and other identifying information has been added to the central state mental health registry, a review of the state concealed handgun registry shall be undertaken and if such review reveals that the person possesses a current concealed handgun license, the sheriff of the county issuing the concealed handgun license shall be informed of the person's change in status.

**§61-7A-5. Petition to regain right to possess firearms.**

(a) Any person who is prohibited from possessing a firearm pursuant to the provisions of ~~section seven, article seven of this chapter~~ §61-7-7 or by provisions of federal law by virtue solely of

having previously been adjudicated to be mentally defective or to having a prior involuntary commitment to a mental institution pursuant to ~~chapter twenty-seven~~ §27-5-4(1) of this code may petition the circuit court of the county of his or her residence to regain the ability to lawfully possess a firearm.

(b) Petitioners prohibited from possession of firearms due to a mental health disability, must include in the petition for relief from disability:

(1) A listing of facilities and location addresses of all prior mental health treatment received by petitioner;

(2) An authorization, signed by the petitioner, for release of mental health records to the prosecuting attorney of the county; and

(3) A verified certificate of mental health examination by a licensed psychologist or psychiatrist occurring within thirty days prior to filing of the petition which supports that the petitioner is competent and not likely to act in a manner dangerous to public safety.

(c) The court may only consider petitions for relief due to mental health adjudications or commitments that occurred in this state, and only give the relief specifically requested in the petition.

(d) In determining whether to grant the petition, the court shall receive and consider at a minimum evidence:

(1) Concerning the circumstances regarding the firearms disabilities imposed by 18 U.S.C. §922(g)(4);

(2) The petitioner's record which must include the petitioner's mental health and criminal history records; and

(3) The petitioner's reputation developed through character witness statements, testimony, or other character evidence.

(e) If the court finds by clear and convincing evidence that the person is competent and capable of exercising the responsibilities concomitant with the possession of a firearm, will not be likely to

act in a manner dangerous to public safety, and that granting the relief will not be contrary to public interest, the court may enter an order allowing the petitioner to possess a firearm. If the order denies petitioner's ability to possess a firearm, the petitioner may appeal the denial, which appeal is to include the record of the circuit court rendering the decision.

(f) All proceedings for relief to regain firearm or ammunition rights shall be reported or recorded and maintained for review.

(g) The prosecuting attorney or one of his or her assistants shall represent the state in all proceedings for relief to regain firearm rights and provide the court the petitioner's criminal history records.

(h) The written petition, certificate, mental health or substance abuse treatment records and any papers or documents containing substance abuse or mental health information of the petitioner, filed with the circuit court, are confidential. These documents may not be open to inspection by any person other than the prosecuting attorney or one of his or her assistants only for purposes of representing the state in and during these proceedings and by the petitioner and his or her counsel. No other person may inspect these documents, except upon authorization of the petitioner or his or her legal representative or by order of the court, and these records may not be published except upon the authorization of the petitioner or his or her legal representative.

(i) The circuit clerk of each county shall provide the Superintendent of the West Virginia State Police, or his or her designee, and the Administrator of the West Virginia Supreme Court of Appeals, or his or her designee, with a certified copy of any order entered pursuant to the provisions of this section which removes a petitioner's prohibition to possess firearms. If the order restores the petitioner's ability to possess a firearm, petitioner's name shall be promptly removed from the central state mental health registry and the superintendent or administrator shall forthwith inform the Federal Bureau of Investigation, the United States Attorney General, or other federal entity operating the

National Instant Criminal Background Check System of the court action.”

And,

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

**Com. Sub. for H. B. 4377** – “A Bill to amend the Code of West Virginia, 1931, as amended by adding thereto three new sections, designated §27-5-1b and §27-5-3a; to amend and reenact §27-5-2, §27-5-3, §27-5-4 and §27-5-10 of said code and to amend and reenact §61-7A-2, §61-7A-4 and §61-7A-5 of said code, all relating generally to involuntary commitment; directing participation by certain groups and entities in a study of the feasibility of developing alternatives to law enforcement transportation of patients; requiring an audit process for mental hygiene services; clarifying conditions for which involuntary commitment is inappropriate; authorizing video conferencing for hearings and evaluations; establishing time limits for completion tasks necessary to the commitment process; requiring reimbursement for transportation costs to the appropriate law enforcement agency; establishing state policy that a person committed for what is determined to be a physical condition is not considered to have been committed for a mental illness or addiction and not a basis for firearms disqualification, professional licensure, or employment purposes; requiring the entry of an order when a mistaken commitment is discovered; clarifying the distinction between hospitalizations for evaluation from those for treatment; and defining terms.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 675**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Brown, Cooper and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4377) passed.

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

A message from the Senate, by

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

**Com. Sub. for S. B. 530**, Encouraging public-private partnerships in transportation.

On motion of Delegate Kessinger, the House of Delegates concurred in the following Senate title amendment:

**Com. Sub. for S. B. 530** – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13A-6b; and to amend and reenact §17-27-3, §17-27-4, §17-27-5, §17-27-7, §17-27-8, §17-27-9, §17-27-11, §17-27-13, §17-27-14, §17-27-15, and §17-27-16 of said code, all relating to encouraging public-private partnerships related to transportation facilities; providing coal severance tax escrow fund for the state portion of coal severance taxes paid on a public-private transportation facility; authorizing the Division of Highways to repay collected tax in escrow to private entities; cleaning up antiquated language; clarifying the roles of the division, public entities, and developers; simplifying the public-private partnership review process; providing that project proposal may not include use of more than \$100 million from state road fund; clarifying that Commissioner of the Division of Highways may approve or modify the division’s rankings, authorize negotiations and entry into comprehensive agreement with the highest-ranked developer, or reject all proposals; providing that division is not obligated to accept, consider, or review unsolicited conceptual proposals, but may choose to do so; providing that no obligation or liability attaches to either party if they are unable to reach an agreement; providing that the division may negotiate a comprehensive



agreement with the next highest-ranked developer if agreement cannot be reached with highest-ranked developer; clarifying the extent to which the division may utilize condemnation if it is found the project serves a public purpose or the developer is in material default; and exempting public-private partnership agreements from statutory government construction contract requirements.”

The bill, as amended by the House, and further amended by the Senate, was put upon its passage.

The bill, as amended by the House, and further amended by the Senate, was put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 676**), and there were—yeas 95, nays 1, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Foster.

Absent and Not Voting: Brown, Cooper, Sypolt and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 530) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4340**, Relating to maximizing the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

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

**“CHAPTER 16. PUBLIC HEALTH.****ARTICLE 19. ANATOMICAL GIFT ACT.****§16-19-9. Who may make anatomical gift of decedent’s body or part.**

(a) Unless barred by §16-19-7 or §16-19-8 of this code, an anatomical gift of a decedent’s body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available in the order of priority listed:

(1) A person holding a medical power of attorney or another agent of the decedent at the time of death who could have made an anatomical gift under §16-19-4 of this code immediately before the decedent’s death;

(2) The spouse of the decedent, unless in the six months prior to the decedent’s death the spouse has lived separate and apart from the decedent in a separate place of abode without cohabitation or ~~in the six (6) months prior to the decedent’s death the spouse has lived separate and apart from the decedent in a separate place of abode without cohabitation~~ an action for divorce is pending;

(3) Adult children of the decedent;

(4) The person acting as the guardian of the decedent at the time of death;

(5) An appointed health care surrogate;

(6) Parents of the decedent;

(7) Adult siblings of the decedent;

(8) Adult grandchildren of the decedent;

(9) Grandparents of the decedent; ~~or~~

(10) An adult who exhibited special care and concern for the decedent; or

(11) A person authorized or obligated to dispose of the decedent's body.

(b) If there is more than one member of a class entitled to make an anatomical gift, any member of the class may make the anatomical gift unless he or she, or a person to whom the anatomical gift may pass pursuant to §16-19-11 of this code, knows of an objection by another member of the class. If an objection is known, the majority of the members of the same class must be opposed to the donation in order for the donation to be revoked. In the event of a tie vote, ~~the attending physician or advanced nurse practitioner shall appoint a health care surrogate to decide whether to make an anatomical gift of the decedent's body or part for the purpose of transplantation, therapy, research or education~~ the anatomical gift may proceed despite the objection by a member or members of a class.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class is reasonably available to make, or to object to the making, of an anatomical gift.

#### **§16-19-14. Rights and duties of procurement organization and others.**

(a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Division of Motor Vehicles and any donor registry it knows of for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) The Division of Motor Vehicles shall allow a procurement organization reasonable access to information in the division's records to ascertain whether an individual at or near death is a donor. The Commissioner of the Division of Motor Vehicles shall propose legislative rules for promulgation pursuant to §29A-3-1 *et seq.* of this code to facilitate procurement agencies' access to records pursuant to this subsection.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the prospective donor expressed a contrary intent.

(d) Unless prohibited by law, at any time after a donor's death, a person to whom a decedent's part passes under §16-19-11 of this code may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law, an examination under subsection (c) or (d) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a) of this section, a procurement organization shall make a reasonable search for any person listed in §16-19-9 of this code having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Except as provided in §16-19-22 of this code, the rights of the person to whom a part passes under §16-19-11 of this code are superior to the rights of all others. A person may accept or reject an anatomical gift, in whole or in part. Subject to the terms of the document of gift and this article, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or

cremation, and use of remains in a funeral service. If the gift is of a part, the person to whom the part passes under §16-19-11 of this code shall, upon the death of the donor and before embalming, burial, or cremation, cause the part to be removed without unnecessary mutilation.

(i) Neither the physician or the physician assistant who attends the decedent at death, nor the physician or the physician assistant who determines the time of death, may participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

(k) A medical examiner shall cooperate with any procurement organization to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(l) A part may not be removed from the body of a decedent under a medical examiner's jurisdiction for transplantation, therapy, research, or education, nor delivered to a person for research or education, unless the part is the subject of an anatomical gift.

(m) Upon the request of a procurement organization, the medical examiner shall release to the procurement organization the name, contact information, name of the next of kin, and available medical and social history of a decedent whose body is under the medical examiner's jurisdiction. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the medical examiner shall release the post-mortem examination results to the procurement organization. The procurement organization may not make a subsequent disclosure of the post-mortem examination results or other information received from the medical examiner unless the subsequent disclosure is relevant to transplantation, therapy, research, or education.

(n) If a hospital refers an individual whose death is imminent or who has died in a hospital to an organ procurement organization, and the organ procurement organization, in consultation with the individual's attending physician or a designee, determines based upon a medical record review and other information supplied by the individual's attending physician or a designee, that the individual may be a prospective donor; and the individual:

(1) Has not indicated in any document an intention to either limit the anatomical gifts of the individual to parts of the body which do not require a ventilator or other life-sustaining measures, or

(2) Has not indicated in any document an intention to deny making or refusing to make an anatomical gift; or

(3) Amended or revoked an anatomical gift in any document, the organ procurement organization may conduct a blood or tissue test or minimally invasive examination which is reasonably necessary to evaluate the medical suitability of a body part that is or may be the subject of an anatomical gift.

(o) Testing and examination conducted pursuant to subsection (n) shall comply with a denial or refusal to make an anatomical gift or any limitation expressed by the individual with respect to the part of the body to donate or a limitation the provision of a ventilator or other life-sustaining measures, or a revocation or amendment to an anatomical gift. The results of tests and examinations conducted pursuant to subsection (n) shall be used or disclosed only:

(1) To evaluate medical suitability for donation and to facilitate the donation process; and

(2) As otherwise required or permitted by law.

(p) A hospital may not withdraw or withhold any measures necessary to maintain the medical suitability of a body part that may be the subject of an anatomical gift until the organ procurement organization or designated requestor, as appropriate, has had the opportunity to advise the applicable persons under this

article of the option to make an anatomical gift and has received or been denied authorization to proceed with recovery of the part.

(q) Subject to the individual's wishes under §16-19-11(c)(3) of this code, after an individual's death, persons who may receive anatomical gift pursuant to §16-19-11 of this code may conduct any test or examination reasonably necessary to evaluate the medical suitability of the body or part for its intended purpose.

(r) The provisions of this section may not be construed to preclude a medical examiner from performing an investigation of a decedent under the medical examiner's jurisdiction.

**§16-19-22. Facilitation of anatomical gift from decedent whose body is under jurisdiction of medical examiner.**

(a) ~~Except as provided in subsection (e) of this section,~~ The medical examiner shall, upon request of a procurement organization, release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is in the custody of the medical examiner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the medical examiner shall release post-mortem examination results after being paid in accordance with the fee schedule established in rules to the procurement organization, ~~subject to subsection (e) of this section.~~ The procurement organization may make a subsequent disclosure of the post-mortem examination results or other information received from the medical examiner only if relevant to transplantation or therapy.

(b) The medical examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the medical examiner which the medical examiner determines may be relevant to the investigation.

(c) A person with any information requested by a medical examiner pursuant to subsection (b) of this section shall provide

that information as soon as possible to allow the medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.

(d) If the medical examiner determines that a post-mortem examination is not required or that a post-mortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the medical examiner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research or education.

~~(e) If the decedent's death is the subject of a criminal investigation, the medical examiner may not release the body or part that is the subject of an anatomical gift or the social history, medical history or post-mortem examination results without the express authorization of the prosecuting attorney of the county having jurisdiction over the investigation~~

~~(f)~~ If an anatomical gift of a part from the decedent under the jurisdiction of the medical examiner has been or might be made, but the medical examiner initially believes that the recovery of the part could interfere with the post-mortem investigation into the decedent's cause or manner of death, the medical examiner shall consult with the procurement organization about the proposed recovery. After the consultation, the medical examiner may ~~allow~~ deny the recovery at his or her discretion. The medical examiner may attend the removal procedure for the part before making a final determination not to allow the procurement organization to recover the part.

~~(g)~~ (f) If the medical examiner denies recovery of the part, he or she shall:

(1) Provide the procurement organization with a written explanation of the specific reasons for not allowing recovery of the part; and



(2) Include in the medical examiner's records the specific reasons for denying recovery of the part.

~~(h)~~ (g) If the medical examiner allows recovery of a part, the procurement organization shall, upon request, cause the physician or technician who removes the part to provide the medical examiner with a written report describing the condition of the part, a biopsy, a photograph or any other information, and observations that would assist in the post-mortem examination.

~~(i)~~ (h) A medical examiner who decides to be present at a removal procedure ~~pursuant to subsection (f) of this section~~ is entitled to reimbursement for the expenses associated with appearing at the recovery procedure from the procurement organization which requested his or her presence.

~~(j)~~ (i) A medical examiner performing any of the functions specified in this section shall comply with all applicable provisions of §61-12-1 *et seq.* of this code.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### ARTICLE 12. POSTMORTEM EXAMINATIONS.

**§61-12-3. Office of ~~Chief medical examiner~~ Chief Medical Examiner established; appointment, duties, etc., of ~~chief medical examiner~~ Chief Medical Examiner; assistants and employees; promulgation of rules.**

(a) The Office of Chief Medical Examiner is ~~hereby established~~ continued within the ~~division of health~~ Bureau of Public Health in the Department of Health and Human Resources. The office shall be directed by a ~~chief medical examiner~~ Chief Medical Examiner, who may employ pathologists, toxicologists, other forensic specialists, laboratory technicians, and other staff members as needed to fulfill the responsibilities set forth in this article.

(b) All persons employed by the ~~chief medical examiner~~ Chief Medical Examiner shall be responsible to him or her and may be discharged for any reasonable cause. The ~~chief medical examiner~~ Chief Medical Examiner shall specify the qualifications required

for each position in the Office of Chief Medical Examiner.—and each position shall be subject to rules prescribed by the secretary of the Department of Health and Human Resources.

(c) The chief medical examiner shall be a physician licensed to practice medicine or osteopathic medicine in the State of West Virginia, who is a diplomat of the American ~~board of pathology~~ Board of Pathology in forensic pathology, or equivalent, and who has experience in forensic medicine. The ~~chief medical examiner~~ Chief Medical Examiner shall be appointed by the ~~director of the division of health~~ Commissioner for the Bureau of Public Health to serve a five-year term unless sooner removed, but only for cause, by the Governor or by the ~~director~~ commissioner.

(d) The ~~chief medical examiner~~ Chief Medical Examiner shall be responsible to the ~~director of the division of health~~ commissioner in all matters except that the chief medical examiner shall operate with independent authority for the purposes of:

(1) The performance of death investigations conducted pursuant to section eight of this article;

(2) The establishment of cause and manner of death; and

(3) The formulation of conclusions, opinions, or testimony in judicial proceedings.

(e) The ~~chief medical examiner~~ Chief Medical Examiner, or his or her designee, shall be available at all times for consultation as necessary for carrying out the functions of the ~~office of the chief medical examiner~~ Office of the Chief Medical Examiner.

(f) The Chief Medical Examiner shall cooperate with procurement organizations as defined in §16-19-3 of this code to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education. The Chief Medical Examiner may enter into contracts and agreements with a procurement organization when necessary to facilitate the efficient and economical recovery of anatomical gifts, including contracts or agreements authorizing persons approved or assigned

by the procurement organization to perform a specific type of duty or duties at the office of the chief medical examiner.

~~(f)~~ (g) The Secretary of the Department of Health and Human Resources ~~is hereby directed to~~ shall propose legislative rules in accordance with the provisions of §29A-3-1 *et seq.* of this code concerning:

(1) The proper conduct of medical examinations into the cause of death;

(2) The proper methods and procedures for postmortem inquiries conducted by county medical examiners and coroners;

(3) The examination of substances taken from human remains in order to determine the cause and manner of death; ~~and~~

(4) The training and certification of county medical examiners and coroners; and

(5) The procedures necessary to maximize the recovery of anatomical gifts for the purpose of transplantation, therapy, research, or education.

~~(g)~~ (h) The ~~chief medical examiner~~ Chief Medical Examiner ~~is authorized to~~ may prescribe specific forms for record books and official papers which are necessary to the functions and responsibilities of the office of the ~~chief medical examiner~~ Chief Medical Examiner.

~~(h)~~ (i) The ~~chief medical examiner~~ Chief Medical Examiner, or his or her designee, ~~is authorized to~~ may order and conduct an autopsy in accordance with the provisions of ~~this article and~~ this code. The ~~chief medical examiner~~ Chief Medical Examiner, or his or her designee, shall perform an autopsy upon the lawful request of any person authorized by the provisions of this code to request the performance of the autopsy.

~~(i)~~ (j) The salary of the ~~chief medical examiner~~ Chief Medical Examiner and the salaries of all assistants and employees of the office of the ~~chief medical examiner~~ Chief Medical Examiner shall

be fixed by the Legislature from funds appropriated for that purpose. The ~~chief medical examiner~~ Chief Medical Examiner shall take an oath and provide a bond as required by law. ~~Within the discretion of the director of the division of health~~ The ~~chief medical examiner~~ Chief Medical Examiner and his or her assistants shall may lecture or instruct in the field of legal medicine and other related subjects to the West Virginia University or Marshall ~~university~~ University School of Medicine, the West Virginia ~~school of osteopathic medicine~~ School of Osteopathic Medicine, the West Virginia ~~state police~~ State Police, other law-enforcement agencies and other interested groups.

And,

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

**Com. Sub. for H. B. 4340** – “A Bill to amend and reenact §16-19-9, §16-19-14 and §16-19-22 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-12-3 of said code, all relating to anatomical gifts; clarifying who may make an anatomical gift of decedent’s body or part; clarifying the duties of procurement organization with regard to state medical examiner; requiring the state medical examiner to cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts; authorizing procurement organizations to conduct a test to evaluate the medical suitability of the body part; and authorizing the state’s chief medical examiner to enter into agreements with a procurement organization to facilitate the recovery of anatomical gifts.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 677**), and there were—yeas 94, nays 2, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Fast and Paynter.

Absent and Not Voting: Brown, Cooper, Sypolt and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4340) passed.

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

A message from the Senate, by

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

**Com. Sub. for S. B. 463**, Best Interests of Child Protection Act of 2022.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.**

**§48-9-102. Objectives; best interests of the child.**

(a) The primary objective of this article is to serve the child’s best interests, by facilitating:

(1) Stability of the child;

(2) Collaborative Parental ~~parental~~ planning and agreement about the child’s custodial arrangements and upbringing;

(3) Continuity of existing parent-child attachments;

(4) Meaningful contact between a child and each parent, and which is rebuttably presumed to be equal (50-50) custodial allocation of the child;

(5) Caretaking and parenting relationships by adults who love the child, know how to provide for the child's needs, and who place a high priority on doing so;

(6) Security from exposure to physical or emotional harm;

(7) Expeditious, predictable decision-making and avoidance of prolonged uncertainty respecting arrangements for the child's care and control; and

(8) Meaningful contact between a child and his or her siblings, including half-siblings.

(b) A secondary objective of this article is to achieve fairness between the parents consistent with the rebuttable presumption of equal (50-50) custodial allocation.

**§48-9-102a Presumption in favor of equal (50-50) custodial allocation.**

There shall be a presumption, rebuttable by a preponderance of the evidence, that equal (50-50) custodial allocation is in the best interest of the child. If the presumption is rebutted, the court shall, absent an agreement between the parents as to all matters related to custodial allocation, construct a parenting time schedule which maximizes the time each parent has with the child and is consistent with ensuring the child's welfare.

**§48-9-203. Proposed temporary parenting plan; temporary order; amendment.~~-vacation-of-order.~~**

(a) A parent seeking a temporary order relating to parenting shall file and serve a proposed temporary parenting plan by motion. The other parent, if contesting the proposed temporary parenting plan, shall file and serve a responsive proposed parenting plan. Either parent may move to have a proposed temporary parenting plan entered as part of a temporary order. The parents may enter an agreed temporary parenting plan at any time as part of a temporary order. The proposed temporary parenting plan may be supported by relevant evidence and shall be verified and shall state at a minimum the following:

(1) The name, address, and length of residence with the person or persons with whom the child has lived for the preceding ~~twelve~~ 12 months;

(2) The performance by each parent during the last 12 months of the parenting functions relating to the daily needs of the child;

~~(3) The parents' work and child care schedules for the preceding twelve~~ 12 months;

~~(4)~~(3) The parents' current work and child-care schedules; and

~~(5)~~(4) Any of the ~~circumstances~~ criteria set forth in §48-9-209 of this code that are likely to pose a serious risk to the child ~~and that or that otherwise~~ warrant limitation on the award to a parent of temporary residence or time with the child pending entry of a permanent parenting plan.

(b) At the hearing, the court shall enter a temporary parenting order incorporating a temporary parenting plan which includes:

(1) A schedule for the child's time with each parent when appropriate;

(2) Designation of a temporary residence or residences for the child;

(3) Allocation of decision-making authority, if any. Absent allocation of decision-making authority consistent with §48-9-207 of this code, neither party shall make any decision for the child other than those relating to day-to-day or emergency care of the child, which shall be made by the party who is present with the child;

(4) Provisions for temporary support for the child; and

(5) Restraining orders, if applicable. ~~And~~

~~(6) Specific findings of fact upon which the court bases its determinations.~~

~~(e) A parent may make a motion for an order to show cause and the court may enter a temporary order, including a temporary parenting plan, upon a showing of necessity.~~

(c) If the parents have not agreed upon the allocation of physical custody of the child, then the allocation shall be made by the court upon the evidence presented at the hearing unless the parties have agreed to proceed by proffer.

(d) Upon request of either parent for an equal (50-50) allocation of physical custody, the presumption provided in §48-1-102a of this code applies.

(e) If the temporary allocation of physical custody is not on an equal (50-50) basis, it must contain specific findings of fact by the court, based upon evidence presented at a hearing, as to the reasons under §48-9-209 of this code that the court ordered the custodial allocation, along with the court's legal conclusions supporting its decision.

(f) A parent who has sought and been denied equal (50-50) physical custody, or who has been denied any physical custody, may file an interlocutory appeal with the West Virginia Intermediate Court of Appeals as to the temporary custodial allocation of the child or children, and the Intermediate Court of Appeals shall provide an expedited review of the order: *Provided*, That no stay shall be granted pending resolution of the appeal, and the filing of an interlocutory appeal shall not be the basis of a continuance of any subsequent or final hearing.

~~(d)~~ (g) A parent may move for amendment of a temporary parenting plan, and the court may order amendment to the temporary parenting plan, if the amendment conforms to the limitations of and considerations required by §48-9-209 of this code and is in the best interest of the child. The court's order modifying the plan shall be in writing and contain specific findings of fact upon which the court bases its determinations.

#### **§48-9-204. Criteria for temporary parenting plan.**

(a) After considering the proposed temporary parenting plan filed pursuant to §48-9-203 of this code and other relevant evidence



presented, the court shall make a temporary parenting plan that is in the best interest of the child, which shall be in writing and contain specific findings of fact upon which the court bases its determinations. In making this determination, the court shall give particular consideration to:

(1) Which parent has taken greater responsibility during the last 12 months for performing ~~caretaking and/or~~ parenting functions relating to the daily needs of the child; and

(2) Which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending.

(b) The court shall also consider the factors used to determine residential provisions in the permanent parenting plan.

(c) Upon credible evidence of one or more of the circumstances set forth in §48-9-209(a) of this code, the court shall issue a temporary order limiting or denying access to the child as required by that section, in order to protect the child or the other party, pending adjudication of the underlying facts. The temporary order shall be in writing and include specific findings of fact supporting the court's determination.

(d) Expedited procedures shall be instituted to facilitate the prompt issuance of a parenting plan.

(e) In establishing a temporary parenting plan, there shall be a presumption in favor of equal (50-50) physical custody which is rebuttable by a preponderance of the evidence, to be evaluated and considered in accordance with the criteria set forth in §48-9-209 of this code.

#### **§48-9-205. Permanent parenting plan.**

(a) A party seeking a judicial allocation of custodial responsibility or decision-making responsibility under this article shall file a proposed parenting plan with the court. Parties may file a joint plan. A proposed plan shall be verified and shall state, to the

extent known or reasonably discoverable by the filing party or parties:

(1) The name, address, and length of residence of any adults with whom the child has lived for one year or more, or in the case of a child less than one year of age, any adults with whom the child has lived since the child's birth;

(2) The name and address of each of the child's parents and any other individuals with standing to participate in the action under §48-9-103 of this code;

(3) A description of the allocation of caretaking and other parenting responsibilities performed by each person named in §48-9-205(a)(1) and §48-9-205(a)(2) of this code;

(4) A description of the work and child-care schedules of any person seeking an allocation of custodial responsibility and any expected changes to these schedules in the near future;

(5) A description of the child's school and extracurricular activities;

(6) A description of any of the ~~limiting factors as~~ criteria described in §48-9-209 of this code that are present, including any restraining orders against either parent to prevent domestic or family violence, by case number and jurisdiction;

(7) Required financial information; and

(8) A description of the known areas of agreement and disagreement with any other parenting plan submitted in the case.

The court shall maintain the confidentiality of any information required to be filed under this section when the person giving that information has a reasonable fear of domestic abuse, and disclosure of the information would increase that fear.

(b) The court shall develop a process to identify cases in which there is credible information that child abuse or neglect as defined in §49-1-201 of this code or domestic violence as defined in §48-

27-202 of this code has occurred. The process shall include assistance for possible victims of domestic abuse in complying with §48-9-205(a)(6) of this code and referral to appropriate resources for safe shelter, counseling, safety planning, information regarding the potential impact of domestic abuse on children, and information regarding civil and criminal remedies for domestic abuse. The process shall also include a system for ensuring that jointly submitted parenting plans that are filed in cases in which there is credible information that child abuse or domestic abuse has occurred receive the court review that is mandated by §48-9-202(b) of this code.

(c) Upon motion of a party and after consideration of the evidence, the court shall order a parenting plan consistent with the provisions of §48-9-206 through §48-9-209 of this code, containing:

(1) A provision for the child's living arrangements and each parent's custodial responsibility, which shall include either:

(A) A custodial schedule that designates in which parent's home each minor child will reside on given days of the year; or

(B) A formula or method for determining a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

(2) An allocation of decision-making responsibility as to significant matters reasonably likely to arise with respect to the child;

(3) A provision consistent with §48-9-202 of this code for resolution of disputes that arise under the plan and remedies for violations of the plan; ~~and~~

(4) Provisions for the financial support of the child or children;  
and

~~(4)~~ (5) A plan for the custody of the child ~~should~~ if one or both of the parents as a member of the National Guard, a reserve

component, or an active duty component ~~be~~ are mobilized, deployed, or called to active duty.

(d) A parenting plan may, at the court's discretion, contain provisions that address matters that are expected to arise in the event of a party's relocation, or provide for future modifications in the parenting plan if specified contingencies occur.

**§48-9-206. Allocation of custodial responsibility at final hearing.**

(a) Unless otherwise resolved by agreement of the parents under §48-9-201 of this code or unless harmful to the child, the court shall allocate custodial responsibility so that, except to the extent required under §48-9-209 of this code, the custodial time the child spends with each parent ~~may be expected to achieve any of the following objectives:~~ shall be equal ('50-50').

~~(1) To permit the child to have a meaningful relationship with each parent who has performed a reasonable share of parenting functions;~~

~~(2) To accommodate, if the court determines it is in the best interests of the child, the firm and reasonable preferences of a child who is 14 years of age or older; and to accommodate, if the court determines it is in the best interests of the child, the firm and reasonable preferences of a child under 14 years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent;~~

~~(3) To keep siblings together when the court finds that doing so is necessary to their welfare;~~

~~(4) To protect the child's welfare when, under an otherwise appropriate allocation, the child would be harmed because of a gross disparity in the quality of the emotional attachments between each parent and the child, or in each parent's demonstrated ability or availability to meet a child's needs;~~

~~(5) To take into account any prior agreement of the parents that, under the circumstances as a whole, including the reasonable~~

~~expectations of the parents in the interest of the child, would be appropriate to consider;~~

~~(6) To avoid an allocation of custodial responsibility that would be extremely impractical or that would interfere substantially with the child's need for stability in light of economic, physical, or other circumstances, including the distance between the parents' residences, the cost and difficulty of transporting the child, the parents' and child's daily schedules, and the ability of the parents to cooperate in the arrangement;~~

~~(7) To~~ (b) The court shall apply the principles set forth in §48-9-403~~(d)~~ of this code if one parent relocates or proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of custodial responsibility that would otherwise be ordered under this section.

~~(8) To consider the stage of a child's development;~~

~~(9) To consider which parent will encourage and accept a positive relationship between the child and the other parent, including which parent is more likely to keep the other parent involved in the child's life and activities;~~

~~(10) To take into account the preference that time allocated to the parent resulting in the child being under the care and custody of that parent is preferred to time allocated to the parent resulting in the child being under the care or custody of a family member of that parent or a third party; and~~

~~(11) To allow reasonable access to the child by telephone or other electronic contact, which shall be defined in the parenting plan;~~

~~(b)~~ (c) The court may consider the allocation of custodial responsibility arising from temporary agreements made by the parties after separation if the court finds, by a preponderance of the evidence, that such agreements were consensual. The court shall afford those temporary consensual agreements the weight the court believes the agreements are entitled to receive, based upon the evidence. The court may not consider the temporary allocation of

custodial responsibility imposed by a court order on the parties unless both parties agreed to the allocation provided for in the temporary order.

~~(c) If the court is unable to allocate custodial responsibility under §48-9-206(a) of this code because the allocation under §48-9-206(a) of this code would be harmful to the child, or because there is no history of past performance of caretaking functions, as in the case of a newborn, or because the history does not establish a pattern of caretaking sufficiently dispositive of the issues of the case, the court shall allocate custodial responsibility based on the child's best interest, taking into account the factors in considerations that are set forth in this section and in §48-9-209 and §48-9-403(d) of this code. and preserving to the extent possible this section's priority on the share of past caretaking functions each parent performed: *Provided*, That if either parent or both has demonstrated reasonable participation in parenting functions as defined in §48-1-235.2 of this code, the court cannot rely solely on caretaking functions, and shall consider the parents' participation in parenting functions.~~

~~(d) In determining how to schedule the custodial time allocated to each parent, the court shall take account of the economic, physical, and other practical circumstances such as those listed in §48-9-206(a)(6) of this code.~~

~~(e)~~ (d) In the absence of an agreement of the parents, the court's determination of allocation of custodial responsibility under this section shall be made pursuant to a final hearing, which shall ~~not~~ be conducted ~~exclusively~~ by the presentation of evidence. ~~by proffer~~. The court's order determining allocation of custodial responsibility shall be in writing, and include specific findings of fact and conclusions of law supporting the determination.

**§48-9-207. Allocation of significant decision-making responsibility at temporary or final hearing.**

(a) Unless otherwise resolved by agreement of the parents under §48-9-201 of this code, the court shall allocate responsibility for making significant life decisions on behalf of the child,

including the child's education and health care, to one parent or to ~~two~~ both parents jointly, in accordance with the child's best interest, in light of the ability or inability of the parents, based upon the evidence before the court, to work collaboratively and in cooperation with each other in decision-making on behalf of the child, and the existence of any criteria ~~considerations~~ as set forth in §48-9-209 of this code.

~~(1) The allocation of custodial responsibility under §48-9-206 of this code;~~

~~(2)~~ (1) The level of each parent's participation in past decision making on behalf of the child;

~~(3)~~ (2) The wishes of the parents; and

~~(4)~~ (3) The level of ability and cooperation the parents have demonstrated in decision-making on behalf of the child.

~~(5) Prior agreements of the parties; and~~

~~(6) The existence of any limiting factors, as set forth in section 9-209 of this article.~~

(b) If each of the child's ~~legal~~ parents has been exercising a reasonable share of the parenting functions for the child, there shall be a rebuttable presumption ~~the court shall presume~~ that an allocation of decision-making responsibility to both parents jointly is in the child's best interests. The presumption may be rebutted ~~is overcome if there is a history of domestic abuse, neglect, or abandonment, or~~ by a showing that joint allocation of decision-making responsibility is not in the child's best interest upon proof by a preponderance of the evidence of relevant factors under §48-9-209 of this code. ~~Provided, That the~~ The court's determination shall be in writing and include specific findings of fact supporting any determination that joint allocation of decision-making responsibility is not in the child's best interest.

(c) Unless otherwise ~~provided or~~ agreed to by the parents or ordered by the court, each parent who is exercising custodial responsibility shall be given sole responsibility for day-to-day

decisions for the child, while the child is in that parent's care and control, including emergency decisions affecting the health and safety of the child.

**§48-9-208. ~~Criteria for parenting plan;~~ Parental dispute resolution.**

(a) If provisions for resolving parental disputes are not ordered by the court pursuant to ~~a parenting agreement under section 9-201, in §48-9-201 of this code,~~ the court shall order a method of resolving disputes that serves the child's best interest in light of:

(1) The parents' wishes and the stability of the child;

(2) Circumstances, including, but not limited to, financial circumstances, that may affect the parents' ability to participate in a prescribed dispute resolution process; and

(3) The existence of any ~~limiting~~ factor ~~as set forth in section 209 of this article.~~ §48-9-209 of this code.

(b) The court may order a non-judicial process of dispute resolution by designating with particularity the person or agency to conduct the process or the method for selecting ~~such~~ a person or agency. The disposition of a dispute through a non-judicial method of dispute resolution that has been ordered by the court without prior parental agreement is subject to de novo judicial review. If the parents have agreed in a parenting plan or by agreement thereafter to a binding resolution of their dispute by non-judicial means, a decision by such means is binding upon the parents and must be enforced by the court, unless it is shown to be contrary to the best interests of the child, beyond the scope of the parents' agreement, or the result of fraud, misconduct, corruption, or other serious irregularity.

(c) This section is subject to the limitations imposed by ~~section two hundred two of this article.~~ §48-9-202 of this code.

**§48-9-209. ~~Parenting plan; limiting factors.~~ considerations.**

(a) ~~If either of the parents so requests, or upon receipt of credible information thereof, the court shall determine whether a~~



~~parent who would otherwise be allocated responsibility under a parenting plan:~~ When entering an order approving or implementing a temporary or permanent parenting plan order, including custodial allocation, the court shall consider whether a parent:

(1) Has abused, neglected, or abandoned a child, as defined by state law;

(2) Has sexually assaulted or sexually abused a child as those terms are defined in §61-8B-1 *et seq.* and §61-8D-1 *et seq.* of this code;

(3) Has committed domestic violence, as defined in §48-27-202 of this code;

(4) Has overtly or covertly, persistently violated, interfered with, impaired, or impeded the rights of a parent or a child with respect to the exercise of shared authority, residence, visitation, or other contact with the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; or

(5) Has made one or more fraudulent reports of domestic violence or child abuse: *Provided*, That a person's withdrawal of or failure to pursue a report of domestic violence or child support shall not alone be sufficient to consider that report fraudulent.

(b) If a parent or another person regularly in the household of the parent is found to have engaged in any activity specified by subsection (a) of this section, the court shall impose limits that are reasonably calculated to protect the child or child's parent from harm. The limitations that the court shall consider include, but are not limited to:

(1) An adjustment of the custodial responsibility of the parents, including but not limited to:

(A) Increased parenting time with the child to make up for any parenting time the other parent lost as a result of the proscribed activity;

(B) An additional allocation of parenting time in order to repair any adverse effect upon the relationship between the child and the other parent resulting from the proscribed activity; or

(C) The allocation of exclusive custodial responsibility to one of ~~them~~ the parents;

(2) Supervision of the custodial time between a parent and the child;

(3) Exchange of the child between parents through an intermediary, or in a protected setting;

(4) Restraints on the parent from communication with, or proximity to, the other parent or the child;

(5) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in the ~~twenty-four~~ 24-hour period immediately preceding such exercise;

(6) Denial of overnight custodial responsibility;

(7) Restrictions on the presence of specific persons while the parent is with the child;

(8) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising custodial responsibility or to secure other performance required by the court;

(9) A requirement that the parent complete a program of intervention for perpetrators of domestic violence, for drug or alcohol abuse, or a program designed to correct another factor; or

(10) Any other constraints or conditions that the court ~~deems~~ determines to be necessary to provide for the safety of the child, a child's parent, or any person whose safety immediately affects the child's welfare.

(c) If a parent or a person regularly in the home of the parent is found to have engaged in any activity specified in subsection (a) of

this section, the court may not allocate custodial responsibility or decision-making responsibility to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under subsection (b) of this section. The parent found to have engaged in the behavior specified in subsection (a) of this section has the burden of proving that an allocation of custodial responsibility or decision-making responsibility to that parent will not endanger the child or the other parent.

(d) If the court determines, based on the investigation described in part ~~three~~ III of this article or other evidence presented to it, that an accusation of child abuse or neglect, or domestic violence made during a child custody proceeding is false and the parent making the accusation knew it to be false at the time the accusation was made, the court may order reimbursement to be paid by the person making the accusations of costs resulting from defending against the accusations. ~~Such~~ The reimbursement may not exceed the actual reasonable costs incurred by the accused party as a result of defending against the accusation and reasonable attorney's fees incurred.

(e) (1) A parent who believes he or she is the subject of activities by the other parent described in subdivision (5), ~~of subsection (a) of this section,~~ may move the court pursuant to ~~subdivision (4), subsection (b), section one hundred and one, article five, chapter forty nine §49-5-101(b)(4)~~ of this code for the Department of Health and Human Resources to disclose whether the other parent was the source of the allegation and, if so, whether the department found the report to be:

- (A) Substantiated;
- (B) Unsubstantiated;
- (C) Inconclusive; or
- (D) Still under investigation.

(2) If the court grants a motion pursuant to this subsection, disclosure by the Department of Health and Human Resources

shall be in camera. The court may disclose to the parties information received from the department only if it has reason to believe a parent knowingly made a false report.

(f) In determining whether the presumption for an equal (50-50) allocation of physical custody has been rebutted, a court shall consider all relevant factors including any of the following:

(1) The factors set forth in subdivision (a) of this section;

(2) Whether the child:

(A) Was conceived as a result of sexual assault or sexual abuse by a parent as set forth in §48-9-209a of this code;

(B) Has special needs, a chronic illness, or other serious medical condition and would receive more appropriate care under another custodial allocation;

(C) Is a nursing child less than six months of age, or less than one year of age if the child receives substantial nutrition through nursing;: *Provided*, That the child reaching one year of age shall qualify as a substantial change in circumstances per §48-9-401 of this code; or

(D) Will be separated from his or her siblings or the arrangement would otherwise disrupt the child's opportunities to bond with his or her siblings;

(3) Whether a parent:

(A) Is willfully noncompliant with a previous order of the court regarding payment of child support payments for a child or children of the parties;

(B) Is unwilling to seek necessary medical intervention for the child who has a serious medical condition;

(C) Has a chronic illness or other condition that renders him or her unable to provide proper care for the child;

(D) Has intentionally avoided or refused involvement or not been significantly involved in the child's life prior to the hearing, except when the lack of involvement is the result of actions on the part of the other parent which were, without good cause, designed to deprive the parent of contact and involvement with his or her child or children without good cause;

(E) Repeatedly causes the child or children to be in the care of a third party rather than the other parent when he or she is available;

(F) Does not have a stable housing situation: *Provided*, That a parent's temporary residence with a child in a domestic violence ~~violation~~ shelter shall not constitute an unsafe housing situation; or

(G) Is unwilling or unable to perform caretaking functions for the child as required by §48-1-210 of this code;

(4) Whether a parent, partner, or other person living, or regularly in that parent's household:

(A) Has been adjudicated in an abuse and neglect proceeding to have abused or neglected a child, or has a pending abuse and neglect case;

(B) Has been judicially determined to have committed domestic violence or has a pending domestic violence case;

(C) Has a felony criminal record;

(D) Is addicted to a controlled substance or alcohol;

(E) Has threatened or has actually detained the child with the intent to retain or conceal the child from the other parent or from a third person who has legal custody: *Provided*, That a parent's temporary residence with the child in a domestic violence shelter shall not be construed as evidence of the parent's intent to retain or conceal the child from the other parent; or

(F) Has been involuntarily committed to a mental health facility, or suffers from a serious mental illness;

(5) Whether an equal (50-50) physical allocation is:

(A) Impractical because of ~~due to~~ the physical distance between the parents' residences;

(B) Impractical due to the cost and difficulty of transporting the child;

(C) Impractical due to each parent's and the child's daily schedules;

(D) Would disrupt the education of the child; or

(E) Contrary to the firm and reasonable preferences of a child who is 14 years of age or older; and to accommodate, if the court determines it is in the best interests of the child, the firm and reasonable preferences of a child under 14 years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent;

(6) Whether the parents cannot work cooperatively and collaboratively in the best interest of the child; or

(7) Whether a parent will encourage and accept a positive relationship between the child and the other parent, including which parent is more likely to keep the other parent involved in the child's life and activities.

**§48-9-401. Modification upon showing of changed circumstances or harm.**

(a) Except as provided in ~~section 9-402 or 9-403~~, §48-9-402 or §48-9-403 of this code, a court shall modify a parenting plan order if it finds, on the basis of facts that were not known or have arisen since the entry of the prior order and were not anticipated ~~therein~~ in the prior order, that a substantial change has occurred in the circumstances of the child or of one or both parents and a modification is necessary to serve the best interests of the child.

(b) In exceptional circumstances, a court may modify a parenting plan if it finds that the plan is not working as contemplated and in some specific way is manifestly harmful to the

child, even if a substantial change of circumstances has not occurred.

(c) Unless the parents have agreed otherwise, the following circumstances do not justify a significant modification of a parenting plan except where harm to the child is shown:

(1) Circumstances resulting in an involuntary loss of income, by loss of employment or otherwise, affecting the parent's economic status;

(2) A parent's remarriage or cohabitation, except under the circumstances set forth in §48-9-209(f) of this code; and

(3) Choice of reasonable caretaking arrangements for the child by a legal parent, including the child's placement in day care.

(d) For purposes of subsection (a) of this section, the occurrence or worsening of a limiting factor, as defined in ~~subsection (a), section 9-209, §48-9-209(a) of this code~~, after a parenting plan has been ordered by the court, constitutes a substantial change of circumstances and measures shall be ordered pursuant to ~~section 9-209~~ §48-9-209 of this code, to protect the child or the child's parent.

**§48-9-402. Modification without showing of changed circumstances.**

(a) The court shall modify a parenting plan in accordance with a parenting agreement, unless it finds that the agreement is not knowing and voluntary or that it would be harmful to the child.

(b) The court may modify any provisions of the parenting plan without the showing of ~~change~~ the changed circumstances required by §48-9-401(a) of this code, if the modification is in the child's best interests, and the modification:

(1) Reflects the de facto arrangements under which the child has been receiving care from the petitioner, without objection, in substantial deviation from the parenting plan, for the preceding six months before the petition for modification is filed, provided the

arrangement is not the result of a parent's acquiescence resulting from the other parent's domestic abuse;

(2) Constitutes a minor modification in the plan;~~or~~

(3) Is necessary to accommodate the reasonable and firm preferences of a child who, has attained the age of ~~fourteen~~ 14; or

(4) Is necessary to accommodate the reasonable and firm preferences of a child who, is under the age of ~~fourteen~~ 14 and, in the discretion of the court, is sufficiently matured that he or she can intelligently express a voluntary preference;

(c) Evidence of repeated filings of fraudulent reports of domestic violence or child abuse is admissible in a domestic relations action between the involved parties when the allocation of custodial responsibilities is in issue, and the fraudulent accusations may be a factor considered by the court in making the allocation of custodial responsibilities.

**§48-9-602. Designation of custody for the purpose of other state and federal statutes.**

Solely for the purposes of all other state and federal statutes which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside the majority of the time as the custodian of the child. However, this designation shall not affect either parent's rights and responsibilities under a parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside the majority of the time is ~~deemed~~ considered to be the custodian of the child for the purposes of such federal and state statutes. When a court orders that custodial allocation shall be on an equal (50-50) basis, the court shall also specify in its order which parent may claim state and federal income tax deductions and exemptions for the child or children: Provided, That such claims to state and federal income tax deductions and exemptions for the child or children may be divided equitably between the parents, year to year.



**§48-9-603. Effect of enactment; operative dates.**

~~(a) The enactment of this article, formerly enacted as article eleven of this chapter during the second extraordinary session of the 1999 Legislature, is prospective in operation unless otherwise expressly indicated.~~

~~(b) The provisions of §48-9-202 of this code, insofar as they provide for parent education and mediation, became operative on January 1, 2000. Until that date, parent education and mediation with regard to custody issues were discretionary unless made mandatory under a particular program or pilot project by rule or direction of the Supreme Court of Appeals or a circuit court.~~

~~(c) The provisions of this article that authorize the court, in the absence of an agreement of the parents, to order an allocation of custodial responsibility and an allocation of significant decision-making responsibility became operative on January 1, 2000, at which time the primary caretaker doctrine was replaced with a system that allocates custodial and decision-making responsibility to the parents in accordance with this article. Any order entered prior to January 1, 2000, based on the primary caretaker doctrine remains in full force and effect until modified by a court of competent jurisdiction.~~

~~(d) The amendments to this chapter made during the 2021 session of the Legislature shall become applicable upon the effective date of those amendments. Any order entered prior to the effective date of those amendments remains in full force and effect until modified by a court of competent jurisdiction.~~

(a) The amendments to this chapter enacted during the 2022 session of the Legislature shall become applicable upon the effective date of those amendments. Any order entered prior to the effective date of those amendments remains in full force and effect until modified by a court of competent jurisdiction.

(b) The amendments to this chapter enacted during the 2022 Regular Legislative Session do not constitute a change in

circumstances or other basis for modification under §48-9-401 or §48-9-402 of this code.

(c) The amendments to this chapter enacted during the 2022 Regular Legislative Session shall become applicable upon the effective date of those amendments. Any order entered prior to the effective date of those amendments remains in full force and effect until modified by a court of competent jurisdiction.

(d) The amendments to this chapter enacted during the 2022 Regular Legislative Session shall be known as the 2022 Best Interest of the Child Act.”

And,

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

**Com. Sub. for S. B. 463** - “A Bill to amend and reenact §48-9-102 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated § 48-1-102a; to amend and reenact §48-9-203, §48-9-204, §48-9-205, §48-9-206, §48-9- 207, §48-9-208, §48-9-209, §48-9-401, §48-9-402, §48-9-602, and §48-9-603 of said code, all relating generally to domestic relations matters; modifying allocation of legal custody and parenting time in domestic relations matters; establishing collaborative parenting as a goal in allocation of custodial responsibility and decision-making; creating a rebuttable presumption that equal custodial allocation is in a child’s best interest; requiring specific findings and legal conclusions by the court if equal parenting is not granted; establishing criteria for diverging from equal custodial allocation when it is sought; authorizing interlocutory appeals to the Intermediate Court of Appeals if the family court refuses all physical custody to a parent or denies equal custody when sought; precluding the family court from entering a stay during an interlocutory appeal; requiring consideration of certain factors in developing a temporary parenting plan; ensuring that permanent parenting plans include provisions for financial support of children; requiring court not to consider temporary allocation of physical custody in final order unless parties agreed on temporary terms; removing provisions

requiring consideration of terms in temporary orders when drafting final orders; requiring consideration of parents' ability or inability to work together in allocating significant decision-making responsibilities; clarifying considerations for courts in developing or approving parenting plans; setting forth optional considerations for a court in allocating physical custody of a child; authorizing family court to designate which parent is entitled to tax deductions and exemptions equitably on a year to year basis when equal custody is ordered; clarifying that amendments made during regular session of the Legislature, 2022, are prospective; and declaring custodial orders entered prior to the effective date of the amendments to chapter 48 during the regular session of the Legislature, 2022, remain in full force and effect until judicially modified."

The bill, as amended by the House, and further amended by the Senate, was put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 678**), and there were—yeas 82, nays 14, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Barach, Diserio, Doyle, Fleischauer, Fluharty, Garcia, Hansen, Nestor, Pushkin, Rowe, Skaff, Thompson, Williams and Young.

Absent and Not Voting: Brown, Cooper, Sypolt and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 463) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4502**, Establishing the BUILD WV Act.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

On pages eight and nine, section six, lines one through seven, by striking out all of section six and inserting in lieu thereof a new section six, to read as follows:

**“§5B-2L-6. Effective date, expiration date and required reporting.**

(a) Effective July 1, 2024, and annually thereafter, the Department of Economic Development shall submit a report to the Joint Committee on Government and Finance. The report shall provide:

(1) The number and location of all projects approved pursuant to this article;

(2) The geographic distribution of the projects approved;

(3) The total number of new housing units approved over the preceding year;

(4) The total number of housing units completed oved the preceding year;

(5) The total amount of exemptions granted pursuant to §5B-2L-7 of this article;

(6) The total amount of property value adjustment tax credits allowed pursuant to §5B-2L-10 of this article; and

(7) Any other information requested by the Joint Committee on Government and Finance.

(b) Any property value adjustment tax credit authorized by this article shall be effective for corporate net income tax years and personal income tax years beginning on and after January 1, 2023.

(c) Effective January 1, 2028, the provisions of this article shall expire and have no further force or effect: *Provided*, That any tax exemption or property value adjustment tax credit authorized

pursuant to this article prior to January 1, 2028, shall continue to be valid and eligible for redemption pursuant to procedures provided herein.”

On page eighteen, section fourteen, line twenty-three, by striking out “12” and inserting in lieu thereof “3”;

And,

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

“(c) The aggregate sum of approved costs for all projects for any fiscal year shall not exceed \$40 million. Any project application submitted for certification in the fiscal year after the sum of \$40 million has been reached shall not be approved or certified. Notwithstanding any other provision of this code, for any fiscal year, the Secretary of the Department of Economic Development may not approve any single proposed project as a certified BUILD WV project for the fiscal year unless the proposed project has an aggregate sum of approved costs that is at least \$3 million or the proposed project includes at least six residential units or houses.”

And,

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

**Com. Sub. for H. B. 4502** – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-2L-1, §5B-2L-2, §5B-2L-3, §5B-2L-4, §5B-2L-5, §5B-2L-6, §5B-2L-7, §5B-2L-8, §5B-2L-9, §5B-2L-10, §5B-2L-11, §5B-2L-12, §5B-2L-13, §5B-2L-14, §5B-2L-15, §5B-2L-16, and §5B-2L-17, all relating to establishing the BUILD WV Act; providing legislative findings and purpose; authorizing rule-making authority; providing for the application of the West Virginia Tax Procedure and Administration Act and West Virginia Tax Crimes and Penalties Act; providing effective and expiration dates; required annual reporting to the Joint Committee on Government and Finance; setting out elements to be included in the

annual report; exempting the construction contractors of certified BUILD WV projects from the consumers sales and service tax and use tax; authorizing municipalities to provide exemptions to business and occupation taxes; establishing a property value adjustment tax credit; providing for the determination of amount and application of the property value adjustment tax credit; providing that the property value adjustment tax credit entitlement is retained by eligible taxpayers that have developed project property; providing for credit recapture, interest, penalties, additions to tax, and statute of limitations; providing for certified BUILD WV districts and the procedure for designation; granting authority to the Department of Economic Development to administer BUILD WV; providing for the application and procedures for BUILD WV projects; and requiring agreements between the Department of Economic Development and BUILD WV project participants.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 679**), and there were—yeas 86, nays 10, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Fast, Gearheart, Hardy, Kimble, Martin, McGeehan, Paynter, Pritt, B. Ward and G. Ward.

Absent and Not Voting: Brown, Cooper, Sypolt and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4502) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 2300**, Including Family Court Judges in the Judges' Retirement System.

On motion of Delegate Kessinger, the House refused to concur in the following amendment of the bill by the Senate, and requested the Senate to recede therefrom:

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

**“CHAPTER 5. GENERAL POWERS AND AUTHORITY  
OF THE GOVERNOR, SECRETARY OF STATE AND  
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;  
MISCELLANEOUS AGENCIES, COMMISSIONS,  
OFFICES, PROGRAMS, ETC.**

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES  
RETIREMENT ACT.**

**§5-10-14. Service credit; retroactive provisions.**

(a) The board of trustees shall credit each member with the prior service and contributing service to which he or she is entitled based upon rules adopted by the board of trustees and based upon the following:

(1) In no event may less than ten days of service rendered by a member in any calendar month be credited as a month of service: *Provided*, That for employees of the State Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, service credit of one month shall be awarded for each ten days employed in the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit;

(2) Except for hourly employees, and those persons who first become members of the retirement system on or after July 1, 2015, ten or more months of service credit earned in any calendar year shall be credited as a year of service: *Provided*, That no more than one year of service may be credited to any member for all service rendered by him or her in any calendar year and no days may be carried over by a member from one calendar year to another calendar year where the member has received a full-year credit for that year; and

(3) Service may be credited to a member who was employed by a political subdivision if his or her employment occurred within a period of thirty years immediately preceding the date the political subdivision became a participating public employer.

(b) The board of trustees shall grant service credit to employees of boards of health, the Clerk of the House of Delegates and the Clerk of the State Senate or to any former and present member of the State Teachers Retirement System who have been contributing members in the Public Employees Retirement System for more than three years, for service previously credited by the State Teachers Retirement System and shall require the transfer of the member's accumulated contributions to the system and shall also require a deposit, with reinstatement interest as set forth in the board's Rule, Refund, Reinstatement, Retroactive Service, Loan and Correction of Error Interest Factors, 162 C. S. R. 7, of any withdrawals of contributions any time prior to the member's retirement. Repayment of withdrawals shall be as directed by the Board of Trustees.

(c) Court reporters who are acting in an official capacity, although paid by funds other than the county commission or State Auditor, may receive prior service credit for time served in that capacity.

(d) Active members who previously worked in Comprehensive Employment and Training Act (CETA) may receive service credit for time served in that capacity: *Provided*, That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from



temporary employment with the participating employer to permanent full-time employment with the participating employer within one hundred twenty days following the termination of the member's CETA employment; (2) the board must receive evidence that establishes to a reasonable degree of certainty as determined by the board that the member previously worked in CETA; and (3) the member shall pay to the board an amount equal to the employer and employee contribution plus interest at the amount set by the board for the amount of service credit sought pursuant to this subsection: *Provided, however,* That the maximum service credit that may be obtained under the provisions of this subsection is two years: *Provided further,* That a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by March 31, 2003: *And provided further,* That the board shall exercise due diligence to notify affected employees of the provisions of this subsection.

(e) (1) Employees of the State Legislature whose terms of employment are otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions shall receive service credit for the time served in that capacity in accordance with the following: For purposes of this section, the term "regular session" means day one through day sixty of a sixty-day legislative session or day one through day thirty of a thirty-day legislative session. Employees of the State Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions and who have been or are employed during regular sessions or during the interim time between regular sessions in seven consecutive calendar years, as certified by the clerk of the house in which the employee served, shall receive service credit of six months for all regular sessions served, as certified by the clerk of the house in which the employee served, or shall receive service credit of three months for each regular thirty-day session served prior to 1971: *Provided,* That employees of the State Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services

required by the Legislature for its regular sessions and who have been or are employed during the regular sessions in thirteen consecutive calendar years as either temporary employees or full-time employees or a combination thereof, as certified by the clerk of the house in which the employee served, shall receive a service credit of twelve months for each regular session served, as certified by the clerk of the house in which the employee served: *Provided, however,* That the amendments made to this subsection during the 2002 regular session of the Legislature only apply to employees of the Legislature who are employed by the Legislature as either temporary employees or full-time employees as of January 1, 2002, or who become employed by the Legislature as temporary or full-time employees for the first time after January 1, 2002. Employees of the State Legislature whose terms of employment are otherwise classified as temporary and who are employed to perform services required by the Legislature during the interim time between regular sessions shall receive service credit of one month for each ten days served during the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit: *Provided further,* That no more than one year of service may be credited to any temporary legislative employee for all service rendered by that employee in any calendar year and no days may be carried over by a temporary legislative employee from one calendar year to another calendar year where the member has received a full year credit for that year. Service credit awarded for legislative employment pursuant to this section shall be used for the purpose of calculating that member's retirement annuity, pursuant to section twenty-two of this article, and determining eligibility as it relates to credited service, notwithstanding any other provision of this section. Certification of employment for a complete legislative session and for interim days shall be determined by the clerk of the house in which the employee served, based upon employment records. Service of fifty-five days of a regular session constitutes an absolute presumption of service for a complete legislative session and service of twenty-seven days of a thirty-day regular session occurring prior to 1971 constitutes an absolute presumption of service for a complete legislative session. Once a legislative

employee has been employed during regular sessions for seven consecutive years or has become a full-time employee of the Legislature, that employee shall receive the service credit provided in this section for all regular and interim sessions and interim days worked by that employee, as certified by the clerk of the house in which the employee served, regardless of when the session or interim legislative employment occurred: *And provided further*, That regular session legislative employment for seven consecutive years may be served in either or both houses of the Legislature.

(2) For purposes of this section, employees of the Joint Committee on Government and Finance are entitled to the same benefits as employees of the House of Delegates or the Senate: *Provided*, That for joint committee employees whose terms of employment are otherwise classified as temporary, employment in preparation for regular sessions, certified by the legislative manager as required by the Legislature for its regular sessions, shall be considered the same as employment during regular sessions to meet service credit requirements for sessions served.

(f) Any employee may purchase retroactive service credit for periods of employment in which contributions were not deducted from the employee's pay. In the purchase of service credit for employment prior to 1989 in any department, including the Legislature, which operated from the General Revenue Fund and which was not expressly excluded from budget appropriations in which blanket appropriations were made for the state's share of public employees' retirement coverage in the years prior to 1989, the employee shall pay the employee's share. Other employees shall pay the state's share and the employee's share to purchase retroactive service credit. Where an employee purchases service credit for employment which occurred after 1988, that employee shall pay for the employee's share and the employer shall pay its share for the purchase of retroactive service credit: *Provided*, That no legislative employee and no current or former member of the Legislature may be required to pay any interest or penalty upon the purchase of retroactive service credit in accordance with the provisions of this section where the employee was not eligible to become a member during the years for which he or she is

purchasing retroactive credit or had the employee attempted to contribute to the system during the years for which he or she is purchasing retroactive service credit and the contributions would have been refused by the board: *Provided, however*, That a current legislative employee purchasing retroactive credit under this section shall do so within twenty-four months of beginning contributions to the retirement system as a legislative employee or no later than December 31, 2016, whichever occurs later: *Provided further*, That once a legislative employee becomes a member of the retirement system, he or she may purchase retroactive service credit for any time he or she was employed by the Legislature and did not receive service credit. Any service credit purchased shall be credited as six months for each sixty-day session worked, three months for each thirty-day session worked or twelve months for each sixty-day session for legislative employees who have been employed during regular sessions in thirteen consecutive calendar years, as certified by the clerk of the house in which the employee served, and credit for interim employment as provided in this subsection: *And provided further*, That this legislative service credit shall also be used for months of service in order to meet the sixty-month requirement for the payments of a temporary legislative employee member's retirement annuity: *And provided further*, That no legislative employee may be required to pay for any service credit beyond the actual time he or she worked regardless of the service credit which is credited to him or her pursuant to this section: *And provided further*, That any legislative employee may request a recalculation of his or her credited service to comply with the provisions of this section at any time.

(g) (1) Notwithstanding any provision to the contrary, the seven consecutive calendar years requirement and the thirteen consecutive calendar years requirement and the service credit requirements set forth in this section shall be applied retroactively to all periods of legislative employment prior to the passage of this section, including any periods of legislative employment occurring before the seven consecutive and thirteen consecutive calendar years referenced in this section: *Provided*, That the employee has not retired prior to the effective date of the amendments made to this section in the 2002 regular session of the Legislature.

(2) The requirement of seven consecutive years and the requirement of thirteen consecutive years apply retroactively to all legislative employment prior to the effective date of the 2006 amendments to this section.

(h) The board of trustees shall grant service credit to any former or present member of the State Police Death, Disability and Retirement Fund who has been a contributing member of this system for more than three years for service previously credited by the State Police Death, Disability and Retirement Fund if the member transfers all of his or her contributions to the State Police Death, Disability and Retirement Fund to the system created in this article, including repayment of any amounts withdrawn any time from the State Police Death, Disability and Retirement Fund by the member seeking the transfer allowed in this subsection: *Provided*, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the Public Employees Retirement System during the period of his or her membership in the State Police Death, Disability and Retirement Fund, excluding contributions on lump sum payment for annual leave, plus interest at a rate determined by the board.

(i) The provisions of section twenty-two-h of this article are not applicable to the amendments made to this section during the 2006 regular session.

(j) The board of trustees shall grant service credit to any judge who elects to transfer service from the judges' retirement system to the public employees retirement system and shall require the transfer to the member's employee contributions to the system: *Provided*, That there shall be added by the member to the amount transferred pursuant to this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the public employees retirement system during the period of his or her membership in the judges' retirement system, plus interest at the actuarial interest rate assumption as approved by the board, compounded per annum.

## ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

### §51-9-1a. Definitions.

(a) Notwithstanding any provision of this code contrary, as used in this article, the term ‘judge’, ‘judge of any court of record’, or ‘judge of any court of record of this state’ means, refers to, and includes judges of the several family courts, circuit courts, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals. ~~For purposes of this article, the terms do not mean, refer to, or include family court judges.~~

(b) ‘Actuarially equivalent’ or ‘of equal actuarial value’ means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided,* That when used in the context of compliance with the federal maximum benefit requirements of section 415 of the Internal Revenue Code, ‘actuarially equivalent’ shall be computed using the mortality tables and interest rates required to comply with those requirements.

(c) ‘Beneficiary’ means any person, except a member, who is entitled to an annuity or other benefit payable by the retirement system.

(d) ‘Board’ means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

(e) ‘Employer error’ means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(f) ‘Final average salary’ means the average of the highest 36 consecutive months’ compensation received by the member as a judge of any court of record of this state.

(f) (g) 'Internal Revenue Code' means the Internal Revenue Code of 1986, as it has been amended.

(g) (h) 'Member' means a judge participating in this system.

(h) (i) 'Plan year' means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(i) (j) 'Required beginning date' means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age ~~70 and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which the member retires or otherwise separates from covered employment under this retirement system.

(j) (k) 'Retirement system' or 'system' means the Judges' Retirement System created and established by this article. Notwithstanding any other provision of law to the contrary, the provisions of this article are applicable only to circuit judges, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals in the manner specified in this article. No service as a family court judge may be construed to qualify a person to participate in the Judges' Retirement System or used in any manner as credit toward eligibility for retirement benefits under the Judges' Retirement System."§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; leased employees; military service credit; maximum allowable and qualified military service; qualifiable prosecutorial service.

(a) Every person who is now serving or shall hereafter serve as a judge of any court of record of this state shall pay into the Judges' Retirement Fund six percent of the salary received by such person out of the State Treasury: *Provided*, That when a judge becomes eligible to receive benefits from such trust fund by actual retirement, no further payment by him or her shall be required, since such employee contribution, in an equal treatment sense, ceases to be required in the other retirement systems of the state, also, only after actual retirement: *Provided, however*, That on and after January 1, 1995, every person who is then serving or shall

thereafter serve as a judge of any court of record in this state shall pay into the Judges' Retirement Fund nine percent of the salary received by that person: *Provided further*, That consistent with the salary increase granted to judges of courts of record during the 2005 regular legislative session and to changes effectuated in judicial retirement by provisions enacted during the third extraordinary legislative session of 2005, on and after July 1, 2005, every person who is then serving or shall thereafter serve as a judge of any court of record in this state shall pay into the Judges' Retirement Fund 10 and one-half percent of the salary received by that person: *And provided further*, That on and after July 1, 2013, except as provided in subsection (b) of this section, every person who is then serving or shall thereafter serve as a judge of any court of record in this state and who elects to participate in this retirement system shall pay into the Judges' Retirement Fund seven percent of the salary received. Any prior occurrence or practice to the contrary, in any way allowing discontinuance of required employee contributions prior to actual retirement under this retirement system, is rejected as erroneous and contrary to legislative intent and as violative of required equal treatment and is hereby nullified and discontinued fully, with the State Auditor to require such contribution in every instance hereafter, except where no contributions are required to be made under any of the provisions of this article.

(b) On and after July 1, 2014, every person who is serving or shall hereafter serve as a judge of any court of record of this state and who elects to participate in this retirement system shall contribute to the fund an amount determined by the board. This amount will be based on the annual actuarial valuation prepared by the State Actuary: *Provided*, That the contribution will be no less than seven percent or no more than ten and one-half percent of the participant's annual compensation: *Provided, however, That on or after July 1, 2023, the contribution will be no less than three percent or no more than ten percent of the participant's annual compensation.*

(c) On or after July 1, 2013, and each year thereafter, the annual actuarial valuation prepared by the State Actuary for determination



of all participants' contributions and the annual actuarially required contribution prepared by the State Actuary for use by the courts of this state for legislative appropriation shall be provided to the Legislature's Joint Committee on Government and Finance and the Joint Committee on Pensions and Retirement.

(d) An individual who is a leased employee shall not be eligible to participate in the system. For purposes of this system, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has the final power to decide the question.

(e) In drawing warrants for the salary checks of judges, the State Auditor shall deduct from the amount of each such salary check six percent thereof, which amount so deducted shall be credited by the Consolidated Public Retirement Board to the trust fund: *Provided*, That on or after January 1, 1995, the amount so deducted and credited shall be nine percent of each such salary check: *Provided, however*, That consistent with the salary increase granted to judges of courts of record during the 2005 regular legislative session and to changes effectuated in judicial retirement by provisions enacted during the third extraordinary legislative session of 2005, on or after July 1, 2005, the amount so deducted and credited shall be 10 and one-half percent of each such salary check: *Provided further*, That on and after July 1, 2013, except as provided in subsection (b) of this section, the amount so deducted and credited shall be seven percent of each salary check: *And provided further*, That on and after July 1, 2014, the amount so deducted and credited will be determined by the board.

(f) Any judge seeking to qualify military service to be claimed as credited service, in allowable aggregate maximum amount up to five years, shall be entitled to be awarded the same without any required payment in respect thereof to the Judges' Retirement Fund.

(g) Notwithstanding the preceding provisions of this section, contributions, benefits, and service credit with respect to qualified

military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and may promulgate rules relating to contributions, benefits and service credit pursuant to the authority granted to the retirement board in §5-10D-1 of this code to comply with Section 414(u) of the Internal Revenue Code.

(h) Any judge holding office as such on the effective date of the amendments to this article adopted by the Legislature at its 1987 regular session who seeks to qualify service as a prosecuting attorney as credited service, which service credit must have been earned prior to the year 1987, shall be required to pay into the Judges’ Retirement Fund nine percent of the annual salary which was actually received by such person as prosecuting attorney during the time such prosecutorial service was rendered prior to the year 1987 and for which credited service is being sought, together with applicable interest. No judge whose term of office shall commence after the effective date of such amendments to this article shall be eligible to claim any credit for service rendered as a prosecuting attorney as eligible service for retirement benefits under this article, nor shall any time served as a prosecutor after the year 1988 be considered as eligible service for any purposes of this article.”

And,

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

**H. B. 2300** – “A Bill to amend and reenact §5-10-14 of the Code of West Virginia, 1931, as amended; to amend and reenact §51-9-1a; and to amend and reenact §51-9-4 relating to including family court judges in the Judges’ Retirement System; to change contribution levels of persons who serve of any court of record of this state and who elects to participate in this retirement system; setting an effective date; and modifying percent of participant’s annual compensation.”

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 3073**, Relating to the West Virginia Emergency School Food Act.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 5D. WEST VIRGINIA FEED TO ACHIEVE ACT.**

**§18-5D-6. West Virginia Emergency School Food Act.**

(a) The Legislature finds and declares that:

(1) The Feed to Achieve initiative has successfully improved the availability and awareness for the need to provide nutritious food to state students and the Shared Table Initiative has facilitated a spirit of innovation and consciousness in our counties to find alternative ways to feed children in need;

(2) A periodic assessment of the needs for county students and availability of county resources would be helpful in determining what type of resources are available and needed to reduce food insecurity for students when they are not in school;

(3) That expansion of the Shared Table Initiative to include a program to encourage county schools to locate, participate in, and initiate programs to provide meals during summers and non-school-day times when some children may not have access to healthy meals could assist in reducing food insecurity for thousands of children in this state, and therefore, creating a mechanism that is not a directive from the Legislature upon county

school boards, but rather an authorization to use school resources to find innovative ways, within the means of the county school systems, to assist the communities they serve, will provide a public benefit.

(b) Any county public school system may conduct an annual countywide survey of public-school students to determine their noninstructional or nontraditional remote learning and virtual school day eating patterns and the availability of nutritious food to them when schools are closed. The West Virginia Office of Child Nutrition may assist and facilitate with this survey to determine the needs for supplemental food services in every county.

(c) Any county board may collect and compile information regarding the availability of food resources in the county during noninstructional or nontraditional remote learning days as well as include a plan that includes virtual school students and distribute this information to all students. These resources may include any public, private, religious group, or charity that will provide food to children with food insecurity.

(d) Any county school board may investigate and implement any program that may facilitate this initiative including, but not limited to, entrepreneurship programs to foster innovation in providing assistance, utilizing participation in programs as a positive discipline option, and creating mentorship programs or other opportunities to participate in the feeding program.

(e) Any county school board may provide an annual countywide or a coordinated regional training opportunity, with assistance from the West Virginia Office of Child Nutrition, that ensures that any entity that potentially qualifies as a summer feeding site according to the county survey, is afforded the opportunity to receive training on operation of a feeding site.

(f) Any county board may provide its survey, a summary of its activities, and any findings or recommendations the county school board has related thereto, to the West Virginia Office of Child Nutrition at a date determined each year by that office.

(g) Each West Virginia public school may include in its crisis response plan, created pursuant to §18-9F-9, an assessment and plan to feed students during noninstructional or nontraditional remote learning days and public virtual school students that includes emergency situations that may require innovative ways to deliver food to student homes. Community support and resources should be utilized when creating this plan.

(h) The West Virginia Office of Child Nutrition may monitor these activities and share between counties information about innovative and successful program initiatives around the state to promote and facilitate the West Virginia Emergency School Food Act.”

And,

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

**H. B. 3073** – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5D-6, relating to establishing the West Virginia Emergency School Food Act; providing findings; allowing an annual countywide survey of public school students to determine certain eating patterns and the availability of nutritious food to certain students when schools are closed; allowing the collection and compilation of information regarding the availability of food resources in the county on certain days including a plan that includes virtual school students and distribute the information to all students; allowing a county board to investigate and implement any program that may facilitate this initiative; allowing a county board to provide an annual county wide or a coordinated regional training opportunity for an entity that potentially qualifies as a summer feeding site; allowing a county board to provide its survey, a summary of its activities, and any findings or recommendations the county board has thereto, to the West Virginia Office of Child Nutrition; allowing a public school to include in its crisis response plan an assessment and plan to feed students during certain remote learning days and to public virtual school students; and allowing the West Virginia Office of Child Nutrition to monitor certain

activities and share between counties information about innovative and successful program initiatives.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 680**), and there were—yeas 93, nays 3, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Fast, J. Jeffries and McGeehan.

Absent and Not Voting: Brown, Cooper, Sypolt and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3073) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4001**, Generally relating to broadband.

On motion of Delegate Kessinger, the House concurred in the following amendment by the Senate, with further amendment:

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

**“ARTICLE 1A. OFFICE OF BROADBAND.**

**§31G-1A-7. Broadband Development Fund.**

(a) The Broadband Development Fund is hereby created in the State Treasury. The fund shall be administered by the Secretary of the Department of Economic Development and shall consist of all moneys made available for the purposes of this article from any

source, including, but not limited to, all gifts, grants, bequests or transfers from any source, any moneys that may be appropriated to the fund by the Legislature, and all interest or other return earned from investment of the fund. Expenditures from the fund shall be for the purposes set forth in subsection (b) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq.* of this code: *Provided*, That for the fiscal year ending June 30, 2022, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this section.

(b) Monies of the Broadband Development Fund may only be expended for the following purposes:

- (1) Expenses for the administration of the Office of Broadband;
- (2) Line extension advancement and development projects, including expansion of existing fiber and cable networks;
- (3) Major broadband project strategies, including new networks or major expansions of existing networks;
- (4) GigReady incentive projects, including a state incentive for ISP and local governments and organizations to pool some of their federal American Rescue Plan Act allocations or other local funding; and

~~And~~

- (5) Wireless Internet Networks, including expansions or upgrades of existing fixed wireless networks.

(c) Except funds expended for the administration of the Office of Broadband, monies of the Broadband Development Fund may only be expended for projects authorized by subsection (b) of this

section that have been certified to the Joint Committee on Government and Finance by the Director of the Office of Broadband or the Secretary of the Department of Economic Development prior to making the expenditures.

(d) The Legislature of the State of West Virginia finds and declares that competition in any market, more especially in the delivery of broadband internet services is eminently desirable. The Legislature further finds that a competitive market, rather than a rate-regulated monopoly or duopoly will promote and perpetuate improvement in customer service, technical service, terms, conditions, and pricing. Accordingly, all agencies of state government are hereby directed to first support expansion and enhancement of broadband internet services to unserved homes and businesses and second to support expansion and enhancement of competition.

(e) Telecommunications facilities purchased, installed, or funded by any grant program offered by this state shall be subject to:

(1) The provisions of 2 CFR 200 governing equipment and capital assets and any other applicable federal law, rule, or regulation; and

(2) Any state law, rule, or regulation governing the sale of government or grant-funded assets not in conflict with applicable federal law, rule, or regulation.

#### **§31G-1A-8. Broadband Carrier Neutral and Open Access Infrastructure Development Fund.**

(a) The Broadband Carrier Neutral and Open Access Infrastructure Development Fund is hereby created in the State Treasury. The fund shall be administered by the Secretary of the Department of Economic Development and shall consist of all moneys made available for the purposes of this article from any source, including, but not limited to, all gifts, grants, bequests or transfers from any source, any moneys that may be appropriated to the fund by the Legislature, and all interest or other return earned



from investment of the fund. Expenditures from the fund shall be for the purposes set forth in subsection (b) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq.* of this code: *Provided*, That for the fiscal year ending June 30, 2022, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this section.

(b) Moneys of the Broadband Carrier Neutral and Open Access Infrastructure Development Fund may only be expended for the following purposes:

(1) Expenses for the administration of the Office of Broadband; and

(2) Line extension advancement and development projects, including expansion of existing fiber and cable networks: *Provided*, That if a broadband project or extension is funded by 100 percent of public money, the project or extension shall be a carrier neutral and open access project.

### **ARTICLE 3. CONDUIT INSTALLATION; MICROTRENCHING.**

#### **§31G-3-5. Mapping of Disturbances in Rights of Way.**

(a) Beginning July 1, 2022, every agency of state government, every public service district, and every county commission or other political subdivision must furnish to the Department of Economic Development, in a timely manner, all information relating to:

(1) any maps which they have; or

(2) descriptions of routes (if maps are not available) which they have for any underground disturbances in state rights of way or easements.

(b) This requirement shall not constitute a new duty to create or maintain maps for any agency of state government, public service district, county commission or other political subdivision, or any regulated public utilities or any other entity with facilities in the rights of way of this state but does require any such information in their possession to be submitted to the Department of Economic Development.

(c) If any such information in subsections (a) or (b) of this section has been previously mapped by another department, division, agency, office, or commission, such information shall not be required to be submitted by that public service district, county commission, or other political subdivision again.

(d) The Department of Economic Development shall map those disturbances and limit access to any map or related data to only those entities or persons that have signed a valid confidentiality or non-disclosure agreement. Such mapping or data shall only be accessed or reviewed for the limited purposes of:

(1) Considering possible routes for installation of telecommunications facilities or other utilities;

(2) Engineering routes for installation of telecommunications facilities or other utilities;

(3) Study of existing telecommunications facilities or other utilities; or

(4) Improving, expanding, enhancing, and attaching to telecommunications facilities or other utilities.

#### **ARTICLE 4. MAKE-READY POLE ACCESS.**

##### **§31G-4-2a. Utility Pole Rights of Way and Easement Mapping Initiative.**

(a) Beginning July 1, 2022, every pole owner must furnish to the Department of Economic Development, in a timely manner, all information which they have required to be furnished by attachers, since January 1, 2018, or from such time as necessary and available, to accurately map the locations, class, number of attachments, weight, and such other information as the Department of Economic Development deems necessary to accurately map and present the data, including but not limited to all engineering reports or other documentation.

(b) The Department of Economic Development is hereby required to utilize this information to produce a map, which is to include information, where available, delineating the following:

(1) Class of poles;

(2) Age of utility poles;

(3) Distance between poles;

(4) Weight between those spans; and

(5) What is attached in the communications space on those poles.

(c) A pole owner shall not be required to disclose the details of any electrical facilities attached to the utility pole and the Department of Economic Development shall not publish information related there to, except any information in the aggregate for that pole or the spans between multiple poles related to weight thereon.

(d) This map is to be made available by the Department of Economic Development at no cost to afford potential attachers considering projects to quickly gain information to determine feasibility of a project. The Department of Economic Development shall require a confidentiality or non-disclosure agreement to access any data mapped relating to the Utility Pole Rights of Way and Easement Mapping Initiative. The Department of Economic Development shall limit access to such maps to only those persons or entities interested in or engaging in the installation of

telecommunications facilities, their vendors, engineers, consultants, or other persons a potential attacher reasonably needs to review such information.

(e) If a pole owner furnishes to a requesting telecommunications entity who has requested to the pole owner to potentially attach to its poles,

(1) the latitude and longitude of all poles within the requested geographic area,

(2) in an electronic file or other format,

(3) at no cost; and

(4) once a non-disclosure agreement is entered into between pole owner and the requesting telecommunications entity. The information thus provided by the pole owners can then be used by the requesting entity to produce a map.

If a pole owner certifies in a sworn affidavit to the Department of Economic Development that the owner has produced and made available to attachers such a map as described in this section with at least the same information included and without cost to access, then the pole owner shall not be required to share this information with the state and the department shall not be required to map those utility poles. The department shall review any such map a pole owner claims meets these requirements annually, and if the map produced by the pole owner is materially deficient and has not met the requirements set-forth herein, the pole owner will once again be required to provide the foregoing information to the department to be mapped.

## **ARTICLE 7. CONSUMER PROTECTIONS.**

### **§31G-7-1. Existing Consumer Protections.**

The Consumer Protection Division of the Office of the Attorney General is responsible for effectuating and enforcing the following consumer protections in coordination with and the

assistance of the Office of Broadband and the Department of Economic Development:

(a) If a broadband service to a subscriber is interrupted for more than 24 continuous hours, such subscriber shall, upon request, receive a credit or refund from the broadband operator in an amount that represents the proportionate share of such service not received in a billing period, provided such interruption is not caused by the subscriber, power outages, or other causes for outages beyond the control of the provider;

(b) A broadband operator may not deny service, deny access, or otherwise discriminate against subscribers, channel users, or any other citizens based on age, race, religion, sex, physical handicap, political affiliation, political views or exercise of other speech protected by the 1st Amendment to the United States Constitution, or country of natural origin;

(c) A broadband operator shall provide subscribers 30 days advance written notice of any changes to rates or charges, including the expiration of any promotion or special pricing that would result in an increase in the subscribers billing or cost of service; and

(d) A broadband system operator shall inform subscribers and provide written notice to subscribers that disputes regarding interrupted or substandard service or billing issues, which are unresolved to satisfaction of the subscriber, can be filed as a complaint with the Consumer Protection Division of the WV Attorney General's Office.

### **§31G-7-2. Fees.**

(a) (1) No telecommunications provider may impose any fee, additional to the cost of service, on fixed broadband internet services which is not an election of the customer or required to be charged or assessed per connection by a government of competent jurisdiction.

(2) No telecommunications provider may require an individual customer to pay his or her pro rata share of the corporation's tax burden as an enumerate portion of their bill.

(b) No telecommunications provider may impose a fee for a residential customer to receive a paper bill or invoice for fixed broadband or cable television service.

### **§31G-7-3. Modems and other connection devices.**

(a) (1) No telecommunications provider may impose any mandate that residential customers be required to rent a modem from that provider.

(2) All residential customers are to be permitted to utilize or furnish their own modem, if the network is built upon a non-proprietary, industry standard communication protocol.

(b) If there are not commercially available modems or devices to interface with the Wide Area Network, the provider must offer the ability for a residential customer to purchase, rather than rent, that hardware.

### **§31G-7-4. Competitive Access Infrastructure.**

(a) Competitive access infrastructure is that infrastructure and related facilities which:

(1) Offer non-discriminatory, non-exclusive access to independent service providers and other entities with reasonable costs comparable to that of the owner; and

(2) On reasonable and equal terms, including location, pricing, applicable tariffs, terms and conditions.

(b) An assertion of competitive access telecommunications facilities may be demonstrated by filing with the Public Service Commission of West Virginia that documentation necessary to demonstrate the elements of a competitive access infrastructure defined in subsection (a) of this section.

(c) Where referenced elsewhere in the Code of West Virginia, 1931 as amended, the phrase ‘open-access networks’ shall have the same meaning as ‘competitive access infrastructure’, as defined by this section.

**§31G-7-5. Credits due to a customer.**

All credits due to a customer for any reason are due to the customer at the time the condition giving rise to them commences and shall be applied to the customer's bill as soon as is practicable. Once notified, the customer has no further duty to seek credit after the condition giving rise to such a credit is resolved.

**ARTICLE 8. ELIGIBLE TELECOMMUNICATIONS CARRIERS.****§31G-8-1. Legislative Findings.**

The Legislature of the State of West Virginia finds and declares that:

(1) The certification of Eligible Telecommunications Carriers is a responsibility primarily delegated to the states.

(2) The proper utilization and oversight of disbursement of funds from the Universal Service Fund established by the federal government and managed by the Federal Communications Commission is in the public interest, convenience, and necessity.

(3) Failure to perform any obligations imposed upon an Eligible Telecommunications Carrier in connection with disbursement of funding from the Universal Service Fund is detrimental to the public interest, convenience, and necessity.

(4) Proper oversight and certification of compliance are necessary and proper for the continuing issuance of Eligible Telecommunications Status and are in the public interest.

**§31G-8-2. Definition.**

'Eligible Telecommunications Carrier' means the status for a telecommunications carrier to be eligible for Universal Service Fund support pursuant to 47 CFR § 54.201.

**§31G-8-3. Eligible Telecommunications Carriers Status.**

Notwithstanding any other provision of this code to the contrary, eligible Telecommunications Carriers Status shall be

issued by the Public Service Commission. Issuance thereof shall not be unreasonably withheld, considering the recommendation of the Attorney General, and only if the applicant for Eligible Telecommunications Carrier status is in compliance with the following:

(a) The Attorney General shall check the Universal Service Administrative Company HUB for any commitments, assertions, and/or obligations of Eligible Telecommunications Carriers in the state of West Virginia.

(b) The Attorney General shall require certification of completion thereof and ongoing compliance therewith, under penalty of perjury prior to making a favorable recommendation to the Public Service Commission of the application to be an Eligible Telecommunications Carrier. The Attorney General shall transmit all such recommendations to the Public Service Commission.

**§31G-8-4. Misrepresentation in Certification for Eligible Telecommunications Carrier Status, penalty.**

(a) If the Attorney General finds evidence that an Eligible Telecommunications Carrier has materially misrepresented compliance in their certification referenced in §31G-8-3 of this code, notification of such misrepresentation shall be transmitted to the West Virginia Public Service Commission. The Public Service Commission shall conduct a hearing on the merits thereof and if the Eligible Telecommunications Carrier is found to be non-compliant, the Public Service Commission shall assess a fine equal to the amount of any subsidization received for which the commitment, assertion or obligation was established. Any such fine shall be limited to such proportional amount as that which was awarded to the Eligible Telecommunications Carrier for a particular area or act to be performed and shall not be construed to include all amounts awarded statewide. The Public Service Commission or Attorney General shall seek enforcement of any fine and any court of competent jurisdiction in this state shall order payment and compliance with the order of the Public Service Commission associated herewith. Funds from any fine shall be deposited into the Broadband Development Fund, less any



reasonable expenses and costs of the Public Service Commission in connection therewith.

(b) When such determination has been made, the Attorney General, and any other Department, office, bureau, or agency and any political subdivision of this state, shall cause any Eligible Telecommunications Carrier and its subsidiaries found to be non-compliant under subsection (a) of this section or failing to make the certification required thereunder, to no longer be certified as an Eligible Telecommunications Carrier and to be ineligible for any state grants, awards, procurement, leasing, licensing other than a business license issued by the Secretary of State or any business license by a political subdivision of this state, easement, right-of-way access, or purchase until such material misrepresentation is cured: *Provided*, That nothing in this section shall be construed to prevent the installation, repair, maintenance or other required work for any Carrier of Last Resort required to provide telephone service in this state: *Provided however*, That nothing in this section shall be construed to prevent an internet service provider from repairing or replacing telecommunications facilities in rights-of-way or easements that internet service provider currently has facilities situated within.”

With the further amendment, sponsored by Delegate Summers, being as follows:

On page eight through eleven of the amendment, by striking out Article 8 in its entirety and inserting in lieu thereof the following:

**“ARTICLE 8. ELIGIBLE TELECOMMUNICATIONS CARRIERS.**

**§31G-8-1. Legislative Findings.**

The Legislature of the State of West Virginia finds and declares that:

(1) The certification of Eligible Telecommunications Carriers is a responsibility primarily delegated to the states.

(2) The proper utilization and oversight of disbursement of funds from the Universal Service Fund established by the federal government and managed by the Federal Communications Commission is in the public interest, convenience, and necessity.

(3) Failure to perform material obligations imposed upon an Eligible Telecommunications Carrier in connection with disbursement of funding from the Universal Service Fund is detrimental to the public interest, convenience, and necessity.

(4) Proper oversight and certification of compliance are necessary and proper for the continuing issuance of Eligible Telecommunications Status and are in the public interest.

### **§31G-8-2. Definition.**

‘Eligible Telecommunications Carrier’ means the status for a telecommunications carrier to be eligible for Universal Service Fund support pursuant to 47 CFR § 54.201.

### **§31G-8-3. Eligible Telecommunications Carriers Status.**

Notwithstanding any other provision of this code to the contrary, eligible Telecommunications Carriers Status shall be issued by the Public Service Commission. Issuance thereof shall not be unreasonably withheld, considering the recommendation of the Attorney General, and only if the applicant for Eligible Telecommunications Carrier status is in compliance with the following:

(a) The Attorney General shall check the Universal Service Administrative Company HUB for any commitments, and/or obligations of Eligible Telecommunications Carriers in the state of West Virginia.

(b) The Attorney General shall require certification of completion thereof and ongoing compliance therewith, under penalty of perjury prior to making a favorable recommendation to the Public Service Commission of the application to be an Eligible Telecommunications Carrier. The Attorney General shall transmit all such recommendations which shall not be unreasonably

withheld to the Public Service Commission within 15 days of an application, after which time a favorable recommendation will be deemed to be received.

**§31G-8-4. Misrepresentation in Certification for Eligible Telecommunications Carrier Status, penalty.**

(a) If the Attorney General finds evidence that an Eligible Telecommunications Carrier has materially misrepresented compliance in their certification referenced in §31G-8-3 of this code, notification of such material misrepresentation shall be transmitted to the West Virginia Public Service Commission. The Public Service Commission shall conduct a hearing on the merits thereof and if after a hearing the Eligible Telecommunications Carrier is found to be materially non-compliant, the Public Service Commission shall assess a fine equal to the amount of any subsidization received for which the commitment, assertion or obligation was established. Any such fine shall be limited to such proportional amount as that which was awarded to the Eligible Telecommunications Carrier for a particular area or act to be performed and shall not be construed to include all amounts awarded statewide. The Public Service Commission or Attorney General shall seek enforcement of any fine and any court of competent jurisdiction in this state shall order payment and compliance with the order of the Public Service Commission associated herewith. Funds from any fine shall be deposited into the Broadband Development Fund, less any reasonable expenses and costs of the Public Service Commission in connection therewith.

(b) When such determination has been made, the Attorney General, and any other Department, office, bureau, or agency and any political subdivision of this state, shall cause any Eligible Telecommunications Carrier and its subsidiaries found to be materially non-compliant under subsection (a) of this section or failing to make the certification required thereunder, to no longer be certified as an Eligible Telecommunications Carrier and to be ineligible for any state grants, awards, procurement, leasing, licensing other than a business license issued by the Secretary of State or any business license by a political subdivision of this state,

easement, right-of-way access, or purchase until such material misrepresentation is cured: *Provided*, That nothing in this section shall be construed or applied retro actively to prevent the installation, repair, maintenance or other required work for any Carrier of Last Resort required to provide telephone service in this state: *Provided however*, That nothing in this section shall be construed to prevent an internet service provider from repairing or replacing telecommunications facilities in rights-of-way or easements that internet service provider currently has facilities situated within.”

And,

The further title amendment, sponsored by Delegate Summers, amending the title of the bill to read as follows:

**Com. Sub. for H. B. 4001** – “A Bill to amend and reenact §31G-1A-7 of the Code of the West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §31G-1A-8; to amend said code by adding thereto a new section, designated §31G-3-5; to amend said code by adding thereto a new section, designated §31G-4-2a; to amend said code by adding thereto a new article, designated §31G-7-1, §31G-7-2, §31G-7-3, §31G-7-4 and §31G-7-5; and to amend said code by adding thereto a new article, designated §31G-8-1, §31G-8-2 §31G-8-3 and §31G-8-4, all relating to certain provisions relating to broadband; adding certain provisions to the administration of the Broadband Development Fund, including regulating the disposal of grant funded assets; relating to creating the Broadband Carrier Neutral and Open Access Infrastructure Development Fund; providing for the administration of the fund, sources of funding for the fund, and the purposes for expenditures from the fund; authorizing expenditures from the fund from collections and pursuant to legislative appropriations; providing that a broadband project or extension shall be a carrier neutral and open access project if it is funded by 100 percent of public money; creating a process for the mapping of disturbances in rights of way; creating utility pole rights of way and easement mapping initiative; creating existing customer protections for the Office of the Attorney General in coordination with the Office of Broadband and Department of

Economic Development; establishing fees; providing for competitive access infrastructure; providing for credits; defining modems and other connection devices; defining competitive access infrastructure; defining eligible telecommunications carriers; defining the status of such; and providing for penalties where misrepresentation of eligible telecommunications carrier status occurs.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 681**), and there were—yeas 91, nays 5, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Criss, Espinosa, Gearheart, Householder and Riley.

Absent and Not Voting: Brown, Cooper, Sypolt and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4001) passed.

On motion of Delegate Summers, the House concurred in the following amendment by the Senate, with further amendment:

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4012**, Prohibiting the showing of proof of a COVID-19 vaccination.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIOUS DISEASES.**

§16-3-4b. Required exemptions to compulsory immunization against COVID-19 as a condition of employment; effective date.

(a) A covered employer, as defined in this section, that requires as a condition of continued employment or as a condition of hiring an individual for employment, that such person receive a COVID-19 immunization or present documentation of immunization from COVID-19, shall exempt current or prospective employees from such immunization requirements upon the presentation of one of the following certifications:

(1) A certification presented to the covered employer, signed by a licensed physician ~~licensed pursuant to the provisions of §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code or an~~ or a licensed advanced practice registered nurse ~~licensed pursuant to the provisions of §30-7-1 *et seq.* of this code~~ who has conducted an in-person examination of the employee or prospective employee, stating that the physical condition of the current or prospective employee is such that a COVID-19 immunization is contraindicated; there exists a specific precaution to the mandated vaccine; or the current or prospective employee has developed COVID-19 antibodies from being exposed to the COVID-19 virus, or suffered from and has recovered from the COVID-19 virus; or

(2) A notarized certification executed by the employee or prospective employee that is presented to the covered employer by the current or prospective employee that he or she has sincerely held religious beliefs that prevent the current or prospective employee from taking the COVID-19 immunization.

(b) A covered employer ~~shall~~ may not be permitted to penalize or discriminate against current or prospective employees for exercising exemption rights provided in this section by practices including, but not limited to, benefits decisions, hiring, firing, or withholding bonuses, pay raises, or promotions.

(c) As used in this section, the following terms shall have the following meaning:

(4) ‘Covered employer’ ~~shall mean~~ means:

(A) (1) The State of West Virginia, including any department, division, agency, bureau, board, commission, office, or authority thereof, or any political subdivision of the State of West Virginia including, but not limited to, any county, municipality, or school district;

(B) (2) A business entity, including without limitation any individual, firm, partnership, joint venture, association, corporation, company, estate, trust, business trust, receiver, syndicate, club, society, or other group or combination acting as a unit, engaged in any business activity in this state, including for-profit or not-for-profit activity, that has employees;

(3) ‘Covered employer’ does not include any Medicare or Medicaid-certified facilities which are subject to enforceable federal regulations contrary to the requirements of this section;

(2) (4) ‘COVID-19’ ~~shall mean~~ means the same as that term is defined in §55-19-3 of this code; or

(3) (5) ‘Immunization’ ~~shall mean~~ means any federally authorized immunization for COVID-19, whether fully approved or approved under an emergency use authorization.

(d) The provisions of this section are inapplicable to employees of covered employers who are required to work in Medicare or Medicaid-certified facilities which are subject to enforceable federal regulations contrary to the requirements of this section.

(d) (e) Any person or entity harmed by a violation of this section may seek injunctive relief in a court of competent jurisdiction.

(e) (f) The provisions of this section shall become effective immediately.

(f) (g) Pursuant to §2-2-10 of this code, if any provision of this section or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the section, and to this end the provisions of this section are declared to be severable.

**§16-3-4c. Prohibiting proof of COVID-19 vaccination.**

(a) As used in this section:

(1) ‘COVID-19’ has the same definition as provided in §55-19-3 of this code;

(2) ‘Hospital’ has the same definition as provided in §16-5B-1 of this code;

(3) ‘Immunization’ has the same definition as provided in §55-19-3 of this code;

(4) ‘Proof of vaccination’ means physical documentation or digital storage of protected health information related to an individual’s immunization or vaccination against COVID-19; and

(5) ‘State institution of higher education’ has the same meaning as provided in §18B-1-2 of this code.

(b) A state or local governmental official, entity, department, or agency may not require proof of vaccination as a condition of entering the premises of a state or local government entity, or utilizing services provided by a state or local government entity: *Provided*, That if any federal law or regulation requires proof of vaccination as a condition of entering the premises, the provisions of this subsection shall not apply: *Provided, however*, That this prohibition does not apply to any local government-owned facility that is leased to a private entity where the local governmental unit primarily serves as a property owner receiving rental payments.

(c) A hospital may not require proof of vaccination as a condition of entering the premises: *Provided*, That if any federal law or regulation requires proof of vaccination as a condition of



entering the premises, the provisions of this subsection shall not apply.

(d) A state institution of higher education may not require proof of vaccination as a condition of enrollment or for entering the premises: *Provided*, That if any federal law or regulation requires proof of vaccination as a condition of entering the premises, or if the academic requirements of a particular program cannot be met without vaccination and proof thereof, the provisions of this subsection shall not apply.”

And,

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

**Com. Sub. for H. B. 4012** – “A Bill to amend and reenact §16-3-4b of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-3-4c, all relating to COVID-19 vaccination, generally prohibiting the showing of proof of a COVID-19 vaccination as a condition for entering upon the premises of any state or local governmental official, entity, department, or agency, or as a condition for entering upon the premises of a hospital or enrolling in a state institution of higher education, unless such proof is required by federal law or regulation; clarifying that a covered employer does not include any Medicare or Medicaid-certified facilities which are subject to federal regulations; clarifying that employees of otherwise covered employers who are required to work in Medicare or Medicaid-certified facilities are not subject to the prohibition; exempting from proof of vaccination prohibition students whose academic program requires vaccination against COVID-19; defining terms; and providing that sincerely held religious beliefs are an exemption to immunization.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 682**), and there were—yeas 84, nays 12,

absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Diserio, Doyle, Fleischauer, Fluharty, Hansen, Hornbuckle, Pethtel, Pushkin, Rowe, Skaff, Williams and Zukoff.

Absent and Not Voting: Brown, Cooper, Sypolt and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4012) passed.

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

On this question, the yeas and nays were taken (**Roll No. 683**), and there were—yeas 88, nays 7, absent and not voting 5, with the nays and the absent and not voting being as follows:

Nays: Doyle, Fleischauer, Hansen, Pethtel, Pushkin, Rowe and Zukoff.

Absent and Not Voting: Bates, Brown, Cooper, Sypolt and Walker.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4012) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4111**, Relating to the prescriptive authority of advance practice registered nurses.

On motion of Delegate Summers, the House concurred in the following amendment by the Senate, with further amendment:

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

**“CHAPTER 5. GENERAL POWERS AND AUTHORITY  
OF THE GOVERNOR, SECRETARY OF STATE AND  
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;  
MISCELLANEOUS AGENCIES, COMMISSIONS,  
OFFICES, PROGRAMS, ETC.**

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES  
INSURANCE ACT.**

**§5-16-13. Payment of costs by employer and employee; spouse and dependent coverage; involuntary employee termination coverage; conversion of annual leave and sick leave authorized for health or retirement benefits; authorization for retiree participation; continuation of health insurance for surviving dependents of deceased employees; requirement of new health plan, limiting employer contribution.**

(a) *Cost-sharing.* — The director shall provide under any contract or contracts entered into under the provisions of this article that the costs of any group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, or group life and accidental death insurance benefit plan or plans shall be paid by the employer and employee.

(b) *Eligible spouse and dependent coverage.* —

(1) Each employee is entitled to have his or her ~~spouse and~~ dependents included in any group hospital and surgical insurance, group major medical insurance, or group prescription drug insurance coverage to which the employee is entitled to participate: *Provided, That the spouse and dependent coverage is limited to excess or secondary coverage for each spouse and dependent who has primary coverage from any other source.*

(2) Each employee is entitled to have his or her spouse included in any group hospital and surgical insurance, group major medical insurance, or group prescription drug insurance coverage to which

the employee is entitled to participate if his or her spouse does not have the option of obtaining primary coverage through the spouse's employer. The spouse of an employee who has the option of obtaining primary coverage through an employer that is not defined by §5-16-2 of this code is not eligible to be included in a group hospital and surgical insurance, group major medical insurance, or group prescription drug insurance coverage authorized by this article. Prior to being included in any group hospital and surgical insurance, group major medical insurance, or group prescription drug insurance coverage authorized by this article, an employee's spouse must submit an affidavit to the Public Employees Insurance Agency certifying that the spouse does not have the option of obtaining primary coverage through an employer.

(3) The director may require proof regarding spouse and dependent primary coverage and shall adopt rules governing the nature, discontinuance, and resumption of any employee's coverage for his or her spouse and dependents.

(4) For purposes of this section: ~~the term 'primary coverage' means individual or group hospital and surgical insurance coverage or individual or group major medical insurance coverage or group prescription drug coverage in which the spouse or dependent is the named insured or certificate holder. For the purposes of this section,~~

(A) 'Dependent' includes an eligible employee's unmarried child or stepchild under the age of 25 if that child or stepchild meets the definition of a 'qualifying child' or a 'qualifying relative' in Section 152 of the Internal Revenue Code. ~~the director may require proof regarding spouse and dependent primary coverage and shall adopt rules governing the nature, discontinuance and resumption of any employee's coverage for his or her spouse and dependents;~~

(B) 'Eligible spouse' means a spouse that is eligible to be included in a group hospital and surgical insurance, group major medical insurance, or group prescription drug insurance coverage authorized by this article according to this subsection.

(C) ‘Primary coverage’ means individual or group hospital and surgical insurance coverage, individual or group major medical insurance coverage, or group prescription drug coverage in which the spouse or dependent is the named insured or certificate holder.

(c) *Continuation after termination.* — If an employee participating in the plan is terminated from employment involuntarily or in reduction of workforce, the employee’s insurance coverage provided under this article shall continue for a period of three months at no additional cost to the employee and the employer shall continue to contribute the employer’s share of plan premiums for the coverage. An employee discharged for misconduct shall not be eligible for extended benefits under this section. Coverage may be extended up to the maximum period of three months, while administrative remedies contesting the charge of misconduct are pursued. If the discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the employee. If the employee is again employed or recalled to active employment within 12 months of his or her prior termination, he or she shall not be considered a new enrollee and may not be required to again contribute his or her share of the premium cost, if he or she had already fully contributed such share during the prior period of employment.

(d) *Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan before July 1988.* — Except as otherwise provided in subsection (g) of this section, when an employee participating in the plan, who elected to participate in the plan before July 1, 1988, is compelled or required by law to retire before reaching the age of 65, or when a participating employee voluntarily retires as provided by law, that employee’s accrued annual leave and sick leave, if any, shall be credited toward an extension of the insurance coverage provided by this article, according to the following formulae: The insurance coverage for a retired employee shall continue one additional month for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. For a retired employee, his or her eligible spouse and dependents, the insurance

coverage shall continue one additional month for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement.

(e) *Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan after June 1988.* — Notwithstanding subsection (d) of this section, and except as otherwise provided in subsections (g) and (l) of this section, when an employee participating in the plan who elected to participate in the plan on and after July 1, 1988, is compelled or required by law to retire before reaching the age of 65, or when the participating employee voluntarily retires as provided by law, that employee's annual leave or sick leave, if any, shall be credited toward one half of the premium cost of the insurance provided by this article, for periods and scope of coverage determined according to the following formulae: (1) One additional month of single retiree coverage for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement; or (2) one additional month of coverage for a retiree, his or her eligible spouse and dependents for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. The remaining premium cost shall be borne by the retired employee if he or she elects the coverage. For purposes of this subsection, an employee who has been a participant under eligible spouse or dependent coverage and who reenters the plan within 12 months after termination of his or her prior coverage shall be considered to have elected to participate in the plan as of the date of commencement of the prior coverage. For purposes of this subsection, an employee shall not be considered a new employee after returning from extended authorized leave on or after July 1, 1988.

(f) *Increased retirement benefits for retired employees with accrued annual and sick leave.* — In the alternative to the extension of insurance coverage through premium payment provided in subsections (d) and (e) of this section, the accrued annual leave and sick leave of an employee participating in the plan

may be applied, on the basis of two days' retirement service credit for each one day of accrued annual and sick leave, toward an increase in the employee's retirement benefits with those days constituting additional credited service in computation of the benefits under any state retirement system: *Provided*, That for a person who first becomes a member of the Teachers Retirement System as provided in article seven-a, chapter eighteen of this code on or after July 1, 2015, accrued annual and sick leave of an employee participating in the plan may not be applied for retirement service credit. However, the additional credited service shall not be used in meeting initial eligibility for retirement criteria, but only as additional service credited in excess thereof.

(g) *Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for certain higher education employees.* Except as otherwise provided in subsection (l) of this section, when an employee, who is a higher education full-time faculty member employed on an annual contract basis other than for 12 months, is compelled or required by law to retire before reaching the age of 65, or when such a participating employee voluntarily retires as provided by law, that employee's insurance coverage, as provided by this article, shall be extended according to the following formulae: The insurance coverage for a retired higher education full-time faculty member, formerly employed on an annual contract basis other than for 12 months, shall continue beyond the effective date of his or her retirement one additional year for each three and one-third years of teaching service, as determined by uniform guidelines established by the University of West Virginia Board of Trustees and the board of directors of the state college system, for individual coverage, or one additional year for each five years of teaching service for family coverage.

(h) Any employee who retired prior to April 21, 1972, and who also otherwise meets the conditions of the 'retired employee' definition in section two of this article, shall be eligible for insurance coverage under the same terms and provisions of this article. The retired employee's premium contribution for any such coverage shall be established by the finance board.

(i) *Retiree participation.* — All retirees under the provisions of this article, including those defined in section two of this article; those retiring prior to April 21, 1972; and those hereafter retiring are eligible to obtain health insurance coverage. The retired employee's premium contribution for the coverage shall be established by the finance board.

(j) *Surviving spouse and dependent participation.* — A surviving eligible spouse and dependents of a deceased employee, who was either an active or retired employee participating in the plan just prior to his or her death, are entitled to be included in any comprehensive group health insurance coverage provided under this article to which the deceased employee was entitled, and the eligible spouse and dependents shall bear the premium cost of the insurance coverage. The finance board shall establish the premium cost of the coverage.

(k) *Elected officials.* — In construing the provisions of this section or any other provisions of this code, the Legislature declares that it is not now nor has it ever been the Legislature's intent that elected public officials be provided any sick leave, annual leave or personal leave, and the enactment of this section is based upon the fact and assumption that no statutory or inherent authority exists extending sick leave, annual leave or personal leave to elected public officials and the very nature of those positions preclude the arising or accumulation of any leave, so as to be thereafter usable as premium paying credits for which the officials may claim extended insurance benefits.

(l) *Participation of certain former employees.* — An employee, eligible for coverage under the provisions of this article who has 20 years of service with any agency or entity participating in the public employees insurance program or who has been covered by the public employees insurance program for 20 years may, upon leaving employment with a participating agency or entity, continue to be covered by the program if the employee pays 105 percent of the cost of retiree coverage: *Provided*, That the employee shall elect to continue coverage under this subsection within two years of the date the employment with a participating agency or entity is terminated.



(m) *Prohibition on conversion of accrued annual and sick leave for extended coverage upon retirement for new employees who elect to participate in the plan after June 2001.* □- Any employee hired on or after July 1, 2001, who elects to participate in the plan may not apply accrued annual or sick leave toward the cost of premiums for extended insurance coverage upon his or her retirement. This prohibition does not apply to the conversion of accrued annual or sick leave for increased retirement benefits, as authorized by this section: *Provided*, That any person who has participated in the plan prior to July 1, 2001, is not a new employee for purposes of this subsection if he or she becomes reemployed with an employer participating in the plan within two years following his or her separation from employment and he or she elects to participate in the plan upon his or her reemployment.

(n) *Prohibition on conversion of accrued years of teaching service for extended coverage upon retirement for new employees who elect to participate in the plan July 2009.* — Any employee hired on or after July 1, 2009, who elects to participate in the plan may not apply accrued years of teaching service toward the cost of premiums for extended insurance coverage upon his or her retirement.

(o) The amendments to this section enacted during the 2022 Regular Session of the Legislature shall become effective beginning July 1, 2023.

#### **§5-16-20. Expense fund.**

The Legislature shall annually appropriate such sums as may be necessary to pay the proportionate share of the administrative costs for the state as an employer, and each division, agency, board, commission, or department of the state which operates out of special revenue funds or federal funds or both shall pay its proportionate share of the administrative costs of the insurance plan or plans authorized under the provisions of this article and such fund existing within the Public Employees Insurance Agency shall be known as the State Employee Insurance Plan. All other employers not operating from the state General Revenue Fund shall pay their proportionate share of the administrative costs of the

insurance plan or plans authorized under the provisions of this article and such fund existing within the Public Employees Insurance Agency shall be known as the Nonstate Employee Insurance Plan.

#### **§5-16-25. Reserve fund.**

Upon the effective date of this section, the finance board shall establish and maintain a reserve fund for the purposes of offsetting unanticipated claim losses in any fiscal year and supplementing any reimbursements made to hospitals and emergency medical service providers or agencies in accordance with §5-16-30 of this code. Beginning with the fiscal year 2002 plan and for each succeeding fiscal year plan, the finance board shall maintain the actuarially recommended reserve in an amount no less than 10 percent of the projected total plan costs for that fiscal year in the reserve fund, which is to be certified by the actuary and included in the final, approved financial plan submitted to the Governor and Legislature in accordance with the provisions of this article.

#### **§5-16-30. Hospital inpatient rates.**

(a) By July 1, 2023, the plan shall reimburse any hospital that provides inpatient care to a beneficiary covered by the plan at a rate of 110 percent of the Inpatient Prospective Payment System Diagnostic Related Group assigned amount then in effect for the federal fee for service component of the Medicare program.

(b) By July 1, 2023, the plan shall reimburse any emergency medical services provider or agency as defined in §16-4C-1 *et seq.* at a rate of 110 percent of the Medicare rate.

(c) Nothing in this section limits the authority of the director under §5-16-3(c) and §5-16-9 of this code, including, but not limited to, his or her authority to manage provider contracting and payments and to designate covered and noncovered services.

(d) This section does not limit the authority of the director, the plan, or the plans under §5-16-11 of this code.

(e) This section shall apply to all policies, contracts, plans, or agreements subject to this section that are delivered, executed, amended, adjusted, or renewed on or after July 1, 2023.

## **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

### **ARTICLE 3E. PHYSICIAN ASSISTANTS PRACTICE ACT.**

#### **§30-3E-3. Rulemaking.**

(a) The boards shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this article, including:

(1) The extent to which physician assistants may practice in this state;

(2) The extent to which physician assistants may pronounce death;

(3) Requirements for licenses and temporary licenses;

(4) Requirements for practice notifications;

(5) Requirements for continuing education;

(6) Conduct of a licensee for which discipline may be imposed;

(7) The eligibility and extent to which a physician assistant may prescribe, including: ~~A state formulary classifying those categories of drugs which may not be prescribed by a physician assistant, including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act, antineoplastics, radiopharmaceuticals, and general anesthetics. *Provided*, That a physician assistant or an advanced practice registered nurse may prescribe no more than a three day supply, without refill, of a drug listed in the Uniform Controlled Substances Act as a Schedule II drug. Drugs listed under Schedule III shall be limited to a 30 day supply without refill. In addition to the above referenced provisions and restrictions and pursuant to a practice notification as set forth in this article, the rules shall permit the prescribing of an annual supply of any drug, with the exception of controlled substances,~~

~~which is prescribed for the treatment of a chronic condition, other than chronic pain management. For the purposes of this section, a chronic condition is a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication, and does not generally disappear. These conditions, with the exception of chronic pain, include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures, and obesity;~~

(8) A fee schedule; and

(9) Any other rules necessary to effectuate the provisions of this article.

(b) The boards may propose emergency rules pursuant to §29A-3-1 *et seq.* of this code to ensure conformity with this article.

(c) (1) A physician assistant may not prescribe a Schedule I controlled substance as provided in §60A-1-1 *et seq.* of this code.

(2) A physician assistant may prescribe up to a three-day supply of a Schedule II narcotic as provided in §60A-1-1 *et seq.* of this code.

(3) There are no other limitations on the prescribing authority of a physician assistant, except as provided in §16-54-1 *et seq.* of this code.

## ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

### **§30-7-15a. Prescriptive authority for prescription drugs; ~~coordination with Board of Pharmacy; rule-making authority.~~**

(a) ~~The board may, in its discretion, authorize an advanced practice registered nurse to prescribe prescription drugs in accordance with this article and all other applicable state and federal laws. An authorized advanced practice registered nurse may write or sign prescriptions or transmit prescriptions verbally or by other means of communication.~~

~~(b) The board shall promulgate legislative rules in accordance with §29A-3-1 *et seq.* of this code of this code governing the eligibility and extent to which an advanced practice registered nurse may prescribe drugs. Such rules shall provide, at a minimum, a state formulary classifying those categories of drugs which shall not be prescribed by advanced practice registered nurse including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act, antineoplastics, radiopharmaceuticals and general anesthetics. Drugs listed under Schedule III shall be limited to a thirty-day supply without refill. In addition to the above referenced provisions and restrictions and pursuant to a collaborative agreement as set forth in §30-7-15b of this code, the rules shall permit the prescribing of an annual supply of any drug, with the exception of controlled substances, which is prescribed for the treatment of a chronic condition, other than chronic pain management. For the purposes of this section, a 'chronic condition' is a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication and does not generally disappear. These conditions, with the exception of chronic pain, include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures, and obesity. The prescriber authorized in this section shall note on the prescription the chronic disease being treated.~~

~~(c) The board may promulgate emergency rules to implement the provisions of this article pursuant to §29A-3-15 of this code.~~

~~(d) The board shall transmit to the Board of Pharmacy a list of all advanced practice registered nurses with prescriptive authority. The list shall include:~~

~~(1) The name of the authorized advanced practice registered nurse;~~

~~(2) The prescriber's identification number assigned by the board; and~~

~~(3) The effective date of prescriptive authority.~~

(a) (1) An advanced practice registered nurse may not prescribe a Schedule I controlled substance as provided in §60A-1-1 *et seq.* of this code.

(2) An advanced practice registered nurse may prescribe up to a three-day supply of a Schedule II narcotic as provided in §60A-1-1 *et seq.* of this code.

(3) There are no other limitations on the prescribing authority of an advanced practice registered nurse, except as provided in §16-54-1 *et seq.* of this code.”

And,

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

**Com. Sub. for H. B. 4111-** “A Bill to amend and reenact §5-16-13, §5-16-20 and §5-16-25 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designed §5-16-30; to amend and reenact §30-3E-3 of said code; and to amend and reenact §30-7-15a of said code, all relating to health care; providing that Public Employees Insurance Agency coverage may only be extended to employee spouses who do not have the option of obtaining primary coverage through the spouse’s employer; requiring the Public Employees Insurance Agency Finance Board to supplement reimbursements with reserve funds; providing for reimbursement of hospital inpatient rates by the plan; providing for reimbursement of emergency medical service providers and agencies rates by the plan; naming of funds within the Public Employees Insurance Agency; specifying prescriptive authority of physician assistants; eliminating certain discretionary authority of the Board of Nursing; eliminating certain legislative rule-making authority of the Board of Nursing with respect to prescriptive authority of an advanced practice registered nurse; eliminating emergency rule-making authority of the Board of Nursing; eliminating requirements regarding list of advanced practice registered nurses with prescriptive authority; and specifying prescriptive authority of advance practice registered nurses.”

With the further amendment, sponsored by Delegate Summers, being as follows:

On page 1, by striking everything in the bill until the Chapter 30 header of page 9.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 684**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Brown, Cooper, Foster and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4111) passed.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with a title amendment, a bill of the House of Delegates, as follows:

**H. B. 4307**, Increase some benefits payable from Crime Victims Compensation Fund.

On motion of Delegate Kessinger, the House of Delegates concurred in the following Senate title amendment:

**H. B. 4307-** “A Bill to amend and reenact §14-2A-3 of the Code of West Virginia, 1931, as amended, relating to increasing and expanding certain benefits payable from the Crime Victims’ Compensation Fund; increasing the limit on the allowable benefit for mental health counseling for secondary victims; increasing the limits on allowable benefits for certain travel and relocation expenses; and expanding the definition of ‘work loss’ to compensate claimants, victims, and parent and legal guardians of minor victims for work missed to attend certain court proceedings.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 685**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Brown, Cooper and Walker.

So, a majority of the members elected having voted in the affirmative, the Speaker declared the bill (H. B. 4307) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4353**, Relating to On Cycle Elections - Voter Turnout Act.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate:

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

### **“CHAPTER 3. ELECTIONS.**

#### **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

##### **§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.**

(a) For any primary, general, or special election held throughout a county, poll clerks and election commissioners may be nominated as follows:

(1) The county executive committee for each of the two major political parties may, by a majority vote of the committee at a duly called meeting, nominate one qualified person for each team of poll



clerks and one qualified person for each team of election commissioners to be appointed for the election;

(2) The appointing body shall select one qualified person as the additional election commissioner for each board of election officials;

(3) Each county executive committee shall also nominate qualified persons as alternates for at least 10 percent of the poll clerks and election commissioners to be appointed in the county and is authorized to nominate as many qualified persons as alternates as there are precincts in the county to be called upon to serve in the event any of the persons originally appointed fail to accept appointment or fail to appear for the required training or for the preparation or execution of their duties;

(4) When an executive committee nominates qualified persons as poll clerks, election commissioners, or alternates, the committee, or its chair or secretary on its behalf, shall file in writing with the appointing body, no later than the 70th day before the election, a list of those persons nominated and the positions for which they are designated.

(b) For any municipal primary, general, or special election, the poll clerks and election commissioners may be nominated as follows:

(1) In municipalities which have municipal executive committees for the two major political parties in the municipality, each committee may nominate election officials in the manner provided for the nomination of election officials by county executive committees in subsection (a) of this section;

(2) In municipalities which do not have executive committees, the governing body shall provide by ordinance for a method of nominating election officials or shall nominate as many eligible persons as are required, giving due consideration to any recommendations made by voters of the municipality or by candidates on the ballot.

(c) The governing body responsible for appointing election officials is:

(1) The county commission for any primary, general, or special election ordered by the county commission and any joint county and municipal election;

~~(2) The board of education for any special election ordered by the board of education conducted apart from any other election;~~

~~(3) The municipal governing body for any primary, general or special municipal election ordered by the governing body.~~

(d) The qualifications for persons nominated to serve as election officials may be confirmed prior to appointment by the clerk of the county commission for any election ordered by the county commission or for any joint county and municipal election and by the official recorder of the municipality for a municipal election.

(e) The appropriate governing body shall appoint the election officials for each designated election board no later than the 49th day before the election as follows:

(1) Those eligible persons whose nominations for poll clerk and election commissioner were timely filed by the executive committees and those additional persons selected to serve as an election commissioner are to be appointed; and

(2) The governing body shall fill any positions for which no nominations were filed.

(f) At the same time as the appointment of election officials or at a subsequent meeting the governing body shall appoint persons as alternates. Provided, That no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official or is instructed to attend and actually attends training as an alternate and is available to serve on election day. Alternates shall be appointed and serve as follows:

(1) Those alternates nominated by the executive committees shall be appointed;

(2) The governing body may appoint additional alternates who may be called upon to fill vacancies after all alternates designated by the executive committees have been assigned, have declined to serve or have failed to attend training; and

(3) The governing body may determine the number of persons who may be instructed to attend training as alternates.

(g) The clerk of the county commission shall appoint qualified persons to fill all vacancies existing after all previously appointed alternates have been assigned, have declined to serve, or have failed to attend training.

(h) Within seven days following appointment, the clerk of the county commission shall notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their appointment and include with the notice a response notice form for the appointed person to return indicating whether or not he or she agrees to serve in the specified capacity in the election.

(i) The position of any person notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve within 14 days following the date of appointment is considered vacant and the clerk shall proceed to fill the vacancies according to the provisions of this section.

(j) If the governing body and the clerk of the county commission are unable to nominate a sufficient number of qualified persons agreeing to serve on a standard receiving board for each precinct, the clerk may assign members of one precinct's standard receiving board to serve simultaneously on the standard receiving board of another precinct where the polling places of both precincts are located within the same physical building or facility: *Provided*, That no more than three precincts within the same building or facility may share board members in this manner.

(k) On election day, if an appointed election official or a poll clerk working a full day fails to appear at the polling place by 45 minutes past five o'clock 5:45 a.m. on election day or, for a poll clerk working a half day, later than a time designated by the clerk of the county commission, the election officials present shall contact the office of the clerk of the county commission for assistance in filling the vacancy. The clerk shall proceed as follows:

(1) The clerk may attempt to contact the person originally appointed, may assign an alternate nominated by the same political party as the person absent if one is available or, if no alternate is available, may appoint another eligible person;

(2) If the election officials present are unable to contact the clerk within a reasonable time, they shall diligently attempt to fill the position with an eligible person of the same political party as the party that nominated the person absent until a qualified person has agreed to serve;

(3) If two teams of election officials, as defined in §3-1-29 of this code, are present at the polling place, the person appointed to fill a vacancy in the position of the additional commissioner may be of either political party.

(l) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county commission as provided in this section.

(m) Nothing in this section shall be construed to require any county executive committee or county commission to offer half-day shifts for poll clerks during any election.

**§3-1-31. Days and hours of elections; scheduling of local elections; extension or shortening of terms of certain elected local officials.**

(a) General elections shall be held in the several election precincts of the state on the Tuesday next after the first Monday in November of each even year. Primary and special elections shall

be held on the days provided by law therefor: Provided, That beginning July 1, 2022, all local municipal elections may be held concurrently with a regularly scheduled statewide primary or general election. In exercising this right, a municipality may negotiate an agreement with the county commission to establish the election date, election officials, registration books to be used, and other matters pertaining to changing the municipal election to be held on the same day as a regularly scheduled statewide primary or general election: Provided, however, That a municipality which enters into an agreement with a county commission to hold elections at the same time as a regularly scheduled statewide primary or general election day pursuant to §8-5-5 of this code shall share in the administrative costs of holding the election, but which costs shall not exceed the municipality's pro rata share of voters registered in the municipality compared with the total voters registered in the county: Provided further, That the municipality shall also comply with the requirements of §8-5-5 of this code regarding an agreement with the county regarding use of county election officials in municipal elections.

(b) At every primary, general, or special election the polls shall be opened in each precinct on the day of ~~such the~~ election at ~~six-thirty o'clock~~ 6:30 in the ~~forenoon~~ morning and be closed at ~~seven-thirty o'clock~~ 7:30 in the evening.

## ARTICLE 2. REGISTRATION OF VOTERS.

### §3-2-19. Maintenance of active and inactive registration records for municipal elections.

(a) For municipal elections, the registration records of active and inactive voters shall be maintained as follows:

(1) Clerks of the county commissions shall prepare pollbooks or voter lists to be used in municipal elections when the county precinct boundaries and the municipal precinct boundaries are the same and all registrants of the precinct are entitled to vote in state, county, and municipal elections within the precinct or when the registration records of municipal voters within a county precinct are separated and maintained in a separate municipal section or

book for that county precinct and can be used either alone or in combination with other pollbooks or voter lists to make up a complete set of registration records for the municipal election precinct.

~~(2) Upon request of the municipality, and if the clerk of the county commission does not object, separate municipal precinct books shall be maintained in cases where municipal or ward boundaries divide county precincts and it is impractical to use county pollbooks or voter lists or separate municipal sections of those pollbooks or voter lists. If the clerk of the county commission objects to the request of a municipality for separate municipal precinct books, the State Election Commission must determine whether the separate municipal precinct books should be maintained~~

(3) No registration record may be removed from a municipal registration record unless the registration is lawfully transferred or canceled pursuant to the provisions of this article in both the county and the municipal registration records.

(b) Within 30 days following the entry of any annexation order or change in street names or numbers, the governing body of an incorporated municipality shall file with the clerk of the county commission a certified current official municipal boundary map and a list of streets and ranges of street numbers within the municipality to assist the clerk in determining whether a voter's address is within the boundaries of the municipality.

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

### **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

#### **§7-1-1a. Requirements for reforming, altering, or modifying a county commission; alternative forms of county government.**

(a) A county government may be reformed, altered, or modified as follows:

(1) The county commission or county council of the county may pass a resolution making application to the Legislature to reform, alter, or modify an existing form of county government in accordance with the requirements of the West Virginia Constitution and this section; or

(2) Ten percent of the registered voters of the county may sign a petition requesting reformation, alteration, or modification of the existing form of county government in accordance with the requirements of the West Virginia Constitution and this section.

(b) A county commission or county council seeking to make application to reform, alter, or modify its county government pursuant to the provisions of section 13, article IX of the West Virginia Constitution shall adopt a resolution containing the following information:

(1) The reasons for the reformation, alteration, or modification of the county commission or county government;

(2) The form of the proposed county government selected from the alternatives authorized by this section;

(3) The proposed name of the county government;

(4) When the question of reformation, alteration, or modification of the county government ~~will~~ shall be on the ballot;

(5) How and when the officers of the proposed county government ~~will~~ shall be elected or appointed, taking into consideration the following:

(A) When the election on the question of reformation, alteration, or modification of the county government ~~will~~ shall be held;

(B) The normal election cycles for county officials; and

(C) The time frames for early and absentee voting provided in 3-3-1 *et seq.* of this code; and

(6) When the new county government ~~will~~ shall become effective.

(c) Prior to the adoption of a resolution seeking to reform, alter, or modify a county commission or county council, the governing body of the county shall publish by a Class II legal advertisement in one or more newspapers of general circulation throughout the county, in compliance with the provisions of §59-3-1 *et seq.* of this code, notice of the proposed changes to the current form of county government. The publication area shall be the entire county. The notice shall summarize the proposed changes to the county government and include the date, time, and place for the meeting or meetings in which the resolution ~~will~~ shall be considered.

(d) After the publication and adoption of the resolution, the following information shall be submitted by the county to the Clerk of the Senate and to the Clerk of the House of Delegates no later than the 10th day of a regular legislative session in which the request for reforming, altering, or modifying a county commission or county government is to be considered by the Legislature:

- (1) A certified copy of the adopted resolution;
- (2) A copy of the required public notice;
- (3) The vote on the adoption of the resolution; and
- (4) The date the resolution was adopted.

(e) Registered voters of a county seeking to reform, alter, or modify the county commission or county council pursuant to section 13, article IX of the West Virginia Constitution shall submit a petition, signed by 10 percent of the registered voters in the county, to the county commission or county council, setting forth the information required in subsection (b) of this section. Upon receipt of the petition, the county commission or county council shall verify that the signatures on the petition are: (1) Legally registered voters of the county; and (2) equal to 10 percent of the registered voters of the county.



(f) The county commission or county council shall, within 30 days of receipt of a constitutionally defective petition, return it to the petitioners with a written statement as to why the petition is defective. The petitioners may, within 90 days of receipt of the written statement from the county commission or council and after making the necessary changes, resubmit the petition to the county commission or county council.

(g) After verifying that the signatures on the petition meet the constitutional requirements, the county commission or council shall forward the petition to the Clerk of the Senate and to the Clerk of the House of Delegates no later than the 10th day of a regular legislative session in which the request for reforming, altering, or modifying a county commission or county government is to be considered by the Legislature.

(h) After receipt of a certified resolution or verified petition by the Clerk of the Senate and the Clerk of the House of Delegates, the Legislature shall determine whether all constitutional and statutory requirements have been met. If such requirements have not been met, the certified resolution or verified petition shall be returned with a written statement of the deficiencies. A certified resolution or verified petition may be revised following the procedures set forth in this section for an original submission and then may be resubmitted to the Clerk of the Senate and the Clerk of the House of Delegates for consideration by the Legislature. The requirement that the petition be submitted prior to the 10th day of the legislative session shall not apply to resubmitted resolutions or petitions.

(i) Following passage of an act by the Legislature authorizing an election on the question of reforming, altering, or modifying a county commission or council, the question shall be placed on the ballot of the county at the next primary or general election following such passage ~~or, at the expense of the county, a special election.~~

(j) Following approval of the reformation, alteration, or modification of the county commission or council by a majority of the county's registered voters, nomination of the county

commission or council members and, where authorized, the chief executive, shall be held in the next primary election or the primary election set forth in the resolution or petition to reform, alter, or modify the county commission or council. Election of the county commissioners or council members and, where authorized, the chief executive shall be held in the next general election or the general election set forth in the resolution or petition to change the form of the county commission.

(k) All elections required by this section shall be held in accordance with the provisions of §3-1-1 *et seq.* of this code.

(l) The following are guidelines for forms of county government:

(1) ‘*Chief executive - county commission plan*’. — Under this plan:

(A) There shall be a chief executive elected by the registered voters of the county at large and three county commissioners that shall be elected at large;

(B) The commission shall be the governing body;

(C) The chief executive shall have the exclusive authority to supervise, direct, and control the administration of the county government. The chief executive shall carry out, execute, and enforce all ordinances, policies, rules, and regulations of the commission;

(D) The salary of the chief executive shall be set by the Legislature;

(E) Other nonelected officers and employees shall be appointed by the chief executive subject to the approval of the county commission; and

(F) The chief executive shall not be a member of the county commission nor shall he or she hold any other elective office.

(2) '*County manager - county commission plan*'. — Under this plan:

(A) There shall be a county manager appointed by the county commission and three county commissioners that may be elected at large;

(B) The commission shall be the governing body;

(C) The county manager shall have the exclusive authority to supervise, direct, and control the administration of the county government. The county manager shall carry out, execute, and enforce all ordinances, policies, rules, and regulations of the commission;

(D) The salary of the county manager shall be set by the county commission;

(E) Other nonelected officers and employees shall be appointed by the county manager subject to the approval of the commission; and

(F) The county manager shall not be a member of the county commission nor shall he or she hold any other elective office.

(3) '*County administrator - county commission plan*'. — Under this plan:

(A) There shall be a county administrator appointed by the county commission and three county commissioners that shall be elected at large;

(B) The commission shall be the governing body;

(C) The county administrator shall have the authority to direct the administration of the county government under the supervision of the county commission. The county administrator shall carry out, execute, and enforce all ordinances, policies, rules, and regulations of the commission;

(D) The salary of the county administrator shall be set by the county commission;

(E) The county administrator shall appoint or employ all subordinates and employees for whose duties or work he or she is responsible to the commission; and

(F) The county administrator shall not be a member of the county commission nor shall he or she hold any other elective office.

(4) A county council consisting of four or more members that shall be elected at large.

(5) Any form of county government adopted pursuant to section 13, article IX of the West Virginia Constitution and this section may, by the methods set forth in this section, return to the traditional county commission or change to another form of county government, as set out in this section.

(m) The purpose of this section is to establish the basic requirements for reforming, altering, or modifying a county commission or county council pursuant to section 13, article IX of the West Virginia Constitution. The structure and organization of a county government may be specified in greater detail by resolution or ordinance so long as such provisions do not conflict with the purposes and provisions set forth in this section, §7A-1-1 *et seq.* of this code, or the Constitution.

#### **ARTICLE 4. PROSECUTING ATTORNEY, REWARDS, AND LEGAL ADVICE.**

##### **§7-4-1. Duties of prosecuting attorney; further duties upon request of Attorney General.**

(a) The prosecuting attorney shall attend to the criminal business of the state in the county in which he or she is elected and qualified and when the prosecuting attorney has information of the violation of any penal law committed within the county, the prosecuting attorney shall institute and prosecute all necessary and proper proceedings against the offender and may, in such case, issue or cause to be issued a summons for any witness the prosecuting attorney considers material. Every public officer shall give the prosecuting attorney information regarding the

commission of any criminal offense committed within his or her county. The prosecuting attorney shall also attend to civil suits in the county in which the state or any department, commission, or board thereof, is interested, and to advise, attend to, bring, prosecute, or defend, as the case may be, all matters, actions, suits, and proceedings in which such county or any county board of education is interested.

(b) (1) In furtherance of a prosecuting attorney's duty to investigate and prosecute criminal offenses, a prosecuting attorney and assistant prosecuting attorneys under his or her supervision shall have the authority to arrest any person committing a violation of the criminal laws of the State of West Virginia, the United States, or a violation of Rule 42 of the West Virginia Rules of Criminal Procedure which occur within the office of the prosecuting attorney and committed in the presence of the prosecuting attorney or assistant prosecuting attorney.

(2) For purposes of subdivision (1) of this subsection, the arrest authority of a prosecuting attorney or assistant prosecuting attorney shall be consistent with that authority vested in a deputy sheriff within the geographic limitations set forth in said subdivision.

(3) Should a prosecuting attorney desire to establish a program authorizing prosecuting attorneys and assistant prosecuting attorneys to carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U. S. C. §926B, the following criteria must be met:

(A) The prosecuting attorney's office shall have a written policy authorizing the prosecuting attorney and his or her assistant prosecuting attorneys to carry a concealed firearm for self-defense purposes;

(B) There shall be in place in the office of the prosecuting attorney a requirement that the prosecuting attorney and assistant prosecuting attorneys must regularly qualify in the use of a firearm with standards therefor which are equal to or exceed those required of sheriff's deputies in the county in which the prosecuting attorney was elected or appointed;

(C) The office of the prosecuting attorney shall issue a photographic identification and certification card which identify the prosecuting attorney or assistant prosecuting attorneys as law-enforcement employees of the prosecuting attorney's office pursuant to the provisions of §30-29-12 of this code.

(4) Any policy instituted pursuant to paragraph (A), subdivision (3) of this subsection shall include provisions which: (i) Preclude or remove a person from participation in the concealed firearm program who is subject to any disciplinary or legal action which could result in the loss of the authority to participate in the program; (ii) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and; (iii) prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defined in §17C-5-2 of this code.

(5) Any prosecuting attorney or assistant prosecuting attorney who participates in a program authorized by the provisions of this subsection shall be responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) It is the intent of the Legislature in enacting the amendments to this section during the 2017 regular session of the Legislature to authorize prosecuting attorney's offices wishing to do so to allow prosecuting attorneys and assistant prosecuting attorneys to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B.

(c) The prosecuting attorney shall keep his or her office open in the charge of a responsible person during the hours when polls are open during statewide general and primary ~~and special~~ ~~countywide~~ election days, and the prosecuting attorney, or the prosecuting attorney's assistant, if any, shall be available for the purpose of advising election officials. The prosecuting attorney, when requested by the Attorney General, shall perform or assist the Attorney General in performing, in the county in which the prosecuting attorney is elected, any legal duties required to be performed by the Attorney General and which are not inconsistent with the duties of the prosecuting attorney as the legal

representative of the county. The prosecuting attorney, when requested by the Attorney General, shall perform or assist the Attorney General in performing, any legal duties required to be performed by the Attorney General in any county other than that in which the prosecuting attorney is elected and for the performance of these duties in any county other than that in which the prosecuting attorney is elected, the prosecuting attorney shall be paid his or her actual expenses.

Upon the request of the Attorney General, the prosecuting attorney shall make a written report of the state and condition of the several causes in which the state is a party, pending in his or her county, and upon any matters referred to the prosecuting attorney by the Attorney General as provided by law.

#### **ARTICLE 14B. CIVIL SERVICE FOR CORRECTIONAL OFFICERS.**

##### **§7-14B-21. County commission of counties with a population of less than 25,000 may place correctional officers under civil service; protest and election with respect thereto.**

The county commission of any county having a population of less than 25,000 may by order entered of record provide that the provisions of this article providing civil service for correctional officers shall apply to such county on and after the effective date of this article. A copy of such order, together with a notice advising the qualified voters of such county of their right to protest the placing of correctional officers of such county under civil service, shall be published as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county.

In the event 15 percent of the qualified voters of such county protest such order, by petition duly signed by them in their own handwriting (which petition may be signed in any number of counterparts) and filed with the county clerk of such county within 60 days after publication of such copy and notice, such order shall not become effective unless and until it is ratified by a majority of the legal votes cast with respect to the question of civil service

coverage for the correctional officers of such county by the qualified voters of such county at a ~~regular or special~~ primary or general election. Any such election shall be conducted and superintended and the results thereof ascertained as provided by law for ~~regular or special~~ primary or general elections, as the case may be.

Whenever the correctional officers of any county are placed under civil service pursuant to the provisions of this section, such civil service system for the correctional officers of such county shall thereupon become mandatory and all of the provisions of this article shall apply to the correctional officers of such county with like effect as if said county had a population of 25,000 or more.

## **ARTICLE 17. COUNTY FIRE BOARDS.**

### **§7-17-12. County fire service fees; petition; election; dedication; and amendment.**

(a) Every county commission which provides fire protection services has plenary power and authority to provide by ordinance for the continuance or improvement of such service, to make regulations with respect thereto, and to impose by ordinance, upon the users of such services, reasonable fire service rates, fees, and charges to be collected in the manner specified in the ordinance.

(b) Any fees imposed under this article are dedicated to the county fire board for the purposes provided in this article.

(c) A county commission can impose by ordinance, upon the users of such service, a reasonable fire service fee, by one of two methods:

(1) Ten percent of the qualified voters shall present a petition duly signed by them in their own handwriting, and filed with the clerk of the county commission, directing that the county commission impose such a fee. The county commission shall not have a lien on any property as security for payments due under the ordinance. Any ordinance enacted under the provisions of this section shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and



the publication area for such publication shall be the county in which the county fire board is located. In the event 30 percent of the qualified voters of the county by petition duly signed by them in their own handwriting and filed with the clerk of the county commission within 45 days after the expiration of such publication protest against such ordinance as enacted or amended, the ordinance may not become effective until it is ratified by a majority of the legal votes cast thereon by the qualified voters of such county at any primary ~~or general or special~~ election as the county commission directs. Voting thereon may not take place until after notice of the submission has been given by publication as above provided for the publication of the ordinance after it is adopted. The powers and authority hereby granted to county commissions are in addition to and supplemental to the powers and authority otherwise granted to them by other provisions of this code; or

(2) If the county fire board determines an amendment in the fee imposed in subsection (a) of this article is necessary, it may, by resolution, request the county commission for such a change. Upon receipt of the resolution from the county fire board, the county commission shall, by ballot referendum, amend the ordinance imposing a fire fee and adopt the changes in the fee requested by the county fire board.

(A) This referendum, to determine whether it is the will of the voters of a county that an amendment to the fire fee is necessary, may be held at any regular primary or general election, or, in conjunction with any other countywide election. Any election at which the question of amending the fire fee is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the election laws, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable. The county commission shall, not less than 90 days before the election, order that the issue be placed on the ballot and referendum held at the next primary; or ~~general, or special~~ election to determine whether it is the will of the voters of the county that a fire fee be amended: *Provided*, That prior to issuing the order, the county commission shall publish the ordinance which must contain the anticipated

allocation of any fees or charges and which would be enacted should the referendum succeed as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county in which the county fire board is located.

(B) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

‘Shall the county commission be permitted to amend the fire fee in \_\_\_\_\_ County, West Virginia?

\_\_\_ For the fee amendment.

\_\_\_ Against the fee amendment.

(Place a cross mark in the square opposite your choice.)’

(C) If a majority of legal votes cast upon the question be for the fire fee amendment, the county commission shall, after the certification of the results of the referendum, thereafter adopt an ordinance, within 60 days of certification, establishing the fire fee amendment in the county: *Provided*, That such program shall be implemented and operational no later than 12 months following certification. If a majority of the legal votes cast upon the question be against the fire fee amendment, then the policy shall not take effect, but the question may again be submitted to a referendum at any subsequent election in the manner herein provided.

(d) In the event that a majority of the votes cast upon a question submitted pursuant to this section at any primary election be against the question, the question may again be submitted to the voters at the next succeeding general election.

## **ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.**

**§7-20-7. Establishment of impact fees; levies may be used to fund existing capital improvements.**

(a) Impact fees assessed against a development project to fund capital improvements and public services may not exceed the actual proportionate share of any benefit realized by such project relative to the benefit to the resident taxpayers.

Notwithstanding any other provision of this code to the contrary, those counties that meet the requirements of §7-20-6 of this code are hereby authorized to assess, levy, collect, and administer any tax or fee as has been or may be specifically authorized by the Legislature by general law to the municipalities of this state: *Provided*, That any assessment, levy, or collection shall be delayed 60 days from its regular effective date: *Provided, however*, That in the event 15 percent of the qualified voters of the county by petition duly signed by them in their own handwriting and filed with the county commission within 45 days after any impact fee or levy is imposed by the county commission pursuant to this article, the fee or levy protested may not become effective until it is ratified by a majority of the legal votes cast thereon by the qualified voters of such county at any primary or general ~~or special~~ election as the county commission directs. Voting thereon may not take place until after notice of the subcommission of the fee a levy on the ballot has been given by publication of Class II legal advertisement and publication area shall be the county where such fee or levy is imposed: *Provided further*, That counties may not 'double tax' by applying a given tax within any corporate boundary in which that municipality has implemented such tax. Any such taxes or fees collected under this law may be used to fund a proportionate share of the cost of existing capital improvements and public services where it is shown that all or a portion of existing capital improvements and public services were provided in anticipation of the needs of new development.

(b) In determining a proportionate share of capital improvements and public services costs, the following factors shall be considered:

(1) The need for new capital improvements and public services to serve new development based on an existing capital improvements plan that shows: (A) Any current deficiencies in existing capital improvements and services that serve existing

development and the means by which any such deficiencies may be eliminated within a reasonable period of time by means other than impact fees or additional levies; and (B) any additional demands reasonably anticipated as the result of capital improvements and public services created by new development;

(2) The availability of other sources of revenue to fund capital improvements and public services, including user charges, existing taxes, intergovernmental transfers, in addition to any special tax or assessment alternatives that may exist;

(3) The cost of existing capital improvements and public services;

(4) The method by which the existing capital improvements and public services are financed;

(5) The extent to which any new development, required to pay impact fees, has contributed to the cost of existing capital improvements and public services in order to determine if any credit or offset may be due such development as a result thereof;

(6) The extent to which any new development, required to pay impact fees, is reasonably projected to contribute to the cost of the existing capital improvements and public services in the future through user fees, debt service payments, or other necessary payments related to funding the cost of existing capital improvements and public services;

(7) The extent to which any new development is required, as a condition of approval, to construct and dedicate capital improvements and public services which may give rise to the future accrual of any credit or offsetting contribution; and

(8) The time-price differentials inherent in reasonably determining amounts paid and benefits received at various times that may give rise to the accrual of credits or offsets due new development as a result of past payments.

(c) Each county shall assess impact fees pursuant to a standard formula so as to ensure fair and similar treatment to all affected

persons or projects. A county commission may provide partial or total funding from general or other nonimpact fee funding sources for capital improvements and public services directly related to new development, when such development benefits some public purpose, such as providing affordable housing and creating or retaining employment in the community.

(d) In the event that a majority of the votes cast upon a question submitted pursuant to this section at any primary election be against the question, the question may again be submitted to the voters at the next succeeding general election.

### **§7-20-12. Countywide service fees.**

(a) Notwithstanding any provision of this code to the contrary, every county shall have plenary power and authority to impose a countywide service fee upon each employee and self-employed individual for each week or part of a calendar week the individual works within the county, subject to the following:

(1) No individual shall pay the fee more than once for the same week of employment within the county.

(2) The fee imposed pursuant to this section is in addition to all other fees imposed by the jurisdiction within which the individual is employed.

(3) The fee imposed pursuant to this section may not take effect until the first day of a calendar month, as set forth in the order of the county commission establishing the fee, that begins at least 30 days after a majority of the registered voters of the county voting on the question approve imposition of the service fee, in a primary or general or a special election held in the county.

(4) The order of the county commission shall provide for the administration, collection, and enforcement of the service fee. Employers who have employees that work in the county imposing the service fee shall withhold the fee from compensation paid to the employee and pay it over to the county as provided in the order of the county commission. Self-employed individuals shall pay the

service fee to the county commission in accordance with the order establishing the fee.

(5) The terms ‘employed’, ‘employee’, ‘employer’ and ‘self-employed’ have the following meaning:

(A) ‘Employed’ shall include an employee working for an employer so as to be subject to any federal or state employment or wage withholding requirement and a self-employed individual working as a sole proprietor or member of a firm so as to be subject to self-employment tax. An employee shall be considered employed in a calendar week so long as the employee remains on the current payroll of an employer deriving compensation for such week and the employee has not been permanently assigned to an office or place of business outside the county. A self-employed individual shall be considered employed in a calendar week so long as such individual has not permanently discontinued employment within the county.

(B) ‘Employee’ means any individual who is employed at or physically reports to one or more locations within the county and is on the payroll of an employer, on a full-time or part-time basis or temporary basis, in exchange for salary, wages, or other compensation.

(C) ‘Employer’ means any person, partnership, limited partnership, limited liability company, association (unincorporated or otherwise), corporation, institution, trust, governmental body, or unit or agency, or any other entity (whether its principal activity is for-profit or not-for-profit) situated, doing business, or conducting its principal activity in the county and who employs an employee, as defined in this section.

(D) ‘Self employed individual’ means an individual who regularly maintains an office or place of business for conducting any livelihood, job, trade, profession, occupation, business, or enterprise of any kind within the county’s geographical boundaries over the course of four or more calendar weeks, which need not be consecutive, in any given calendar year.

(6) All revenues generated by the county service fee imposed pursuant to this section shall be dedicated to and shall be exclusively utilized for the purpose or purposes set forth in the referendum approved by the voters, including, but not limited to, the payment of debt service on any bonds issued pursuant to §7-20-13 of this code and any costs related to the administration, collection, and enforcement of the service fee.

(b) Any order entered by a county commission imposing a countywide service fee pursuant to this section, or increasing or decreasing a countywide service fee previously adopted pursuant to this section, shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for the publication shall be the county. The order shall not become effective until it is ratified by a majority of the lawful votes cast thereon by the qualified voters of the county at a primary or general ~~or special~~ election, as the county commission shall direct. Voting thereon shall not take place until after notice of the referendum shall have been given by publication as above provided for the publication of the order after it is adopted by the county commission. The notice of referendum shall at a minimum include: (1) The date of the referendum; (2) the amount of countywide service fee; (3) a general description of the capital improvement or improvements included in the special infrastructure project to be financed with the service fee; (4) whether revenue bonds ~~will~~ shall be issued; and (5) if bonds are to be issued, the estimated term of the revenue bonds. The county commission may include additional information in the notice of referendum.

(c) In the event that a majority of the votes cast upon a question submitted pursuant to this section at any primary election be against the question, the question may again be submitted to the voters at the next succeeding general election.

## CHAPTER 8. MUNICIPAL CORPORATIONS.

### ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

## PART II. DEFINITIONS.

**§8-1-2. Definitions of terms.**

(a) For the purpose of this chapter:

(1) ‘Municipality’ is a word of art and shall mean and include any Class I, Class II, and Class III city, and any Class IV town or village, heretofore or hereafter incorporated as a municipal corporation under the laws of this state;

(2) ‘City’ is a word of art and shall mean, include, and be limited to any Class I, Class II, and Class III city, as classified in section three of this article (except in those instances where the context in which used clearly indicates that a particular class of city is intended), heretofore or hereafter incorporated as a municipal corporation under the laws of this state, however created and whether operating under: (i) A special legislative charter; (ii) a home rule charter framed and adopted or revised as a whole or amended under the provisions of former §8A-1-1 *et seq.* of this code, or under the provisions of §8-3-1 or §8-4-1 of this code; (iii) general law, or (iv) any combination of the foregoing; and

(3) ‘Town or village’ is a term of art and shall, notwithstanding the provisions of §2-2-10 of this code, mean, include, and be limited to any Class IV town or village, as classified in §8-3-1 of this code, heretofore or hereafter incorporated as a municipal corporation under the laws of this state, however created and whether operating under: (i) A special legislative charter; (ii) general law; or (iii) a combination of the foregoing.

(b) For the purpose of this chapter, unless the context clearly requires a different meaning:

(1) ‘Governing body’ shall mean the mayor and council together, the council, the board of directors, the commission, or other board or body of any municipality, by whatever name called, as the case may be, charged with the responsibility of enacting ordinances and determining the public policy of such municipality; and in certain articles dealing with intergovernmental relations shall also mean the county ~~court~~ commission of any county or



governing board of other units of government referred to in said articles;

(2) 'Councilmen' shall mean the members of a governing body, by whatever name such members may be called;

(3) 'Mayor' shall mean the individual called mayor unless as to a particular municipality a commissioner (in a commission form of government) or the city manager (in a manager form of government) is designated or constituted by charter provision as the principal or chief executive officer or chief administrator thereof, in which event the term 'mayor' shall mean as to such municipality such commissioner or city manager unless as to any particular power, authority, duty or function specified in this chapter to be exercised, discharged or fulfilled by the mayor it is provided by charter provision or ordinance that such particular power, authority, duty, or function shall be exercised, discharged, or fulfilled by the individual called mayor and not by a commissioner or city manager, in which event such particular power, authority, duty, or function shall in fact be exercised, discharged, or fulfilled in and for such municipality by the individual called mayor: *Provided*, That in the exercise and discharge of the ex officio justice of the peace, conservator of the peace, and mayor's court functions specified in this chapter, the term 'mayor' shall always mean the individual called mayor;

(4) 'Recorder' shall mean the recorder, clerk, or other municipal officer, by whatever name called, charged with the responsibility of keeping the journal of the proceedings of the governing body of the municipality and other municipal records;

(5) 'Treasurer' shall mean the treasurer or other municipal officer, by whatever name called, exercising the power and authority commonly exercised by a treasurer;

(6) 'Administrative authority' shall mean the officer, commission, or person responsible for the conduct and management of the affairs of the municipality in accordance with the charter, general law, and the ordinances, resolutions, and orders of the governing body thereof;

(7) 'Charter' shall mean, except where specific reference is made to a particular type of charter, either a special legislative charter (whether or not amended under the provisions of former §8A-1-1 *et seq.* of this code, or under article four of this chapter, and although so amended, such special legislative charter shall, for the purposes of this chapter, remain a special legislative charter), or a home rule charter framed and adopted or revised as a whole or amended by a city under the provisions of former §8A-1-1 *et seq.* of this code or under the provisions of article three or article four of this chapter;

(8) 'Ordinance' shall mean the ordinances and laws enacted by the governing body of a municipality in the exercise of its legislative power, and in one or more articles of this chapter, ordinances enacted by a county ~~court~~ commission;

(9) 'Inconsistent or in conflict with' shall mean that a charter or ordinance provision is repugnant to the constitution of this state or to general law because such provision: (i) Permits or authorizes that which the constitution or general law forbids or prohibits; or (ii) forbids or prohibits that which the constitution or general law permits or authorizes;

(10) 'Qualified elector,' 'elector,' 'qualified voter,' or 'legal voter' shall mean any individual who, at the time he or she offers to vote or at the time he or she participates in any event or activity (such as signing a petition) under the provisions of this chapter for which he or she must be a qualified elector, elector, qualified voter, or legal voter, is a resident within the corporate limits of the municipality or within the boundaries of a territory referred to in this chapter, as the case may be, and who: (i) Has been a resident of the state for one year and of the municipality or territory in question for at 60 sixty days next preceding such election or date pertinent to any such event or activity; and (ii) in the case of a regular municipal election, special municipal election, municipal public question election, or any such municipal event or activity, is duly registered on the municipal registration books set up in the office of the clerk of the county ~~court~~ commission of the county in which the municipality or the major portion of the territory thereof is located under the integration of the municipal registration of

voters with the 'permanent registration system' of the state, or, in the event there be no such integration of the municipal registration of voters, is duly registered in the county in which he or she resides to vote in state-county elections; or (iii) in the case of a territory election, general election, or any such territory event or activity, is duly registered in the county in which he or she resides to vote in state-county elections; and any charter provision or ordinance establishing a voting residency requirement different than that in this definition provided shall be of no force and effect; and in any case where a particular percentage of the qualified electors, electors, qualified voters, or legal voters is required under the provisions of this chapter in connection with any such event or activity as aforesaid, the percentage shall be determined on the basis of the number of qualified electors, electors, qualified voters, or legal voters, as of the time of such event or activity, unless it is impracticable to determine such percentage as of such time and it is provided by ordinance, resolution or order that the percentage shall be determined on the basis of the number of qualified electors, electors, qualified voters, or legal voters, as of the date of the last preceding election (whether a general election, regular municipal election, or special municipal election, and whether or not they voted at such election) held in such municipality or territory, as the case may be;

(11) 'Public question' shall mean any issue or proposition required to be submitted to the qualified voters of a municipality or of a territory referred to in this chapter for decision at an election, as the case may be;

(12) 'Inhabitant' shall mean any individual who is a resident within the corporate limits of a municipality or within the boundaries of a territory referred to in this chapter, as the case may be;

(13) 'Resident' shall mean any individual who maintains a usual and bona fide place of abode within the corporate limits of a municipality or within the boundaries of a territory referred to in this chapter, as the case may be;

(14) 'Freeholder' shall mean any person (and in the case of an individual one who is sui juris and is not under a legal disability) owning a 'freehold interest in real property';

(15) 'Freehold interest in real property' shall mean any fee, life, mineral, coal, or oil or gas interest in real property, whether legal or equitable, and whether as a joint tenant or a tenant in common, but shall not include a leasehold interest (other than a mineral, coal, or oil or gas leasehold interest), a dower interest, or an interest in a right-of-way or easement, and the freehold interest of a church or other unincorporated association shall be considered as one interest and not as an individual interest of each member thereof;

(16) 'County ~~court~~ commission' shall mean the governmental body created by section 22, article eight of the Constitution of this state, or any existing tribunal created in lieu of a county ~~court~~ commission;

(17) 'Code' shall mean the Code of West Virginia, 1931, as heretofore and hereafter amended; and

(18) 'Person' shall mean any individual, firm, partnership, corporation, company, association, joint-stock association, or any other entity or organization of whatever character or description.

(c) The term 'intergovernmental relations' is used in this chapter to mean undertakings and activities which may be undertaken or engaged in by two or more units of government acting jointly, and in certain headings in this chapter to call attention to the fact that the provisions under such headings apply to units of government in addition to municipalities.

(d) For the purpose of this chapter, unless the context clearly indicates to the contrary, words importing the masculine gender shall include both the masculine and feminine gender, and the phrase 'charter-framed and adopted or revised as a whole or amended (or words of like import) under the provisions of former chapter eight-a of this code' shall include a charter-framed and adopted or revised as a whole or amended under the provisions of former article two of former chapter eight of this code.

**ARTICLE 2. CREATION OF MUNICIPALITIES.****PART II. ELECTION.****§8-2-5. Special incorporation election — Voting precincts; time for election; supplies; commissioners and clerks; notice.**

Upon receiving such a report from said enumerators, the county ~~court~~ commission shall forthwith fix a date for a special incorporation election, ~~not later than thirty days thereafter to be held concurrently with the next regularly scheduled primary or general election if there are more than 90 days preceding such election, and, if not, then, at the next succeeding regularly scheduled primary or general election, and at on which election~~ all qualified electors of the territory shall vote upon the question of incorporation between such hours as may be fixed by order of said ~~court~~ commission. For the purpose of holding and conducting said election, the county ~~court~~ commission shall divide the territory into one or more precincts, consisting of not more than 500 qualified voters in each precinct; shall arrange for and provide at its expense polling places, registration books, challenges, and other election supplies as provided for by law in general elections; shall appoint three commissioners of election and two clerks from the qualified electors of said territory for each precinct so established, dividing the election officials as nearly as possible equally between those favoring incorporation and those opposed to incorporation; and shall give notice of the date and place or places of election and hours for voting by publication of such notice as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the territory sought to be incorporated.

**ARTICLE 3. FRAMING AND ADOPTING AN ORIGINAL CHARTER FOLLOWING INCORPORATION OF A CITY; REVISING OR AMENDING A CHARTER; EXPENSES OF INCORPORATION.****§8-3-6. Same — ~~Special election; time~~ Time for election; notice; voting precincts; supplies; officials; certification; canvass; declaration of results; recount.**

The proposed charter shall be submitted to the qualified voters of the incorporated territory for approval or rejection at a special election ordered by the county ~~court~~ commission to be held ~~not less than thirty days nor more than ninety days following the date on which the two copies of the completed charter were filed with the clerk of the county court~~ concurrently with the next regularly scheduled primary or general election if there are more than 90 days preceding such election, and, if not, then, at the next succeeding regularly scheduled primary or general election, and at which election the officers provided for by said proposed charter and to be elected shall be voted upon in the manner provided in said proposed charter. The county ~~court~~ commission shall cause notice of the date, hours, place, and purpose of such election to be given by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the incorporated territory. The first of said publications shall be made not less than 30 days prior to the date fixed for the election. Each such notice of election shall state that upon request any qualified voter and any freeholder of the incorporated territory may obtain a copy of the proposed charter from a designated person at a designated place.

For the purpose of holding and conducting said election, the county ~~court~~ commission shall divide the incorporated territory into one or more temporary precincts, consisting of not more than 500 qualified voters in each temporary precinct; shall arrange for and provide at its expense polling places, registration books, challenges, and other election supplies as provided for by law in general elections; and shall appoint three commissioners of election and two clerks from the qualified voters of said incorporated territory for each temporary precinct so established, subject, however, to the provisions of §8-4-11 of this code. Such election shall be held and conducted under the supervision of the commissioners and clerks of election appointed by the county ~~court~~ commission as aforesaid and shall be conducted as nearly as may be in accordance with the laws of this state governing general elections. The results of such election, both as to approval or rejection of the proposed charter and the election of officers, shall be certified as in general elections, and the returns shall be

canvassed and the results declared by the county ~~court~~ commission. In the event any commissioner or clerk designated to serve in said election shall fail or refuse to serve, such vacancy may be filled in like manner as such vacancies are filled in general elections under the laws of this state governing general elections. A recount may be had, as in general elections, upon the party or parties desiring such recount providing adequate assurance to the county ~~court~~ commission that ~~he or they will~~ the party or parties shall pay all costs of such recount.

#### **ARTICLE 4. FRAMING AND ADOPTING A CHARTER OTHER THAN IMMEDIATELY FOLLOWING INCORPORATION; REVISING OR AMENDING A CHARTER; ELECTIONS AND EXPENSES.**

##### **PART II. REVISING OR AMENDING A CHARTER.**

##### **§8-4-7. Revising or amending a charter — generally.**

A special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former §8A-1-1 *et seq.*, §8-3-1 *et seq.*, or §8-4-1 *et seq.* of this code, as the case may be, may be revised as a whole in like manner as a charter may be framed and adopted under the provisions of §8-4-1 *et seq.* of this code, except that the question submitted shall be ‘Shall the charter be revised as a whole by representatives of the people?’, but no such revision as a whole shall be made within four years of the effective date of such a charter or of the last preceding revision as a whole, whichever be later, as the case may be. A revision as a whole may also be initiated in the manner specified in §8-3-9 of this code or in the manner specified in said section nine considered in *pari materia* with the provisions of §8-3-9 of this code. If a majority of the legal votes cast on the question be in the negative or if the proposed charter revised as a whole is rejected by a majority of the legal votes cast at the election thereon, the provisions of §8-4-2 and §8-4-3 of this code relating to a negative vote on the question of framing a charter and to rejection of a proposed charter shall govern and control.

The qualified voters of a city may amend a special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former §8A-1-1 *et seq.* of this code, §8-3-1 *et seq.* of this code, or under §8-4-1 *et seq.* of this code, as the case may be, but no amendment shall be made within one year of the effective date of such a charter or of the last preceding revision of such charter as a whole, whichever be later, as the case may be. An amendment or amendments may be initiated in the same manner provided in this article for the framing of a charter, in the manner specified in §8-3-9 of this code, or in the manner specified in said section nine considered in *pari materia* with the provisions of §8-4-3 of this code. The governing body of a city shall provide by ordinance for a special municipal election to pass upon a proposed charter amendment or amendments if: (1) Such governing body by the affirmative vote of two-thirds of its members shall determine and specify that a special municipal election is necessary; or (2) a petition bearing the signatures, written in their own handwriting, of 15 percent of the qualified voters of the city, if a Class I or Class II city, or 10 percent of the qualified voters of the city, if a Class III city, expressly requesting that a special municipal election be called for the purpose has been filed with the governing body more than 120 days prior to the date of the next regular municipal election. In all other cases, a proposed charter amendment or amendments shall be submitted by ordinance at the next regular municipal election. Any proposed amendment or amendments shall be set out in full in the ordinance submitting same. The date of any special municipal election for the purpose shall be fixed by the ordinance providing for same, but any such special municipal election shall be held not less than 30 nor more than 60 days after such ordinance shall have been adopted. Notice of any election at which a proposed amendment or amendments shall be voted upon shall state the date and hours thereof, and shall set out the proposed amendment or amendments at length or state that copies may be obtained by any qualified voter or any freeholder of the city from a designated person at a stated place, upon request. Such notice shall be published as in the case of a notice of an election on the question of whether a charter shall be framed, as specified in §8-4-2 of this code. A charter amendment or amendments approved, or such of them as may be approved, by a majority of the legal votes



cast at the election thereon shall take effect on the date that the declaration of the results showing approval by the voters has been made by the governing body and entered in the minutes of the governing body. One copy of the amendment or amendments, together with a certified copy of the declaration of results attached thereto, shall be certified forthwith by the recorder of the city to the Clerk of the House of Delegates, as keeper of the rolls, and another to the clerk of the county ~~court~~ commission for recording in the office of such clerk of the county ~~court~~ commission. The same shall be preserved by said Clerk of the House of Delegates as an authentic public record. After the effective date of an amendment or amendments so filed, all courts shall take judicial notice of such amendment or amendments.

If a majority of the legal votes cast at the election thereon be against any amendment, such proposed amendment shall not be submitted again, without a petition of the qualified voters as provided for in §8-4-1(b) of this code considered in *pari materia* with the provisions of this section, for at least one year.

#### **§8-4-8. Same — An alternate plan.**

Whenever the governing body of any city shall deem it expedient to amend the charter of any such city (whether such charter be a special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former §8A-1-1 *et seq.*, of this code, under §8-3-1 *et seq.*, of this code, or §8-4-1 of this code, as the case may be), it shall, by ordinance, set out in its proper record book the proposed amendment or amendments in full. The governing body shall set a date, time, and place for a public hearing thereon, which date shall be not less than 30 days after the date of the first publication hereinafter required. The governing body shall cause the proposed amendment or amendments, together with a notice of the date, time and place fixed for the hearing thereon, to be published as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the city. The notice shall state that the proposed amendment or amendments ~~will~~ shall be considered on the date and at the time and place fixed by the governing body and that any qualified voter

or any freeholder of the city may appear and file objections, in writing, and also that if no objections are filed the said amendment or amendments shall become operative on and after a date fixed in the notice, which date shall be not less than 10 days after the date of the hearing. If no objections are filed, or if objections are filed and are withdrawn at the time of the hearing, or within 10 days thereafter, the governing body shall, by ordinance, adopt the amendment or amendments as an amendment or amendments to the charter, and cause a copy of the amendment or amendments, ordinance, and transcript of the proceedings to be certified to the Clerk of the House of Delegates, as keeper of the rolls, and to be recorded in the office of the clerk of the county ~~court~~ commission. The same shall be preserved by such Clerk of the House of Delegates as an authentic public record. The amendment or amendments shall take effect on the effective date specified in the notice as aforesaid. After the effective date, all courts shall take judicial notice of such amendment or amendments.

If, on the date and at the time and place set for the hearing, objections to the amendment or amendments are filed and are not withdrawn then or within 10 days thereafter, the governing body may abandon the proposed amendment or amendments to which objections have been filed, or it may submit the proposed amendment or amendments, either as a unit or separately, at the next regular municipal election, or at a special municipal election if such governing body by the affirmative vote of two-thirds of its members shall determine and specify that a special municipal election is necessary and if the date of such regular municipal election shall be more than six months from such date, for ratification or rejection. Notice of any election at which the proposed amendment or amendments shall be voted upon shall state the date and hours thereof and shall set out the proposed amendment or amendments at length or state that copies may be obtained by any qualified voter or any freeholder of the city from a designated person at a stated place, upon request. The governing body shall cause such notice to be published as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the city. The amendment or amendments approved, or such of them

as may be approved, by a majority of the legal votes cast at the election thereon shall take effect on the date that the declaration of the results showing approval by the voters has been made by the governing body and entered in the minutes of the governing body. One copy of the amendment or amendments, together with a certified copy of the declaration of results attached thereto, shall be certified forthwith by the recorder of the city to the Clerk of the House of Delegates, as keeper of the rolls, and another to the clerk of the county ~~court~~ commission for recording in the office of such clerk of the county ~~court~~ commission. The same shall be preserved by said Clerk of the House of Delegates as an authentic public record. After the effective date of an amendment or amendments so filed, all courts shall take judicial notice of such amendment or amendments. If a majority of the legal votes cast at the election thereon be against any proposed amendment, the same shall not be proposed again under the provisions of this section for at least one year.

The method of charter amendment provided for in this section is not in lieu of but is in addition to the other methods prescribed in this chapter

### PART III. ELECTIONS; EXPENSES.

#### **§8-4-10. Conduct of elections; general provisions concerning canvass and declaration of results; election supplies; election officials.**

The governing body of a city shall canvass the returns within relatively the same time with reference to an election held under the provisions of this article and in the same manner as county ~~court~~ commissions are required to do with respect to general elections, and shall declare the results of any such election. This requirement shall apply to any election held under the provisions of this article, whether it be a special municipal election or voting conducted in conjunction with a general election or a regular municipal election. The canvass and declaration of results shall be entered in the minutes of the governing body on the date made. Unless otherwise provided by charter provision, any such special municipal election or voting conducted in conjunction with a general election or a

regular municipal election shall be held and conducted under the supervision at each precinct of three commissioners of election and two clerks who shall be appointed by the governing body and shall be conducted as nearly as may be in accordance with the laws of this state governing general elections, subject, however, in the case of a special municipal election to the provisions of §8-4-11 of this code. For any special municipal election or voting conducted in conjunction with a general election or a regular municipal election, in accordance with the provisions of this article, the governing body shall arrange for and provide at its expense registration books, challenges and other election supplies as provided by law in general elections, and polling places in any such special municipal election or with respect to any such voting conducted in conjunction with a regular municipal election. In the event any commissioner or clerk appointed by the governing body shall fail or refuse to serve, such vacancy may be filled in like manner as such vacancies are filled in general elections under the laws of this state governing general elections, except that the governing body shall act in the place and stead of the county ~~court~~ commission. A recount may be had, as in general elections, upon the party or parties desiring such recount providing adequate assurance to the governing body that ~~he or they will~~ the party or parties shall pay all costs of such recount.

**§8-5-5. Regular election of officers; establishment of longer terms.**

(a) After the first election of officers of a city, town, or village, the regular election of officers shall be held on the second Tuesday in June of the appropriate year, unless otherwise provided in the charter of the city or the special legislative charters of the towns or villages.

(b) A municipal election date established by a charter provision may fall on the same day as ~~the county-state~~ a regularly scheduled statewide primary election or general election only when the voting precinct boundaries in the municipality coincide with the voting precinct boundaries established by the county commission or when the charter provides for separate registration books. If a municipal election falls on the same day as ~~the county-state~~ a regularly

scheduled statewide primary or general election, the municipality and county may agree to use the county election officials in the municipal elections, if practicable, or the municipality may provide for separate election officials.

(c) A municipal election date established by charter provision may fall within 25 days of a ~~the county-state~~ regularly scheduled statewide primary or general election only where separate registration books are provided and maintained for the municipal election.

(d) Any municipality which establishes its election date by charter provision must comply with the provisions of this section or the election date shall be the second Tuesday of June. The language of this section may not be construed to prevent any city, town, or village from amending the provisions of its charter or special legislative charter, to provide that its municipal election be held on some day other than the second Tuesday in June.

(e) Officers of a city may be elected for a four-year term at the same election at which a proposed charter, proposed charter revision, or charter amendment providing for four-year terms is voted upon. The ballots or ballot labels used for the election of officers must indicate that the officers ~~will~~ shall be elected for four-year terms if the proposed charter, revision or amendment is approved. Officers of a town or village may be elected for a four-year term upon approval by a majority of the legal votes cast at a regular municipal election of a proposition calling for four-year terms. The ballots or ballot labels used for the election of officers must indicate that the officers ~~will~~ shall be elected for four-year terms if the proposition is approved.

(f) Municipalities are authorized to stagger and/or change the terms of elected municipal officers. Prior to any changes being made to the terms of elected municipal officers, the procedure to stagger and/or change the terms shall be set by ordinance and must be approved by a majority of the voters.

(g) Beginning on July 1, 2022, any municipality that has not previously adopted a municipal charter may pass an ordinance that

establishes a new municipal election day upon agreement with its county commission to hold any local elections, including the regular election of local officers, municipal bond elections, and municipal levy elections, on the same day as a regularly scheduled statewide primary or general election. The municipality shall publish notice of the public meeting during which the proposed ordinance shall be considered by the municipal governing body via Class II-0 legal advertisement in a publication area sufficient to reach a majority of the municipal residents, which notice shall include the public meeting date, time, and location, any proposed extension or reduction of terms of office pursuant to paragraph (f) of this section, and the proposed election day change.

(h) The ordinance proposed pursuant to paragraph (g) of this section may call for an extension or reduction of the terms of office for the purpose of aligning the terms to coincide with the same date as a regularly scheduled statewide primary or general election day, which question shall be resolved by majority vote of the participating voters in the county: *Provided*, That the governing body shall not propose an extension of the terms of those offices by more than 18 months: *Provided, however*, That nothing in this section modifies a municipality's authority to reduce current elected officials' terms of office in any other manner provided by law.

(i) A municipality which enters into an agreement with the county commission to hold elections at the same time as a regularly scheduled statewide primary or general election day pursuant to this section is required to share in the administrative costs of holding the election, but which costs shall not exceed the municipality's pro rata share of voters registered in the municipality compared with the total voters registered in the county.

## **CHAPTER 8A. LAND USE PLANNING.**

### **ARTICLE 7. ZONING ORDINANCE.**

#### **§8A-7-7. Election on a zoning ordinance.**

(a) The governing body of a municipality or a county may submit a proposed zoning ordinance for approval or rejection at any primary election or general election ~~or special election~~, to the qualified voters residing:

(1) Within the entire jurisdiction of the governing body, if the proposed zoning ordinance is for the entire jurisdiction; or

(2) In the specific area to be zoned by the proposed zoning ordinance, if the proposed zoning ordinance only applies to part of the governing body's jurisdiction.

(b) The election laws of this state apply to any election on a proposed zoning ordinance.

(c) If a petition for an election on a zoning ordinance is filed with the clerk of a governing body within 90 days after the enactment of a zoning ordinance by a governing body without an election, then a zoning ordinance does not take effect until an election is held and a majority of the voters approves it. At least 10 percent of the total eligible voters in the area to be affected by the proposed zoning ordinance must sign, in their own handwriting, the petition for an election on a zoning ordinance.

(d) Notice for an election on a proposed zoning ordinance must be published in a local newspaper of general circulation in the area affected by the proposed zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 of this code.

(e) The ballots for an election on a zoning ordinance shall have the following:

// For Zoning

// Against Zoning

(f) The zoning ordinance is adopted if it is approved by a majority of the voters and is effective on the date the results of an election are declared. If a zoning ordinance is rejected, the zoning ordinance does not take effect. The governing body may submit the

zoning ordinance to the voters again at the next primary or general election.

**§8A-7-8a. Requirements for adopting an amendment to the zoning ordinance.**

(a) After the enactment of the zoning ordinance, the governing body of the municipality may amend the zoning ordinance in accordance with §8A-7-8 of this code, without holding an election.

(b) After the enactment of the zoning ordinance, the governing body of the county may amend the zoning ordinance in accordance with §8A-7-8 of this code, as follows:

(1) Without holding an election;

(2) Holding an election on the proposed amendment; or

(3) Holding an election on the proposed amendment pursuant to a petition.

(c) If the governing body of the county chooses to hold an election on the proposed amendment, then it must:

(1) Publish notice of the election and the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq.* of this code; and

(2) Hold an election on the question of adopting or rejecting the proposed amendment to the zoning ordinance at any primary; or general or special election for the qualified voters residing in:

(A) The entire jurisdiction of the county, if the zoning ordinance applies to the entire county; or

(B) The specific area to which the zoning ordinance applies, if the zoning ordinance only applies to a part of the county.

(d) The governing body of a county must hold an election on an amendment to a zoning ordinance if a petition, signed by at least



10 percent of the eligible voters in the area to which the zoning ordinance applies, is filed:

(1) With the governing body of the county prior to enactment of an amendment to a zoning ordinance; or

(2) After the enactment of an amendment to a zoning ordinance without an election, if the petition for an election on the amendment to a zoning ordinance is filed with the governing body of the county within 90 days.

(e) The governing body of the county holding an election on the proposed amendment pursuant to a petition must:

(1) Publish notice of the election and the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq.* of this code; and

(2) Hold an election on the question of adopting or rejecting the proposed amendment to the zoning ordinance at any primary, or general or special election for the qualified voters residing in:

(A) The entire jurisdiction of the county, if the zoning ordinance applies to the entire county; or

(B) The specific area to which the zoning ordinance applies, if the zoning ordinance only applies to a part of the county.

(f) If an election is held, then the proposed amendment to the zoning ordinance does not take effect until a majority of the voters approve it.

(g) If an election is held and the proposed amendment to the zoning ordinance is rejected, then the proposed amendment does not take effect. The governing body of the county may resubmit the proposed amendment to the zoning ordinance to the voters at another election.

(h) ~~A special election may be held upon written request to the governing body of the county.~~

(i) The election laws of this state apply to any election on a proposed amendment to a zoning ordinance.

**§8A-7-13. Process to replace nontraditional zoning ordinance.**

(a) A governing body that has adopted or enacted a nontraditional zoning ordinance may replace the nontraditional zoning ordinance with a zoning ordinance. A nontraditional zoning ordinance may be replaced with a zoning ordinance by:

(1) The governing body; or

(2) A petition by the voters in the affected area. If the voters petition to replace the nontraditional zoning ordinance with a zoning ordinance, then the provisions of this section and this chapter shall be followed.

(b) At least 10 percent of the total eligible voters in the affected area may petition the governing body to replace the nontraditional zoning ordinance with a zoning ordinance. The petition must include:

(1) The governing body's name to which the petition is addressed;

(2) The reason for the petition, including:

(A) Replacing the nontraditional zoning ordinance with a zoning ordinance; and

(B) That the question of replacing the nontraditional zoning ordinance with a new zoning ordinance be put to the voters of the affected area; and

(3) Signatures in ink or permanent marker.

(c) Each person signing the petition must be a registered voter in the affected area and in the governing body's jurisdiction. The

petition must be delivered to the clerk of the affected governing body. There are no time constraints on the petition.

(d) Upon receipt of the petition with the required number of qualifying signatures, the governing body shall place the question on the next ~~special~~, primary or general election ballot.

Notice for an election on replacing a zoning ordinance must be published in a local newspaper of general circulation in the area affected by the nontraditional zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq.* of this code.

(e) The ballots for an election on replacing a zoning ordinance shall have the following:

‘Shall \_\_\_\_\_ (name of governing body) replace \_\_\_\_\_ (name of commonly known nontraditional zoning ordinance) with a zoning ordinance?’

\_\_\_ Yes                      \_\_\_ No’

(f) Upon a majority vote of the voters voting in favor of replacing a nontraditional zoning ordinance with a zoning ordinance, the governing body shall immediately begin the process of adopting and enacting a zoning ordinance, in accordance with the provisions of this chapter. The governing body has a maximum of three years from the date of the election to adopt a zoning ordinance.

(g) The governing body may amend its nontraditional zoning ordinance during the process of adopting and enacting a zoning ordinance.

(h) If a majority of the voters reject replacing the nontraditional zoning ordinance with a zoning ordinance, the affected voters may not petition for a vote on the issue for at least two years from the date of the election.

(i) Nothing in this section shall prevent a governing body from amending its zoning ordinance in accordance with this chapter.

(j) If a governing body of a county chooses to replace a nontraditional zoning ordinance with a traditional zoning ordinance without holding an election, a petition, signed by at least 10 percent of the eligible voters who reside in the area affected by the zoning ordinance, for an election on the question of adopting a traditional zoning ordinance may be filed with the governing body of the county within 90 days after the enactment of the traditional zoning ordinance by the governing body of the county. If a petition is timely filed, then the traditional zoning ordinance does not take effect until:

(1) Notice of the election and the zoning ordinance is published in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq.* of this code;

(2) An election is held; and

(3) A majority of the voters approve it.

## CHAPTER 11. TAXATION.

### ARTICLE 8. LEVIES.

#### **§11-8-16. What order for election to increase levies to show; vote required; amount and continuation of additional levy; issuance of bonds.**

A local levying body may provide for an election to increase the levies by entering on its record of proceedings an order setting forth:

(1) The purpose for which additional funds are needed;

(2) The amount for each purpose;

(3) The total amount needed;

(4) The separate and aggregate assessed valuation of each class of taxable property within its jurisdiction;

(5) The proposed additional rate of levy in cents on each class of property;

(6) The proposed number of years, not to exceed five, to which the additional levy applies;

(7) The fact that the local levying body ~~will~~ shall or ~~will~~ shall not issue bonds, as provided by this section, upon approval of the proposed increased levy.

The local levying body shall submit to the voters within their political subdivision the question of the additional levy at either a regularly scheduled primary, or general, ~~or special~~ election in accordance with the requirements of §3-1-31 of this code. If at least 60 percent of the voters cast their ballots in favor of the additional levy, the county commission or municipality may impose the additional levy. If at least a majority of voters cast their ballot in favor of the additional levy, the county board of education may impose the additional levy: *Provided*, That any additional levy adopted by the voters, including any additional levy adopted prior to the effective date of this section, shall be the actual number of cents per each \$100 of value set forth in the ballot provision, which number shall not exceed the maximum amounts prescribed in this section, regardless of the rate of regular levy then or currently in effect, unless such rate of additional special levy is reduced in accordance with the provisions of §11-8-6g of this code or otherwise changed in accordance with the applicable ballot provisions. For county commissions, this levy shall not exceed a rate greater than seven and fifteen hundredths cents for each \$100 of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties. For municipalities, this levy shall not exceed a rate greater than six and twenty-five hundredths cents for each \$100 of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties. For county boards of education, this levy shall not exceed a rate greater than twenty-two and ninety-five hundredths cents for each \$100 of value for Class I properties, and for Class II properties a

rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties.

Levies authorized by this section shall not continue for more than five years without resubmission to the voters.

Upon approval of an increased levy as provided by this section, a local levying body may immediately issue bonds in an amount not exceeding the amount of the increased levy plus the total interest thereon, but the term of the bonds shall not extend beyond the period of the increased levy.

Insofar as they might concern the issuance of bonds as provided in this section, the provisions of §13-1-3 and §13-1-4 of this code shall not apply.

In the event that a majority of the votes cast upon a question submitted pursuant to this section at any primary election be against the question, the question may again be submitted to the voters at the next succeeding general election.

**§11-8-17. Special levy elections; notices; ~~election—officers~~ conduct of election; supplies; canvass of returns; form of ballot.**

(a) The local levying body shall publish a notice, calling the election, as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the territory in which the election is held. Such notice shall be so published within 14 consecutive days next preceding the election.

(b) All the provisions of the law concerning general elections shall apply so far as they are practicable: Provided, That notwithstanding any provision of this code to the contrary, in the case of a levy which expires at a time after July 1, 2022, and which shall not be up for renewal at the next regularly scheduled primary or general election thereafter, the local levying body shall by ordinance choose to hold the election to renew that levy either at the next regularly scheduled primary or general election in

accordance with §3-1-31 of this code: *Provided, however,* That notwithstanding any other provision of this code, a local levying body may enter an order authorizing a special election prior to the expiration of the existing or expiring levy for the purpose of presenting to the voters the question of synchronizing the renewal of an existing or expiring levy with a future regularly scheduled primary or general election, which question shall pass upon adoption by a majority of participating voters. ~~except as follows:~~

(1) ~~Where a special election is held, the local levying body, having due regard to the minimum expense involved, shall determine the number of election officials necessary to properly conduct said election, which number shall in no case be less than three commissioners and two clerks, and shall appoint the same and fix and pay their compensation, but otherwise the election officials shall be such as are appointed to serve with respect to the general election held at the same time~~

~~(2) The local levying body shall provide the election supplies necessary for such election and shall canvass the returns thereof: *Provided, That the county commission is the board of canvassers to canvass the returns of levy elections called by the board of education.*~~

~~(c) A separate ballot shall be used at a levy election held in connection with any other election~~ The question on the special levy shall be placed on the ballot in accordance with the ballot placement order prescribed by §3-5-13a(a) of this code. The ballot question heading shall be entitled: 'Special Levy Election' and the question shall be significantly in the following form: 'Special election to authorize additional levies for the year(s) \_\_\_\_\_ and for the purpose of \_\_\_\_\_ according to the order of the \_\_\_\_\_ entered on the \_\_\_\_\_ day of \_\_\_\_\_.'

The additional levy shall be on Class I property \_\_\_\_\_ cents; on Class II property \_\_\_\_\_ cents; on Class III property (if any) \_\_\_\_\_ cents; on Class IV property (if any) \_\_\_\_\_ cents.

(d) In the event that a majority of the votes cast upon a question submitted pursuant to this section at any primary election be against the question, the question may again be submitted to the voters at the next succeeding general election.

## **CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.**

### **ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.**

#### **§13-1-7. When election to be held.**

Elections for the purpose of voting upon questions of issuing bonds may be held at any general, ~~or primary or special~~ election which the fiscal body in its order submitting the same to a vote may designate, except that, when a petition is filed asking that bonds be issued, the fiscal body with which the same is filed, ~~if it be not designated in the petition that~~ shall order a special election and the election shall be held concurrently at a the next regularly scheduled general or primary election, shall order a special election to be held within sixty days from the date of the filing of such petition; or, if it be a petition for bonds for the construction of county district roads or bridges thereon, the election shall be held within sixty days from the filing of the engineer's report as provided for in section five of this article.

In the event that a majority of the votes cast upon a question submitted pursuant to this section at any primary election be against the question, the question may again be submitted to the voters at the next succeeding general election.

#### **§13-1-11. General election laws to apply; recorders and secretaries to act in lieu of circuit clerks.**

All the provisions of the general election laws of this state concerning general, ~~or primary or special~~ elections, when not in conflict with the provisions of this article, shall apply to bond elections hereunder, insofar as practicable: *Provided*, That in bond elections for municipalities, school, or independent school districts, the recorders and secretaries, respectively, shall procure and furnish to the election commissioners at each voting precinct



the ballots, pollbooks, tally sheets, and other things necessary for conducting the election, and perform all duties imposed by law upon clerks of the circuit courts in relation to general elections.

## **CHAPTER 15. PUBLIC SAFETY.**

### **ARTICLE 2. WEST VIRGINIA STATE POLICE.**

#### **§15-2-13. Limitations upon members; exceptions.**

(a) No member of the West Virginia state police may in any way interfere with the rights or property of any person except for the prevention of crime.

(b) No member of the State Police may in any way become active or take part in any political contest or at any time participate in any political party caucus, committee, ~~primary~~, assembly or convention or in any primary, general, or special election while in uniform, except to cast his or her ballot.

(c) No member of the State Police may be detailed or ordered to duty at or near any voting precinct where any election or convention is held on the day of an election or convention; nor may any member thereof remain in, about or near the voting precinct or place of convention, except to cast his or her vote. After voting he or she shall forthwith retire from the voting precinct. No member may act as an election official. If any member of the State Police is found guilty of violating any of the provisions of this section, he or she shall be dismissed by the superintendent as hereinafter provided.

(d) While out of uniform and off duty, no member of the State Police may participate in any political activity except to:

(1) Campaign for and hold office in political clubs and organizations;

(2) Actively campaign for candidates for public office in partisan and nonpartisan elections; and

(3) Contribute money to political organizations and attend political fund-raising functions.

(e) No member of the State Police may at any time:

(1) Be a candidate for public office in a nonpartisan or partisan election;

(2) Use official authority or influence to interfere with or affect the results of an election or nomination; or

(3) Directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

(f) No officer or member of the State Police may, in any labor trouble or dispute between employer and employee, aid or assist either party thereto, but shall in these cases see that the statutes and laws of this state are enforced in a legal way and manner.

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 12. SANITARY DISTRICTS FOR SEWAGE DISPOSAL.**

#### **§16-12-1. Incorporation as sanitary district for sewage disposal; petition, notice and hearing; election; form of ballot; expenses of election.**

Whenever any area of contiguous territory shall contain one or more incorporated cities, towns, and/or villages, and shall be so situated that the construction and maintenance of a plant or plants for the purification and treatment of sewage and the maintenance of one or more outlets for the drainage thereof, after having been so treated and purified by and through such plant or plants will conduce to the preservation of the public health, comfort, and convenience, the same may be incorporated as a sanitary district under this article in the manner following, to wit:

Any 400 legal voters, residents within the limits of such proposed sanitary district, may petition the county ~~court~~ commission of the county in which the proposed sanitary district,

or the major portion thereof, is located, to cause the question to be submitted to the legal voters of such proposed sanitary district, whether such proposed territory shall be organized as a sanitary district under this article; such petition shall be addressed to the county ~~court~~ commission and shall contain a definite description of the boundaries of the territory to be embraced in the such sanitary district, and the name of such proposed sanitary district: *Provided*, That no territory shall be included within more than one sanitary district organized under this article.

Notice shall be given by such county ~~court~~ commission within 10 days after receiving the petition, of the time and place when a hearing on the petition for a sanitary district ~~will~~ shall be held, by publication of such notice as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the area of the sanitary district. The first publication shall be made at least 20 days prior to such hearing. The hearing on the petition for a sanitary district shall be held not later than 30 days after the county ~~court~~ commission receives the said petition. At such hearing the president of the county ~~court~~ commission shall preside, and all persons resident within the limits of such proposed sanitary district shall have an opportunity to be heard upon the question of the location and boundary of such proposed sanitary district, and to make suggestions regarding the same, and the said county ~~court~~ commission, after hearing statements, evidence, and suggestions, shall fix and determine the limits and boundaries of such proposed sanitary district as stated in the original petition unless by a vote of the majority of the legal voters resident within the limits of such proposed sanitary district, present at the said hearing, it should be decided to alter and amend such petition to change and redetermine the limits and boundaries of such proposed sanitary district.

After such determination by the county ~~court~~ commission, the same shall be incorporated in an order which shall be spread at length upon the records of the county ~~court~~ commission. Upon the entering of such order, the county ~~court~~ commission shall submit to the legal voters of the proposed sanitary district, the question of organization and establishment of the proposed sanitary district as

determined by said county ~~court~~ commission, at a ~~special~~ an election, to be held ~~within sixty days after the entering of such order~~ concurrently with the next regularly scheduled primary or general election, notice whereof shall be given by the county ~~court~~ commission at least 20 days prior thereto by publication of such notice as a Class II-O legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the area of the proposed sanitary district. Such notice shall specify briefly the purpose of such election, with the description of such proposed sanitary district, and the time and place for holding such election.

Each legal voter resident within such proposed sanitary district shall have the right to cast a ballot at such election. Ballots at elections held under this section shall be in substantially the following form, to wit:

// For sanitary district.

// Against sanitary district.

The ballots so cast shall be issued, received, returned, and canvassed in the same manner and by the same officers as is provided by law in the case of ballots cast for county officers, except as herein modified. The county ~~court~~ commission shall cause a statement of the result of such election to be spread on the records of the county ~~court~~ commission. If a majority of the votes cast upon the question of the incorporation of the proposed sanitary district shall be in favor of the proposed sanitary district, such proposed sanitary district shall thenceforth be deemed an organized sanitary district under this article. All courts in this state shall take judicial notice of the existence of all sanitary districts organized under this article.

The expenses of holding said special election shall be paid by the county ~~court~~ commission of said county, in which said proposed sanitary district, or the major portion thereof, is located, out of the general funds of said county: *Provided*, That in the event such sanitary district is established and incorporated under this article, then said sanitary district shall repay to said county the

expenses incurred in holding said special election within two years from the date of incorporating said sanitary district.

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 9. SCHOOL FINANCES.**

#### **§18-9-1. School levies; when levy election necessary; special election.**

[Repealed.]

#### **§18-9-2. Elections under this chapter; procedure.**

[Repealed.]

#### **§18-9-2a. Levies.**

[Repealed.]

## **CHAPTER 20. NATURAL RESOURCES.**

### **ARTICLE 5K. COMMERCIAL INFECTIOUS MEDICAL WASTE FACILITY SITING APPROVAL.**

#### **§20-5K-3. Procedure for public participation.**

(a) From and after the effective date of this article, in order to obtain approval to locate a commercial infectious medical waste facility, currently not under permit to operate, an applicant shall:

(1) File a presiting notice with the county commission and local solid waste authority of the county or counties in which the facility is to be located or proposed. Such notice shall be submitted on forms prescribed by the secretary;

(2) File a presiting notice with the secretary; and

(3) File a presiting notice with the Division of Environmental Protection.

(b) If a presiting notice is filed in accordance with subsection (a) of this section, the county commission shall publish a Class II

legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, in a newspaper of general circulation in the counties wherein the commercial infectious medical waste facility is to be located. Upon an affirmative vote of the majority of the county commissioners or upon the written petition of registered voters residing in the county equal to not less than 15 percent of the number of votes cast within the county for Governor at the preceding gubernatorial election, which petition shall be filed with the county commission within 60 days after the last date of publication of the notice provided in this section, the county commission shall, upon verification of the required number of signatures on the petition, and not less than 56 days before the election, order a referendum be placed upon the ballot. Any referendum conducted pursuant to this section shall be held at the next primary, or general ~~or other county-wide~~ election:

(1) Such referendum is to determine whether it is the will of the voters of the county that a commercial infectious medical waste management facility be located in the county. Any election at which such question of locating a commercial infectious medical waste management facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address, and date of birth of each person whose signature appears on the petition.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following depending upon the type of facility to be located within the county:

Shall a commercial infectious medical waste management facility be located within \_\_\_\_\_ County.

☐ For the facility

☐ Against the facility

(Place a cross mark in the square opposite your choice.)

(3) If a majority of the legal votes cast upon the question is against the facility, then the county commission shall notify the local solid waste authority, the Division of Environmental Protection, and the Secretary of the Department of Health and Human Resources of the result and the commercial infectious medical waste management facility may not proceed any further with the application. If a majority of the legal votes cast upon the question is for the facility, then the application process as set forth in §20-5j-1 *et seq.* of this code may proceed: *Provided*, That such vote is not binding on nor does it require the secretary to issue the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: *Provided, however*, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

## CHAPTER 22. ENVIRONMENTAL RESOURCES.

### ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

#### **§22-15A-18. Establishment of county recycling programs for solid waste; petition for referendum; ballot contents; election procedure; effect of such election.**

(a) On or before October 18, 1992, each municipality described in subsection (b) of this section shall submit a proposal to the Solid Waste Management Board, consistent with the provisions of this section, describing the establishment and implementation of the mandatory recycling program. The Solid Waste Management Board shall review the submitted plans for consistency with the criteria provided in this section, the county or regional solid waste management plan, and the statewide management plan. The Solid Waste Management Board may make suggested changes to the plan and shall provide technical assistance to the municipalities in the development of the plans.

(b) On or before October 18, 1993, each municipality with a population of 10,000 or more people, as determined by the most recent decennial census by the Bureau of the Census of the United States Department of Commerce, shall establish and commence implementation of a source separation and curbside collection program for recyclable materials. Implementation shall be phased in by July 1, 1995. Such program shall include, at a minimum, the following:

(1) An ordinance adopted by the governing body of the municipality requiring that each person, partnership, corporation, or other entity in the municipality shall separate at least three recyclable materials, as deemed appropriate by the municipality, from other solid waste: *Provided*, That the list of recyclables to be separated may be adjusted according to whether the generator is residential, commercial or other type of establishment.

(2) A scheduled day, at least one per month, during which separated materials are to be placed at the curbside, or similar location, for collection.

(3) A system that collects recyclable materials from the curbside, or similar location, at least once per month: *Provided*, That to encourage full participation, the program shall, to the maximum extent possible, provide for the collection of recyclables at the same rate of frequency, and simultaneous with, the regular collection of solid waste.

(4) Provisions to ensure compliance with the ordinance, including incentives and penalties.

(5) A comprehensive public information and education program covering the importance and benefits of recycling, as well as the specific features and requirements of the recycling program. As part of the education program, each municipality shall, at a minimum, notify all persons occupying residential, commercial, institutional, or other premises within its boundaries of the requirements of the program, including how the system will operate, the dates of collection, the responsibilities of persons within the municipality and incentives and penalties.



(6) Consultation with the county or regional solid waste authority in which the municipality is located to avoid duplication, ensure coordination of solid waste programs, and maximize the market for recyclables.

(c) Notwithstanding the provisions of subsection (b) of this section, a comprehensive recycling program for solid waste may be established in any county of this state by action of a county commission in accordance with the provisions of this section. Such program shall require:

(1) That, prior to collection at its source, all solid waste shall be segregated into separate identifiable recyclable materials by each person, partnership, corporation, and governmental agency subscribing to a solid waste collection service in the county or transporting solid waste to a commercial solid waste facility in the county;

(2) Each person engaged in the commercial collection, transportation, processing, or disposal of solid waste within the county shall accept only solid waste from which recyclable materials in accordance with the county's comprehensive recycling program have been segregated; and

(3) That the provisions of the recycling plan prepared pursuant to §22-15A-17 of this code shall, to the extent practicable, be incorporated in the county's comprehensive recycling program.

(d) For the purposes of this article, recyclable materials shall include, but not be limited to, steel and bimetallic cans, aluminum, glass, paper, and such other solid waste materials as may be specified by either the municipality or county commission with the advice of the county or regional solid waste authority.

(e) A comprehensive recycling program for solid waste may be established in any county of this state by: (1) A petition filed with the county commission bearing the signatures of registered voters of the county equal to not less than five percent of the number of votes cast within the county for Governor at the preceding gubernatorial election; and (2) approval by a majority of the voters

in a subsequent referendum on the issue. A referendum to determine whether it is the will of the voters of a county that a comprehensive recycling program for solid waste be established in the county may be held at any regular primary or general election ~~or in conjunction with any other countywide election~~. Any election at which the question of establishing a policy of comprehensive recycling for solid waste is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address, and date of birth of each person whose signature appears on the petition. Upon verification of the required number of signatures on the petition, the county commission shall, not less than 70 days before the election, order that the issue be placed on the ballot and referendum held at the next primary; or general or special election to determine whether it is the will of the voters of the county that a policy of comprehensive recycling of solid waste be established in the county: *Provided*, That the petition bearing the necessary signatures has been filed with the county commission at least 100 days prior to the election.

The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

‘Shall the county commission be required to establish a comprehensive recycling program for solid waste in \_\_\_\_\_ County, West Virginia?’

For Recycling

Against Recycling

(Place a cross mark in the square opposite your choice.)’

If a majority of legal votes cast upon the question be for the establishment of a policy of comprehensive recycling of solid waste, the county commission shall, after the certification of the results of the referendum, thereafter adopt an ordinance, within 180

days of certification, establishing a comprehensive recycling program for solid waste in the county: *Provided*, That such program shall be implemented and operational no later than 12 months following certification. If a majority of the legal votes cast upon the question be against the establishment of a policy of comprehensive recycling of solid waste, the policy shall not take effect, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

(f) A comprehensive recycling program for solid waste established by petition and referendum may be rescinded only pursuant to the procedures set out herein to establish the program.

To rescind the program, the ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

‘Shall the county commission be required to terminate the comprehensive recycling program for solid waste in \_\_\_\_\_ County, West Virginia?’

Continue Recycling

End Recycling

(Place a cross mark in the square opposite your choice.)’

(g) If a majority of legal votes cast upon the question be for the termination of a policy of comprehensive recycling of solid waste previously established in the county, the county commission shall, after the certification of the results of the referendum, thereafter rescind by ordinance the comprehensive recycling program for solid waste in the county within 90 days of certification. If a majority of the legal votes cast upon the question be for the continuation of the policy of comprehensive recycling of solid waste, the ordinance shall not be rescinded, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

(h) In the case of any municipality having a population greater than 30,000 persons, as indicated by the most recent decennial

census conducted by the United States, the governing body of such municipality may by ordinance establish a materials recovery facility in lieu of or in addition to the mandatory recycling program required under the provisions of this section: *Provided*, That a materials recovery facility shall be subject to approval by both the Public Service Commission and the Solid Waste Management Board upon a finding by both the Public Service Commission and the Solid Waste Management Board that the establishment of a materials recovery facility will not hinder, and will be consistent with, the purposes of this article.

## **CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS, AND COMPACTS.**

### **ARTICLE 4A. LOCAL PARTICIPATION; REFERENDUM.**

#### **§22C-4A-2. Approval of new Class A facility.**

(a) The purpose of the mandatory referendum for approval of new Class A facilities is to verify for the local community that the local infrastructure and environment are appropriate for a new Class A facility and to assure that the local community accepts the associated benefits and detriments of having a new Class A facility located in their county.

(b) Following receipt of a certificate of need from the Public Service Commission as required by §24-2-1c of this code, and local solid waste approval as required in §22C-4-6 of this code for a new Class A facility, the county commission shall cause a referendum to be placed on the ballot not less than 56 days before the next primary; or general ~~or other countywide~~ election:

(1) Such referendum is to determine whether it is the will of the voters of the county that a new Class A facility be constructed. Any election at which such question of locating a solid waste facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of

this article, apply to voting and elections hereunder, insofar as practicable.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

‘The West Virginia Legislature has found that the location of a Class A solid waste facility has impact upon the county in which it will be located, and further that local citizens should be given the opportunity to participate in the decision of locating a new Class A facility in their community. A Class A facility is authorized to receive between ten and thirty thousand tons of solid waste per month.

The \_\_\_\_\_ county commission finds the following:

I. The \_\_\_\_\_ (name of applicant) has obtained site approval for a Class A commercial facility from the \_\_\_\_\_ (name of the county or regional solid waste authority). The authority has determined that the proposed landfill meets all local siting plan requirements. The local siting plan evaluates local environmental conditions and other factors and authorizes commercial landfills in areas of a county where a commercial landfill can be appropriately located.

II. The West Virginia Public Service Commission has issued a certificate of need, and has approved the operation of the Class A landfill. The Public Service Commission has determined that the landfill complies with the state solid waste management plan and based on the anticipated volume of garbage expected to be received at the landfill, that the proposal is consistent with public convenience and necessity.

Please vote whether to approve construction of the facility by responding to the following question:

Shall the \_\_\_\_\_ commercial solid waste facility located within \_\_\_\_\_ County, be permitted to handle between ten and thirty thousand tons of solid waste per month?

  / For the facility

/ Against the facility

(Place a cross mark in the square opposite your choice.)’

(3) If a majority of the legal votes cast upon the question is against the facility, the Division of Environmental Protection shall not proceed any further with the application. If a majority of the legal votes cast upon the question be for the facility, then the application process as set forth in this article and §22-15-1 *et seq.* of this code may proceed: *Provided*, That such vote is not binding on nor does it require the Division of Environmental Protection to issue the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: *Provided, however*, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

**§22C-4A-3. Referendum for approval of conversion of a Class B facility to a Class A facility.**

(a) The purpose of the petition and referendum for approval of conversions of Class B facilities to Class A facilities is to allow the local community an opportunity to participate in the decision of whether the local infrastructure and environment are appropriate for expansion of a Class B facility to a Class A facility, and to assure that the local community accepts the associated benefits and detriments of having a Class A facility located in their county.

(b) Within 21 following receipt of a certificate of need from the Public Service Commission as required by §24-2-1c of this code, and local solid waste authority approval as required in §22C-4-26 of this code, the county commission shall complete publication of a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, in the qualified newspaper of general circulation in the county wherein the solid waste facility is located. Registered voters residing in the county may petition the county commission to place the issue of whether a Class B facility be expanded to a Class A facility be placed on the ballot at the next primary; or general ~~or other countywide~~ election held not less than 100 days after the deadline for filing the petition. The petition shall

be in writing, in the form prescribed by the Secretary of State, and shall include the printed name, residence address, and date of birth of each person whose signature appears on the petition. The petition shall be filed with the county commission not less than 60 days after the last date of publication of the notice provided in this section. Upon receipt of completed petition forms, the county commission shall immediately forward those forms to the clerk of the county commission for verification of the signatures and the voter registration of the persons named on the petition. If a primary; or general ~~or other countywide~~ election is scheduled not more than 120 days and not less than 100 days following the deadline for filing the petitions, the clerk of the county commission shall complete the verification of the signatures within 30 days and shall report the number of valid signatures to the county commission. In all other cases, the clerk of the county commission shall complete verification in a timely manner. Upon verification of the signatures of registered voters residing in the county equal to not less than 15 percent of the number of votes cast within the county for Governor at the preceding gubernatorial election, and not less than 70 days before the election, the county commission shall order a referendum be placed upon the ballot:

(1) Such referendum is to determine whether it is the will of the voters of the county that the Class B facility be converted to a Class A facility. Any election at which such question of locating a solid waste facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition. Should the petition fail to meet the requirements set forth above, the application process as set forth in this article and §22-15-1 *et seq.* of this code, may proceed.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

‘The West Virginia Legislature finds that expansion of a Class B solid waste facility to a Class A solid waste facility has impact to the county in which it will be located, and further that local citizens should be afforded the opportunity to participate in the decision of locating a Class A facility in their community. A Class A facility is authorized to receive between 10 and 30 thousand tons of solid waste per month. Fifteen percent of the registered voters in \_\_\_\_\_ county have signed a petition to cause a referendum to determine the following question:

The \_\_\_\_\_ county commission finds the following:

I. The \_\_\_\_\_ (name of applicant) has obtained site approval for a Class A commercial facility from the \_\_\_\_\_ (name of the county or regional solid waste authority). The authority has determined that the proposed landfill meets all local siting plan requirements. The local siting plan evaluates local environmental conditions and other factors and authorizes commercial landfills where a commercial landfill can be appropriately located.

II. The West Virginia Public Service Commission has issued a certificate of need, and has approved the operation of the Class A landfill. The Public Service Commission has determined that the landfill complies with the state solid waste management plan and that based on the anticipated volume of garbage expected to be received at the landfill, that the proposal is consistent with public convenience and necessity.

Please vote whether to approve construction of the facility by responding to the following question:

Shall the \_\_\_\_\_ solid waste facility, located within \_\_\_\_\_ County, West Virginia, be permitted to handle between 10 and 30 thousand tons of solid waste per month?

☐ For conversion of the facility

☐ Against conversion of the facility



(Place a cross mark in the square opposite your choice.)’

(3) If a majority of the legal votes cast upon the question is against the facility, then the Division of Environmental Protection shall not proceed any further with the application. If a majority of the legal votes cast upon the question be for the facility, then the application process as set forth in this article and §22-15-1 *et seq.* of this code may proceed: *Provided*, That such vote is not binding on nor does it require the Division of Environmental Protection to modify the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: *Provided, however*, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

## **ARTICLE 6. HAZARDOUS WASTE FACILITY SITING APPROVAL.**

### **§22C-6-3. Procedure for public participation.**

(a) From and after June 5, 1992, in order to obtain approval to locate either a commercial hazardous waste management facility or a hazardous waste management facility which disposes of greater than 10,000 tons per annum on site in this state, an applicant shall:

(1) File a presiting notice with the county or counties in which the facility is to be located or proposed. Such notice shall be submitted on forms prescribed by the commercial hazardous waste management facility siting board;

(2) File a presiting notice with the commercial hazardous waste management facility siting board; and

(3) File a presiting notice with the Division of Environmental Protection.

(b) If a presiting notice is filed in accordance with subsection (a) of this section, the county commission shall publish a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, in a newspaper of general circulation in the counties wherein the hazardous waste management facility is to be

located. Upon an affirmative vote of the majority of the county commissioners or upon the written petition of registered voters residing in the county equal to not less than 15 percent of the number of votes cast within the county for Governor at the preceding gubernatorial election, which petition shall be filed with the county commission within 60 days after the last date of publication of the notice provided in this section, the county commission shall, upon verification of the required number of signatures on the petition, and not less than 56 days before the election, order a referendum be placed upon the ballot: *Provided*, That such a referendum is not required for a hazardous waste management facility for which at least 90 percent of the capacity is designated for hazardous waste generated at the site of disposal. Any referendum conducted pursuant to this section shall be held at the next primary, or general ~~or other countywide~~ election.

(1) Such referendum is to determine whether it is the will of the voters of the county that a commercial hazardous waste management facility be located in the county or that a hazardous waste management facility disposing of greater than 10,000 tons of hazardous waste per annum on site be located in the county. Any election at which such question of locating a hazardous waste management facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following depending upon the type of facility to be located with the county:

‘Shall a commercial hazardous waste management facility be located within \_\_\_\_\_ County, West Virginia?

   / For the facility

☐ / Against the facility

(Place a cross mark in the square opposite your choice.)’ or,

‘Shall a hazardous waste management facility disposing of greater than 10,000 tons per annum on site be located within \_\_\_\_\_ County, West Virginia?’

☐ / For the facility

☐ / Against the facility

(Place a cross mark in the square opposite your choice.)’

(3) If a majority of the legal votes cast upon the question is against the facility, then the county commission shall notify the Division of Environmental Protection and the commercial hazardous waste management facility siting board, in the case of a commercial facility, of the result and the commercial hazardous waste management facility siting board or Division of Environmental Protection, as the case may be, shall not proceed any further with the application. If a majority of the legal votes cast upon the question is for the facility, then the application process as set forth in §22-18-1 *et seq.* of this code and §22C-5-1 *et seq.* in the case of a commercial hazardous waste management facility, may proceed: *Provided*, That such vote is not binding on nor does it require the commercial hazardous waste management facility siting board to grant a certificate of site approval or the Division of Environmental Protection to issue the permit, as the case may be. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: *Provided, however*, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

## **CHAPTER 47. REGULATION OF TRADE.**

### **ARTICLE 20. CHARITABLE BINGO.**

#### **§47-20-26. County option election.**

The county commission of any county is authorized to call a local option election for the purpose of determining the will of the voters as to whether the provisions of this article shall continue in effect in said county: *Provided*, That no local option election may be called to disapprove the playing of bingo games at the state fair in accordance with the provisions of this article.

A petition for local option election shall be in the form specified in this section and shall be signed by qualified voters residing within said county equal to at least 10 percent of the persons qualified to vote within said county at the last general election. The petition may be in any number of counterparts and is sufficient if substantially in the following form:

PETITION ON LOCAL OPTION ELECTION RESPECTING  
THE CONDUCT OF BINGO GAMES FOR CHARITABLE  
PURPOSES IN..... COUNTY, WEST VIRGINIA

Each of the undersigned certifies that he or she is a person residing in..... County, West Virginia, and is duly qualified to vote in that county under the laws of the state, and that his or her name, address, and the date of signing this petition are correctly set forth below.

The undersigned petition the county commission to call and hold a local option election at ~~(1) a special or (2) concurrent with~~ the next primary; or general ~~or special~~ election ~~(the petition shall specify (1) or (2))~~ upon the following question: Shall the provisions of Article Twenty, Chapter Forty-Seven of the Code of West Virginia, 1931, as amended, continue in effect in..... County, West Virginia?

Name

Address

Date

.....

(Each person signing must specify either his or her post-office address or his or her street number.)

Upon the filing of a petition for a local option election in accordance with the provisions of this section, the county

commission shall enter an order calling a local option election as specified in the petition. The county commission shall give notice of such local option election by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication is the county. The notice shall be so published within 14 consecutive days next preceding the election.

Each person qualified to vote in the county at any primary, general, or special election shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at any primary, general, or special election shall conduct the local option election. If the local option election is to be held at the same time as a primary, or general ~~or special~~ election, it shall be held in connection with and as a part of that primary, or general ~~or special~~ election. The ballots in the local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to said county commission which shall canvass the ballots, all in accordance with the laws of the State of West Virginia relating to primary and general elections insofar as the same are applicable. The county commission shall, without delay, canvass the ballots cast at said local option election and certify the result thereof.

The ballot to be used in said local option election shall have printed thereon substantially the following:

‘Shall the playing of bingo to raise money for charitable or public service organizations continue in effect in..... County of West Virginia?

// Yes // No

(Place a cross mark in the square opposite your choice.)’

If a majority of the voters voting at any local option election vote no on the foregoing question, the provisions of §47-20-1 *et seq.* of this code, no longer continue in effect in said county.

No local option election may be called in a county to resubmit said question to the voters of that county, whether the question was

approved or disapproved at the previous local option election, sooner than five years after the last local option election.

## **ARTICLE 21. CHARITABLE RAFFLES.**

### **§47-21-24. County option election.**

The county commission of any county is authorized to call a local option election for the purpose of determining the will of the voters as to whether the provisions of this article shall continue in effect in such county.

A petition for a local option election shall be in the form specified in this section and shall be signed by qualified voters residing within such county equal to at least 10 percent of the individuals qualified to vote within such county at the last general election. The petition may be in any number of counterparts and is sufficient if substantially in the following form:

PETITION ON LOCAL OPTION ELECTION RESPECTING  
THE CONDUCT OF RAFFLES FOR CHARITABLE  
PURPOSES IN \_\_\_\_\_ COUNTY, WEST VIRGINIA

Each of the undersigned certifies that he or she is an individual residing in \_\_\_\_\_ County, West Virginia, and is duly qualified to vote in that county under the laws of the state, and that his or her name, address, and the date of signing this petition are correctly set forth below.

The undersigned petition the county commission to call and hold a local option election at ~~(1) a special or (2) the next primary, or general or special election (the petition shall specify (1) or (2))~~ upon the following question: Shall the provisions of article twenty-one, chapter forty-seven of the Code of West Virginia, 1931, as amended, continue in effect in \_\_\_\_\_ County, West Virginia?

Name

Address

Date

\_\_\_\_\_

(Each individual signing must specify either his or her post-office address or his or her street number.)

Upon the filing of a petition for a local option election in accordance with the provisions of this section, the county commission shall enter an order calling a local option election as specified in the petition. The county commission shall give notice of such local option election by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county. The notice shall be so published within 14 consecutive days next preceding the election.

Each individual qualified to vote in the county at any primary, general, or special election, shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at any primary, general, or special election shall conduct the local option election. If the local option election is to be held at the same time as a primary, or general ~~or special~~ election, it shall be held in connection with and as a part of that primary, or general ~~or special~~ election. The ballots in the local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to such county commission which shall canvass the ballots, all in accordance with the laws of the State of West Virginia relating to primary and general elections insofar as the same are applicable. The county commission shall, without delay, canvass the ballots cast at said local option election and certify the result thereof.

## **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

### **ARTICLE 5. LOCAL OPTION ELECTIONS.**

#### **§60-5-1. Election in county, magisterial district, or municipality.**

A county or any municipality may in an election held especially for the purpose, determine whether the sale of alcoholic liquors for

beverage purposes shall be permitted within that county or municipality.

A local option election shall ~~not~~ be held ~~within 60 days of a general or municipal election at the same time as the next regularly scheduled primary or general election.~~

### **§60-5-3. Form of petition.**

The petition shall be in the following form:

Petition for Local Option Election

We, the undersigned legally qualified voters, resident within the county (municipality) of \_\_\_\_\_, do hereby petition that a special election be held within the county (city, town) of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the date of the next regularly scheduled primary or general election upon the following question:

Shall the sale of alcoholic beverages under the West Virginia Alcohol Beverage Control Commissioner be (permitted) (prohibited) in \_\_\_\_\_?

Name Address Date

(Post office or street and number)

### **§60-5-4. Notice of election; when held; election officers.**

The county commission or governing body of the municipality shall give notice of the special local option election by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the area in which the election is to be held. Such notice shall be so published within 14 consecutive days next preceding the election. The election shall be held ~~not more than 90 nor less than 60 days from the filing of the petition at the same time as the next regularly scheduled primary or general election.~~ The regular election officers of the county or municipal



corporation shall open the polls and conduct the election in the same manner provided for general elections.”

And,

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

**Com. Sub. for H. B. 4353** - “A Bill to repeal §18-9-1, §18-9-2, and §18-9-2a of the Code of West Virginia, 1931, as amended; to amend and reenact §3-1-30 and §3-1-31 of said code; to amend and reenact §3-2-19 of said code; to amend and reenact §7-1-1a of said code; to amend and reenact §7-4-1 of said code; to amend and reenact §7-14B-21 of said code; to amend and reenact §7-17-12 of said code; to amend and reenact §7-20-7 and §7-20-12 of said code; to amend and reenact §8-1-2 of said code; to amend and reenact §8-2-5 of said code; to amend and reenact §8-3-6 of said code; to amend and reenact §8-4-7, §8-4-8, and §8-4-10 of said code; to amend and reenact §8-5-5 of said code; to amend and reenact §8A-7-7, §8A-7-8a, and §8A-7-13 of said code; to amend and reenact §11-8-16, and §11-8-17 of said code; to amend and reenact §13-1-7, and §13-1-11 of said code; to amend and reenact §15-2-13 of said code; to amend and reenact §16-12-1 of said code; to amend and reenact §20-5K-3 of said code; to amend and reenact §22-15A-18 of said code; to amend and reenact §22C-4A-2, and §22C-4A-3 of said code; to amend and reenact §22C-6-3 of said code; to amend and reenact §47-20-26 of said code; to amend and reenact §47-21-24 of said code; and to amend and reenact §60-5-1, §60-5-3, and §60-5-4 of said code, all relating to synchronizing certain local elections with regular statewide primary or general elections; eliminating requirement that board of education serve as the governing body responsible for appointing election officials for certain special elections; authorizing poll clerks to work and be compensated for both full and half days worked during an election; authorizing local municipal elections to be held concurrently with a regularly scheduled statewide primary or general election; removing requirement to maintain separate municipal precinct books upon request of municipality; requiring question of reforming, altering, or modifying a county commission or council to be placed on primary or general election ballot; requiring question of civil service coverage for county correctional officers

to be placed on primary or general election ballot; requiring certain questions regarding county fire service ordinances or fire fees to be placed on primary or general election ballot; requiring certain questions regarding county taxes and fees to be placed on primary or general election ballot; requiring certain questions regarding countywide service fees to be placed on primary or general election ballot; updating references to county commissions; requiring certain questions regarding incorporation of new municipality to be placed on primary or general election ballot; providing for proposed municipal charter to be placed on ballot concurrent with primary or general election; providing for division of incorporated territory into temporary precincts for purpose of holding election; providing for municipal election date established by charter to be concurrent with primary or general election; providing for municipal election date established by charter to be within 25 days of primary or general election; authorizing municipality without previously adopted municipal charter to establish municipal election day concurrent with primary or general election by ordinance and providing requirements therefor; providing for extension or reduction in terms of office; authorizing agreement between municipality and county regarding certain concurrent election matters; providing for shared administrative costs of municipality and county commission holding elections concurrently with primary or general election; requiring certain questions regarding zoning ordinances to be placed on primary or general election ballot; requiring certain questions regarding additional levies to be placed on primary or general election ballot; authorizing one-time special levy elections on certain questions regarding levy renewal; requiring certain questions regarding levy renewal to be placed on primary or general election ballot; requiring certain questions regarding issuance of certain bonds to be placed on primary or general election ballot; clarifying limitations on members of State Police with respect to participation in elections; requiring certain questions regarding organization and establishment of proposed sanitary district to be placed on primary or general election ballot; repealing certain provisions regarding school levies and elections for same; repealing certain provisions regarding certain elections authorized for school purposes; requiring certain questions regarding commercial infectious medical waste management facility siting to be placed on primary

or general election ballot; requiring certain questions regarding county comprehensive recycling programs for solid waste to be placed on primary or general election ballot; requiring certain questions regarding certain solid waste facilities to be placed on primary or general election ballot; requiring certain questions regarding certain hazardous waste facilities to be placed on primary or general election ballot; requiring certain questions regarding charitable bingo to be placed on primary or general election ballot; requiring certain questions regarding charitable raffles to be placed on primary or general election ballot; requiring certain questions regarding sale of alcoholic liquors within the county to be placed on primary or general election ballot; and authorizing certain ballot questions rejected at primary election to be again submitted to the voters at the next succeeding general election.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 686**), and there were—yeas 81, nays 15, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Boggs, Doyle, Evans, Hansen, D. Jeffries, Kessinger, Lovejoy, Pethtel, Rohrbach, Rowe, Thompson, Williams, Worrell, Zukoff and Hanshaw (Mr. Speaker).

Absent and Not Voting: Brown, Cooper, Forsht and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4353) passed.

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

### **Conference Committee Report**

The Senate having adopted the report of conference and passed Com. Sub. for S. B. 334, Delegate Foster was recognized to present the following:

Delegate Foster, from the committee of conference on matters of disagreement between the two houses, as to

**Eng. Committee Substitute for Senate Bill No. 334,**  
Authorizing miscellaneous agencies and boards to promulgate rules.

Submitted the following report, which was received:

Your committee of conference on the disagreeing votes of the two houses as to the amendments of the House to Engrossed Committee Substitute for Senate Bill 334 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the House of Delegates on page two, section one, lines twenty-five through thirty-seven, and that the Senate and House agree to an amendment as follows:

On page two, section one, lines twenty-five through thirty-seven, by striking all of subsection (f) and inserting in lieu thereof a new subsection (f) to read as follows:

(f) The legislative rule filed in the State Register on July 29, 2021, authorized under the authority of §19-2C-3a of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 5, 2021, relating to the Commissioner of Agriculture (Auctioneers, 61 CSR 11B), is authorized, with the following amendments:

On page 8, subdivision 16.1, by striking “two hundred dollars (\$200)” and inserting in lieu thereof “\$100”;

On page 8 subdivision 16.3, by striking “two hundred dollars (\$200)” and inserting in lieu thereof “\$100”;

On page 9, subdivision 16.6 by striking “two hundred dollars (\$200)” and inserting in lieu thereof “\$100”;

On page 9, subdivision 16.7, by striking “two hundred dollars (\$200)” and inserting in lieu thereof “\$100”;

That the Senate agree to all other House of Delegates amendments to the bill;

And,

That both houses recede from their respective positions as to the title of the bill and agree to the same as follows:

**Eng. Senate Bill 334** - “A BILL to amend and reenact §64-9-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to authorizing and directing certain miscellaneous agencies and boards to promulgate legislative rules; authorizing the rules, as filed, as modified, and as amended by the Legislative Rule-Making Review Committee, and as amended by the Legislature; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to feeding of untreated garbage to swine; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to commercial feed; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to enrichment of flour and bread law regulations; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to fruits and vegetables: certification for potatoes for seedling purposes; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to Fresh Food Act; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to auctioneers; to authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to hemp products; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to livestock care standards; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the Rural Rehabilitation Program; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the Farm-to-Food Bank Tax Credit; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to farmers markets; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to seed certification;

authorizing the State Auditor to promulgate a legislative rule relating to the procedure for local levying bodies to apply for permission to extend time to meet as levying body; authorizing the State Auditor to promulgate a legislative rule relating to accountability requirements for state funds and grants; authorizing the West Virginia Board of Chiropractic Examiners to promulgate a legislative rule relating to fees established by the Board; directing the West Virginia Board of Chiropractic Examiners to promulgate a legislative rule relating to chiropractic telehealth practices; authorizing the Contractor Licensing Board to promulgate a legislative rule relating to the Contractor Licensing Act; authorizing the West Virginia Board of Examiners in Counseling to promulgate a legislative rule relating to licensure; authorizing the West Virginia Board of Examiners in Counseling to promulgate a legislative rule relating to licensed professional counselors fees; authorizing the West Virginia Board of Examiners in Counseling to promulgate a legislative rule relating to marriage and family therapist licensing; authorizing the West Virginia Board of Examiners in Counseling to promulgate a legislative rule relating to marriage and family therapist fees; authorizing the Dangerous Wild Animal Board to promulgate a legislative rule relating to dangerous wild animals; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to the West Virginia Board of Dentistry; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; directing the West Virginia Board of Dentistry to promulgate a legislative rule relating to fees; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to the formation and approval of dental corporation and dental practice ownership; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to continuing education requirements; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to the administration of anesthesia by dentists; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to the expanded duties of dental hygienists and dental assistants; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to teledentistry; directing the West Virginia Board of

Licensed Dietitians to promulgate a legislative rule relating to licensure and renewal requirements; directing the West Virginia Board of Professional Engineers to promulgate a legislative rule relating to examination, licensure, and practice of professional engineers; authorizing the West Virginia Board of Funeral Service Examiners to promulgate a legislative rule relating to the fee schedule; authorizing the West Virginia Massage Therapy Licensure Board to promulgate a legislative rule relating to general provisions; directing the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners relating to medical imaging technologists; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to licensing and disciplinary procedures for physicians, podiatric physicians, and surgeons; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to licensure, practice requirements disciplinary and complaint procedures, continuing education, and physician assistants; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to dispensing of prescription drugs by practitioners; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to continuing education for physicians and podiatric physicians; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to practitioner requirements for accessing the West Virginia Controlled Substances Monitoring Program Database; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to the establishment and regulation of limited license to practice medicine and surgery at certain state veterans nursing home facilities; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to registration to practice during a declared state of emergency; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to telehealth and interstate telehealth registration for physicians, podiatric physicians, and physician assistants; authorizing the West Virginia Board of Osteopathic Medicine to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; authorizing the West Virginia Board of Osteopathic Medicine to promulgate a legislative rule relating to Osteopathic Physicians Assistants; authorizing the West Virginia

Board of Osteopathic Medicine to promulgate a legislative rule relating to practitioner requirements for controlled substances licensure and Accessing the West Virginia Controlled Substances Monitoring Program Database; authorizing the West Virginia Board of Osteopathic Medicine to promulgate a legislative rule relating to telehealth practice and interstate telehealth registration for osteopathic physicians and physician assistants; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to licensure and practice of pharmacy care; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to the Controlled Substance Monitoring Program; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to regulations governing pharmacists; directing the West Virginia Board of Psychologists to promulgate a legislative rule relating to fees; authorizing the Public Service Commission to promulgate a legislative rule relating to rules governing the occupancy of customer-provided conduit; authorizing the West Virginia Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to requirements for licensure or certification; authorizing the West Virginia Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to the renewal of licensure and certification; authorizing the West Virginia Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to requirements for registration and renewal of appraisal management companies; authorizing the West Virginia Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to limited prescriptive authority for nurses in advanced practice; authorizing the West Virginia Board of Examiners of Registered Professional Nurses to promulgate a legislative rule relating to telehealth practice; authorizing the Secretary of State to promulgate a legislative rule relating to voter registration at the Division of Motor Vehicles; authorizing the Secretary of State to promulgate a legislative rule relating to voter registration list maintenance by the Secretary of State; authorizing the Secretary of State to promulgate a legislative rule relating to the combined Voter Registration and Driver Licensing Fund; authorizing the Secretary of State to promulgate a legislative rule relating to the use of digital signatures; authorizing



the Secretary of State to promulgate a legislative rule relating to regulation of political party headquarters finances; authorizing the Secretary of State to promulgate a legislative rule relating to standards and guidelines for electronic notarization, remote online notarization, and remote ink notarization; authorizing the Secretary of State to promulgate a legislative rule relating to real property electronic recording standards and regulations; authorizing the West Virginia Board of Social Work Examiners to promulgate a legislative rule relating to qualifications for the profession of social work; directing the West Virginia Board of Social Work Examiners to promulgate a legislative rule relating to the fee schedule; authorizing the West Virginia Board of Social Work Examiners to promulgate a legislative rule relating to continuing education for social workers and providers; authorizing the West Virginia Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to licensure of speech-pathology and audiology; authorizing the State Treasurer to promulgate a legislative rule relating to Substitute Checks-Exceptional Items Fund; authorizing the State Treasurer to promulgate a legislative rule relating to procedures for deposit of monies with the State Treasurer's Office by state agencies; authorizing the State Treasurer to promulgate a legislative rule relating to the selection of state depositories for disbursement accounts through competitive bidding; authorizing the State Treasurer to promulgate a legislative rule relating to the selection of state depositories for receipt accounts; authorizing the State Treasurer to promulgate a legislative rule relating to procedures for processing payments from the State Treasury; authorizing the State Treasurer to promulgate a legislative rule relating to reporting debt; authorizing the State Treasurer to promulgate a legislative rule relating to procedures for fees in collections by charge, credit, or debit card or by electronic payment; and authorizing the State Treasurer to promulgate a legislative rule relating to procedures for providing services to political subdivisions."

Respectfully submitted,

Dave Sypolt  
*Chair.*

Geoff Foster  
*Chair.*

Patricia Rucker  
Glenn Jeffries

Shannon Kimes  
Kayla Young

On the question of adoption of the report of the Committee of Conference, the same was put and prevailed.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 687**), and there were—yeas 92, nays 4, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Fleischauer, Hansen, Pushkin and Rowe.

Absent and Not Voting: Brown, Cooper, Doyle and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 334) passed.

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

On this question, the yeas and nays were taken (**Roll No. 688**), and there were—yeas 90, nays 5, absent and not voting 5, with the nays and the absent and not voting being as follows:

Nays: Doyle, Fleischauer, Hansen, Pushkin and Rowe.

Absent and Not Voting: Bridges, Brown, Cooper, Summers and Walker.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 334) takes effect from its passage.

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

In the absence of objection, **Com. Sub. for H. B. 4111**, Relating to the prescriptive authority of advance practice registered

nurses, still being in possession of the Clerk, was taken up for further consideration.

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

**Com. Sub. for H. B. 4111** – “A Bill to amend and reenact §30-3E-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-7-15a of said code, all relating to clarifying prescriptive authority.”

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4408**, Relating to contracts for construction of recreational facilities in state parks and forests.

Delegate Summers moved the House of Delegates concur in the following amendment of the bill by the Senate:

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

**“ARTICLE 5. PARKS AND RECREATION.**

**§20-5-16. Authority to enter into contracts with third parties to construct recreational facilities and cabins; public comment.**

(a) Notwithstanding any other provision of this code to the contrary, in addition to all other powers and authority vested in the director, he or she ~~is hereby authorized and empowered to~~ may:

(1) Enter into contracts with third parties for the financing, construction, and operation of new recreational, lodging, and ancillary facilities at ~~Chief Logan State Park, Beech Fork State~~

~~Park, Tomlinson Run State Park, Stonewall Jackson Lake State Park, Lost River State Park and Canaan Valley Resort State Park~~ all state parks and state forests under the jurisdiction of the Division of Natural Resources except for Watoga State Park. The contracts may allow and recognize both direct and subsidiary investment arrangements. The term of the contracts may not exceed a period of ~~twenty-five~~ 40 years, at which time the full title to the recreational facilities shall vest in the state, except as otherwise provided in this section;

(2) Enter into contracts with third parties for the construction, but not the operation, of cabins at any state park or forest. Upon completion of the construction of the cabins, full title to the cabins shall immediately vest in the state and the cabins shall be operated by the parks and recreation section;

(3) Authorize the construction of at least five cabins by any single third party in state parks and state forests which do not offer the facilities on the effective date of this subsection; and

(4) Propose emergency and legislative rules, in accordance with ~~the provisions of~~ §29A-3-1 *et seq.* of this code, that set the conditions upon which the director may enter into a contract with a single third party proposing to construct cabins.

~~(b) All contracts shall be presented to the Joint Committee on Government and Finance for review and comment prior to execution.~~

(b) Any contract entered into pursuant to this section shall be approved prior to execution by the Secretary of the Department of Commerce, the Secretary of the Department of Tourism, and the Secretary of the Department of Economic Development.

(c) A contract may provide for renewal for the purpose of permitting continued operation of the facilities at the option of the director for a term or terms not to exceed 10 years.

(d) The director shall provide prior electronic notice of any contract, extension, and renewal entered into pursuant to this section to the Joint Committee on Government and Finance.

~~Except as otherwise authorized by this section, no extension or renewal beyond the original twenty five year term may be executed by the director absent the approval of the Joint Committee on Government and Finance.~~

(e) Any vendor which is contracted with pursuant to this section may not employ or contract with the individual who holds the position of director when the contract is executed for a period of one year following the individual's separation from the position of director.

(f) Prior to initiating a contract for new recreational, lodging, and ancillary facilities at all state parks and state forests under the jurisdiction of the Division of Natural resources, the director shall conduct a public hearing to be held at a reasonable time and place within the county in which the facility is located. Notice of the time, place and purpose of the public hearing shall be provided as a Class II legal advertisement in accordance with §59-3-2 of this code which notice shall be given at least for the first publication 20 days in advance of the hearing.

~~(e)~~ (g) Stonewall Jackson Lake State Park. —

(1) With respect to the financing, construction, and operation of lodging at Stonewall Jackson Lake State Park, in addition to the lodging in existence as of July 1, 2008, contracts entered into pursuant to this section may grant, convey, or provide for commercially reasonable lodging usage and related rights and privileges all on terms and conditions as the director may deem appropriate, desirable or necessary to attract private investment for the construction of additional lodging units.

(2) No contracts may be entered into prior to the preparation of lodging unit development plans and standard lodging unit contract documents in a form and at a level of detail acceptable to the United States Army Corps of Engineers and the director, and subsequent to the presentation of the lodging unit development plans and standard lodging unit contract documents to the Joint Committee on Government and Finance for review and comment.

(3) At a minimum, the lodging unit development plans and standard lodging unit contracts shall comply with the following requirements:

(A) That no more than 100 additional lodging units may be constructed, in addition to the lodging in existence as of July 1, 2008;

(B) That lodging unit contracts, with respect to any additional lodging units that may be financed, constructed or operated pursuant to the provision of this section, shall generally conform to the contracts entered into by federal agencies or the National Park Service with private parties regarding privately financed property that is constructed, developed or operated on public lands administered by federal agencies or the National Park Service, subject to modification and adaptation by the director as the director deems appropriate, suitable and relevant to any lodging units to be constructed at Stonewall Jackson Lake State Park.

(C) That a party granted rights and privileges under lodging unit contracts awarded under the provisions of this subsection shall have the right to renew his or her ~~or her~~ her or its lodging unit contract for successive terms not to extend beyond the termination date of the state's lease with the United States Army Corps of Engineers; or, in the event that the state's lease with the United States Army Corps of Engineers is extended beyond the termination date of the lease as of July 1, 2007, not to exceed five 10-year extensions or renewals beyond the termination date of the lease between the state and the United States Army Corps of Engineers in effect as of July 1, 2007: *Provided*, That the party extended the renewal rights is in compliance with all material rights, duties and obligations arising under his or her, ~~her~~ her or its contract and all relevant and applicable provisions of federal, state and local laws, rules, regulations, contracts or agreements at the time of renewal: *Provided, however*, That if ~~and in the event~~ the director makes an affirmative determination that further renewals beyond the time periods set forth in this subsection are in the best interest of the state and Stonewall Jackson Lake State Park, giving due consideration to financial, operational and other considerations deemed relevant

and material by the director, that the director may authorize further renewals;

(D) That all rights and privileges arising under a lodging unit contract shall be transferred to the state or the state's designee upon the expiration or termination of the contract, upon the terms and conditions as each contract may provide or as may otherwise be agreed upon between the parties;

(E) That the state is not, ~~and cannot be,~~ obligated for any costs, expenses, fees, or other charges associated with the development of the additional lodging units under this subsection or the operation and maintenance of the additional lodging units over time, including, but not limited to, costs associated with infrastructure improvements associated with development or operation of the additional lodging units. In his or her discretion, the director may engage professionals to assist the state in connection with its review and oversight of development of the additional lodging units;

(F) That at any time following the initial term and first renewal period of any lodging unit contract entered into with a private party with respect to an additional lodging unit that is constructed under this section, the state shall have the right and option, in its sole discretion, to purchase a lodging unit or lodging units in accordance with the provisions of this subsection and any and all contracts that may be entered into from time to time under this section;

(G) That ~~at its sole option and discretion,~~ the state may elect to purchase a lodging unit from a private party. ~~In that event,~~ If the private party ~~shall be~~ is paid the fair value of the private party's residual rights and privileges under the lodging unit contract, the residual rights and privileges to be valued generally in accordance with the valuation standards set forth in the National Park Service's standard contract provisions, or other relevant federal agency standards applicable to similar or like contract rights and provisions as may be in existence at the time of transfer, all as the same may be ~~deemed~~ considered relevant and appropriate by the director, and all in the exercise of the director's reasonable

discretion. Nothing in this section is intended or ~~shall~~ may be construed to impose an obligation on the state to purchase, buy, buy out or otherwise acquire or pay for any lodging unit under this section, or to limit the right and ability of a private party to donate or contribute his or ~~her~~, her or its interest in and to any lodging unit constructed under this section to the state or any charitable foundation that may be established and operating from time to time to support the continued operation and development of Stonewall Jackson Lake State Park;

(H) That the state ~~shall have~~ has no obligation whatsoever to purchase, buy, buy out or otherwise acquire or pay for any lodging unit that is developed or constructed under this section; and

(I) The director ~~shall have the right to~~ may review and approve the form and content of all contracts that may be entered into pursuant to this subsection in connection with the development, operation, and maintenance of additional lodging units at Stonewall Jackson Lake State Park.

(h) Any facilities constructed under the authority granted under this section must be in accordance with the purpose, powers, and duties of the Section of Parks and Recreation as provided by §20-5-3 of this code.”

And,

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

**Com. Sub. for H. B. 4408** – “A Bill to amend and reenact §20-5-16 of the Code of West Virginia, 1931, as amended, relating to the authority of the Division of Natural Resource to enter into certain contracts.”

On the motion to concur in the Senate amendments, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 689**), and there were—yeas 73, nays 24, absent and not voting 3, with the yeas and the absent and not voting being as follows:



Nays: Booth, Capito, Conley, Doyle, Fast, Foster, Griffith, Hansen, Hardy, Holstein, Hornbuckle, J. Jeffries, J. Kelly, Kessinger, Lovejoy, Miller, Pinson, Reed, Rohrbach, Rowan, Rowe, Statler, Steele and Williams.

Absent and Not Voting: Brown, Cooper and Walker.

So, a majority of the members present having voted in the affirmative, the motion to concur in the amendment of the bill by the Senate prevailed.

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 690**), and there were—yeas 68, nays 29, absent and not voting 3, with the yeas and the absent and not voting being as follows:

Nays: Barach, Booth, Capito, Diserio, Doyle, Evans, Fast, Fleischauer, Griffith, Hansen, Hornbuckle, D. Jeffries, Kessinger, Lovejoy, Miller, Nestor, Paynter, Pushkin, Reed, Rohrbach, Rowan, Rowe, Statler, Steele, Thompson, Toney, B. Ward, Williams and Young.

Absent and Not Voting: Brown, Cooper and Walker.

So, a majority of the members elected having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4408) passed.

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

On this question, the yeas and nays were taken (**Roll No. 691**), and there were—yeas 79, nays 18, absent and not voting 3, with the yeas and the absent and not voting being as follows:

Nays: Doyle, Fast, Fleischauer, Griffith, Hansen, Kessinger, Lovejoy, Miller, Nestor, Paynter, Pushkin, Rohrbach, Rowe, Steele, Thompson, B. Ward, Williams and Young.

Absent and Not Voting: Brown, Cooper and Walker.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4408) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4600**, Making it a felony for a ‘Person in a Position of Trust’ to assault, batter, or verbally abuse a child, or neglect to report abuse they witness.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

**ARTICLE 8D. CHILD ABUSE.**

**§61-8D-5a. Verbal abuse of noncommunicative child; penalties.**

[Repealed.]

**ARTICLE 8F. SPECIAL PROTECTIONS FOR DISABLED CHILDREN ACT OF 2022.**

*This article shall be known as Trenton, Andrew, Adri, Owen and Emma’s law*

**§61-8F-1. Findings.**

The Legislature finds that disabled persons and particularly disabled children are often more vulnerable and in greater need of protection than the nondisabled. Concomitant with greater

vulnerability is the enhanced risk of injury and intimidation, particularly when the child is noncommunicative.

Based upon these facts, the Legislature has determined that it is appropriate that enhanced protections be put in place statutorily to provide a framework of protections to improve disabled children's education and, quality of life as well as ease the concerns of their loved-ones and caregivers.

### **§61-8F-2 Definitions.**

As used in this article:

(1) 'Disabled child' means a child with any physical, intellectual, developmental, communication, or psychological disability or impairment. A disability includes, but is not limited to one that:

(A) Limits the child's ability to recognize abuse, unlawful activity, or his or her rights to safety and protection, or that makes the child rely on others to recognize that he or she is being abused;

(B) Limits the child's ability to recognize unlawful sexual abuse or misconduct;

(C) Causes the child to be dependent on others to assist with any activity of daily living or personal care;

(D) Limits the child's ability to formulate or execute a response to abuse, to verbally or physically defend himself or herself, or to physically escape from an abusive environment; or

(E) Limits the child's ability to disclose abuse.

(2) 'Noncommunicative child' means a child who, due to physical or developmental disabilities, is unable to functionally articulate verbally, in writing, or through a recognized sign language,

(3) 'Person in a position of trust in relation to a disabled child' means any adult who is acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning

a disabled child or someone with supervisory responsibility for a disabled child's welfare, or any person who by virtue of their occupation or position is charged with any duty or responsibility for the health, education, welfare, or supervision of a disabled child,

(4) 'Repeatedly' means on two or more occasions,

(5) 'Supervisory responsibility' means any situation where an adult has direct supervisory decision-making, oversight, instructive, academic, evaluative, or advisory responsibilities regarding the child. Supervisory responsibility may occur in a residence, in or out of a school setting, institutional setting, and in curricular, co-curricular, or extra-curricular settings.

### **§61-8f-3. Maltreatment of a disabled child; penalties.**

(a) Any person in a position of trust in relation to a disabled child, who has supervisory responsibility over a disabled child, and who repeatedly engages in conduct, verbal or otherwise toward the child in an insulting, demeaning, or threatening manner, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500, nor more than \$2,500, or confined in jail not more than one year, or both fined and confined.

(b) The conduct prohibited by this section includes, but is not limited to, behavior of any type intended to humiliate, intimidate, shame, degrade, or cause emotional distress.

(c) Each instance of the conduct prohibited by subsection (a) of this section shall constitute a separate and distinct offense whether directed at one disabled child or multiple disabled children.

### **§61-8F-4 Battery and assault of a disabled child.**

(a) Any person in a position of trust to a disabled child, with supervisory responsibility over the child who unlawfully and intentionally makes physical contact of an insulting and provoking nature to the person of the disabled child or unlawfully causes physical harm to the disabled child is guilty of a felony, and upon

conviction thereof, shall be fined not more than \$1,000 and imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(b) Any person in a position of trust in relation to a disabled child, with supervisory responsibility over the child who unlawfully attempts to commit a violent injury to the person of the disabled child or unlawfully commits an act that places the disabled child in reasonable apprehension of immediately receiving a violent injury is guilty of a felony and upon conviction thereof shall be fined not more than \$500 or imprisoned not less than one nor more than three years, or both fined and imprisoned.

**§61-8F-5 Failure to report; obstruction; retaliation; penalties.**

(a) Any person in a position of trust in relation to a disabled child who is subject to the mandatory reporting requirements in §49-2-803 of this code who fails to make a required report regarding a disabled child is guilty of a misdemeanor, and upon conviction shall be confined in jail for not more than one year.

(b) Any person who willfully impedes or obstructs or attempts to impede or obstruct a person in a position of trust in regard to a disabled child from making a report required by §49-2-803 of this code regarding a disabled child is guilty of a felony, and upon conviction thereof be fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one nor more than three years, or both fined and imprisoned.

(c) Any person who discriminates or retaliates against a person in a position of trust in relation to a disabled child for making a report pursuant to § 49-2-803 of this code regarding a disabled child is guilty of a felony and, upon conviction, shall be fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one year nor more than three years or both fined and imprisoned or both fined and imprisoned.

**§61-8F-6 Specific directives to enhance the safety of disabled children.**

(a) The West Virginia Department of Education in collaboration with the Secretary of Health and Human Resources shall:

(1) On or before January 1, 2023, develop, produce, and disseminate an eight-hour education program for people employed in or to be employed in the care, housing, and education of disabled children as well as their supervisory personnel and administrators. The program shall include, but not be limited to, the legal duties of persons so employed, the behavioral characteristics associated with different disabling conditions, symptoms of disabling conditions and appropriate interventions necessary to support a child in a particular setting. Successful completion of the program shall be mandatory for state, county, and municipal employees engaged in the care, housing, and education of disabled children as well as their supervisory personnel and administrators on and after July 1, 2023; and

(2) On or before January 1, 2023, investigate the availability and implementation cost of a program for public schools and government operated programs for disabled children which allows parents, guardians, and custodians to remotely view classrooms and other areas where disabled children are taught, housed, or cared for and provide copies of the findings and proposals to the President of the Senate and the Speaker of the House of Delegates prior to the first day of the 2023 Regular Session of the Legislature.

(3) To the extent practicable the program shall consider and include input from family members and caregiving of disabled children.

(b) On or before January 1, 2023, the West Virginia Prosecuting Attorney's Institute in collaboration with the Law Enforcement Professional Standards subcommittee on the Governor's Committee on Crime Delinquency and Correction shall develop a three-hour mandatory educational program for prosecuting attorneys and law enforcement officers that offers education:

(1) As to the provisions of this article; and

(2) In the investigation and prosecution of crimes against disabled children.

(3) To the extent practicable the program shall consider and include input from family members and caregiving of disabled children.

(c) The State Board of Education shall create a database which identifies school employees who are under active investigation for misconduct towards children into which county boards of education shall report and review when considering employing a person with previous experience in the education system.

**§61-8F-7. Effective dates.**

(a) This section and the provisions of §61-8F-1, §61-8F-2, and §61-8F-6 of this article shall be effective from passage.

(b) The provisions of §61-8F-3, §61-8F-4, and §61-8F-5 shall be effective July 1, 2022.”

And,

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

**Com. Sub. for H. B. 4600** – “A Bill to repeal §61-8D-5a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §61-8F-1, §61-8F-2, § 61-8F-3, §61-8F-4, §61-8F-5, §61-8F-6, and §61-8F-7, all relating to maltreatment of disabled children by persons in a position of trust to them; defining terms; creating misdemeanor and felony offenses and penalties for certain non-physical and physical acts against disabled children; creating criminal penalty for persons in a position of trust in relation to a disabled child failing to report abuse as a mandatory reporter; creating criminal offenses for obstructing or discriminating against a mandatory reporter of abuse; directing the Secretary of the Department of Health and Human Resources and the West Virginia Department of Education to create a mandatory program for people working with disabled children and to study the viability and implementation of putting in place a system that allows parents and guardians the ability to view their children remotely; directing educational programs specific to crimes against disabled children for prosecutors and law enforcement; establishing dates for compliance; requiring the state department of education to establish a database of persons under

active investigation for child abuse required to be reported to by county boards of education; and establishing effective dates.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 692**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Brown, Cooper and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4600) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

**H. B. 4827**, Relating to the promotion and development of public-use vertiports.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF  
1985.**

**ARTICLE 2K. PROMOTING PUBLIC-USE VERTIPORTS  
ACT.**

**§5B-2K-1. Policy.**

It is the policy of this state to promote the development of a network of vertiports that will provide equitable access to



citizens of this state who may benefit from advanced air mobility operations for cargo and passenger service, and to avoid any vertiport monopolization or discrimination, by: (i) Funding the planning for and construction of public-use vertiports, with any funding appropriated by the Legislature; (ii) encouraging local zoning and other land use authorities to ensure an adequate number and a varied location of vertiports to serve citizens throughout the state; and (iii) promoting competition and equity of access by prohibiting the grant of an exclusive right to one or more vertiport owners and operators or to vertiport operators at one or more vertiports.

#### **§5B-2K-2. Definitions.**

For purposes of this article, ‘vertiport’ means infrastructure or a system with supporting services and equipment intended for landing, ground-handling, and take-off of manned or unmanned vertical take-off and landing (VTOL) aircraft.

#### **§5B-2K-3. Applicability.**

This article applies to any vertiport that is available for public use by any advanced air mobility operator authorized by the U.S. Department of Transportation or Federal Aviation Administration to engage in passenger and/or cargo services in scheduled or non-scheduled service in or affecting interstate commerce.

#### **§5B-2K-4. Vertiport safety.**

(a) *Vertiport Design.* – Each vertiport subject to this article shall comply with any Federal Aviation Administration published rule or advisory circular containing standards for vertiport design and performance characteristics.

(b) *Vertiport Layout Plan.* – Each vertiport subject to this article shall submit a vertiport layout plan to the administrator of the Federal Aviation Administration in the form and manner determined by the administrator, and no operations may be conducted at the vertiport until such layout plan is approved.

**§5B-2K-5. Exclusionary and discriminatory zoning prohibited.**

A political subdivision of this state shall not exercise its zoning and land use authority to grant or permit an exclusive right to one or more vertiport owners or operators and shall use such authority to promote reasonable access to advanced air mobility operators at public-use vertiports within the jurisdiction of the subdivision.

**§5B-2K-6. Harmonization.**

The provisions of this article are intended to supplement any provision of federal law pertaining to the design, construction, operations, or maintenance of a vertiport designed or constructed with a grant under 49 U.S.C. § 47101 *et seq.*, and any provision of this article found in conflict with or otherwise preempted by federal law shall be null and void, without invalidating any other provision of this article.”

And,

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

**H. B. 4827** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-2K-1, §5B-2K-2, §5B-2K-3, §5B-2K-4 and §5B-2K-5, and §5B-2K-6, all relating to the promotion of the development of public-use vertiports; establishing policy of state; defining ‘vertiport’; providing for applicability of article; establishing requirements for vertiport design and performance characteristics and vertiport layout plans; prohibiting political subdivisions from exercising zoning and land use authority to grant or permit exclusive rights to vertiport owners or operators; requiring political subdivisions to use zoning and land use authority to promote reasonable access to advanced air mobility operators and public vertiports within their jurisdiction; providing for harmonization of article with federal law.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 693**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Brown, Cooper and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4827) passed.

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

On this question, the yeas and nays were taken (**Roll No. 694**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Brown, Cooper and Walker.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4827) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4667**, Prohibition on county, city, or municipality restrictions on advanced air mobility aircraft.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF  
1985.**

**ARTICLE 2. DEPARTMENT OF ECONOMIC DEVELOPMENT.**

**§5B-2-18. West Virginia Uncrewed Aircraft Systems Advisory Council.**

(a) The West Virginia Uncrewed Aircraft Systems Advisory Council is hereby created within the Department of Economic Development.

(b) The council consists of the following nine members, including the chairperson:

(1) The Secretary of the Department of Economic Development or his or her designee, ex officio, who shall serve as the chair of the council, and who shall vote when necessary in the event the appointed members of the council become deadlocked;

(2) The following eight members shall be appointed by the Governor and serve at his or her will and pleasure:

(A) One member representing the Secretary of the Department of Transportation;

(B) One member from the Adjutant General's Department;

(C) One member representing the uncrewed aircraft system industry with at least five years of experience operating an uncrewed aircraft;

(D) One member representing a national association of the uncrewed aerial vehicle industry;

(E) One member with experience managing a commercial services airport;

(F) One member representing business and industry, generally;

(G) One member representing academia; and

(H) One member representing the advanced air mobility industry developing human transit capabilities.

(3) Members of the council will receive no compensation but are entitled to reimbursement for mileage expenses while attending meetings of the committee to the extent that funds are available through the Department of Economic Development.

(c) The council shall:

(1) Identify trends and technologies driving innovation in uncrewed aircraft systems;

(2) Develop comprehensive strategies, including, but not limited to, the promotion of research and development, education, economic growth, and jobs in the uncrewed aircraft system industry in West Virginia; public acceptance of the uncrewed aircraft system industry; business planning; air vehicle technology and manufacturing; and airspace management and national airspace system integration; and

(3) Develop recommended legislation addressing specific issues and in furtherance of the comprehensive strategies identified in subdivision (2), subsection (c) of this section.

(d) The council shall meet at least annually and may convene public meetings to gather information or receive public comments.

(e) The council shall report on the status of its duties, goals, accomplishments, and recommendations to the Legislature on at least an annual basis.

**§5B-2-18a. Applicability of federal laws and Federal Aviation Administration regulations; permissible use of uncrewed aircraft.**

(a) Notwithstanding any provision of this article to the contrary, any person or entity operating an uncrewed aircraft system may do so in compliance with applicable federal law and applicable regulations of the Federal Aviation Administration.

(b) Except as authorized by law, a political subdivision of the state shall not enact or adopt an ordinance, policy, or rule that relates to the ownership or operation of an advanced air mobility

aircraft or advanced air mobility system, and shall not otherwise engage in the regulation of any uncrewed aircraft system, advanced air mobility aircraft, or advanced air mobility system. Any ordinance, policy, or rule, to the extent that it violates any provision of this subsection, whether enacted or adopted by the political subdivision before or after the effective date of this section, is void.

(c) As used in this section, ‘advanced air mobility aircraft’ or ‘advanced air mobility system’ means a system that transports people and property by air between points in the United States using aircraft, as defined in §29-2A-1 of this code, including electric aircraft and electric vertical takeoff and landing aircraft, in both controlled and uncontrolled airspace.”

And,

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

**Com. Sub. for H. B. 4667-** “A Bill to amend of the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §5B-2-18 and §5B-2-18a, all relating to uncrewed aircraft operation in the state; establishing the West Virginia Uncrewed Aircraft Systems Advisory Council within the Department of Economic Development; establishing membership, expense reimbursement, and duties of Council; clarifying that all uncrewed aircraft operation in the state must comply with federal regulations; prohibiting political subdivisions from regulating advanced air mobility aircraft or advanced air mobility systems; and defining terms.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 695**), and there were—yeas 92, nays 5, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Anderson, Fleischauer, J. Kelly, Pushkin and Rowe.

Absent and Not Voting: Brown, Cooper and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4667) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4613**, Relating to increasing the multiplier for use in determining accrued benefit in the West Virginia Municipal Police Officers and Firefighters Retirement System.

On motion of Delegate Summers, the House concurred in the following amendment by the Senate, with further amendment:

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

**“ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.**

**§8-22A-2. Definitions.**

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) ‘Accrued benefit’ means on behalf of any member ~~two and six-tenths~~ 2.75 percent per year of the member’s final average salary for the first 20 years of credited service. Additionally, ~~two~~ 2 percent per year for 21 through 25 years and ~~one~~ 1.5 percent per year for ~~26 through 30 each year over 25~~ years will be credited with a maximum benefit of ~~67~~ 90 percent of a member’s final average salary. A member’s accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §8-22A-10 of this code.

(b) 'Accumulated contributions' means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

(c) 'Active military duty' means full-time duty in the active military service of the United States Army, Navy, Air Force, Coast Guard or Marine Corps. The term does not include regularly required training or other duty performed by a member of a reserve component or National Guard unless the member can substantiate that he or she was called into the full-time active military service of the United States and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) 'Actuarial equivalent' means a benefit of equal value computed on the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of section 415 of the Internal Revenue Code, 'actuarial equivalent' shall be computed using the mortality tables and interest rates required to comply with those requirements.

(e) 'Annual compensation' means the wages paid to the member during covered employment within the meaning of section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of employment or services performed during the plan year plus amounts excluded under section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits, or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost-of-living in accordance with §5-10D-7 of this code and section 401(a)(17) of the Internal Revenue Code.

(f) 'Annual leave service' means accrued annual leave.



(g) ‘Annuity starting date’ means the first day of the month for which an annuity is payable after submission of a retirement application or the required beginning date, if earlier. For purposes of this subsection, if retirement income payments commence after the normal retirement age, ‘retirement’ means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member’s normal retirement age and after completing proper written application for retirement on an application supplied by the board.

(h) ‘Beneficiary’ means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

(i) ‘Board’ means the Consolidated Public Retirement Board.

(j) ‘Covered employment’ means either: (1) Employment as a full-time municipal police officer or firefighter and the active performance of the duties required of that employment; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by a municipal police officer or firefighter in a job or jobs in addition to his or her employment as a municipal police officer or firefighter in this plan where the secondary employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the police officer or firefighter contributes to the fund created in this article the amount specified as the member’s contribution in §8-22A-8 of this code.

(k) ‘Credited service’ means the sum of a member’s years of service, active military duty and disability service.

(l) ‘Dependent child’ means either: (1) An unmarried person under age 18 who is: (A) A natural child of the member; (B) a legally adopted child of the member; (C) a child who at the time of the member’s death was living with the member while the member was an adopting parent during any period of probation; or (D) a stepchild of the member residing in the member’s household at the time of the member’s death; or (2) Any unmarried child under age

23: (A) Who is enrolled as a full-time student in an accredited college or university; (B) who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and (C) whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(m) 'Dependent parent' means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(n) 'Disability service' means service credit received by a member, expressed in whole years, fractions thereof, or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(o) 'Effective date' means January 1, 2010.

(p) 'Employer error' means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

~~(p)~~ (q) 'Final average salary' means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then 'final average salary' means the average of the monthly compensation which the member was receiving in the plan year prior to the initial disability. 'Final average salary' does not include any lump sum payment for unused, accrued leave of any kind or character.

~~(e)~~ (r) 'Full-time employment' means permanent employment of an employee by a participating municipality in a position which normally requires 12 months per year service and requires at least 1,040 hours per year service in that position.

~~(f)~~ (s) 'Fund' means the West Virginia Municipal Police Officers and Firefighters Retirement Fund created by this article.

~~(s)~~ (t) 'Hour of service' means: (1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and (2) each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member may not be credited with any hours of service for any period of time he or she is receiving benefits under §8-22A-17 and §8-22A-18 of this code; and (3) each hour for which back pay is either awarded or agreed to be paid by the employing municipality, irrespective of mitigation of damages. The same hours of service may not be credited both under subdivision (1) or (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

~~(t)~~ (u) 'Member' means, except as provided in §8-22A-32 and §8-22A-33 of this code, a person hired as a municipal police officer or municipal firefighter, as defined in this section, by a participating municipal employer on or after January 1, 2010. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

~~(u)~~ (v) 'Monthly salary' means the W-2 reportable compensation received by a member during the month.

~~(v)~~ (w) 'Municipality' has the meaning ascribed to it in this code.

~~(w)~~ (x)(1) 'Municipal police officer' means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal policemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal policemen's pension and relief fund as provided in §8-22-16 of this code: *Provided*, That municipal police officer also means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid police department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(2) 'Municipal firefighter' means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal firemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal firemen's pension and relief fund as provided in §8-22-16 of this code: *Provided*, That municipal firefighter also means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid fire department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

~~(x)~~ (y) 'Municipal subdivision' means any separate corporation or instrumentality established by one or more municipalities, as permitted by law; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more municipalities.

~~(y)~~ (z) 'Normal form' means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is

payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

~~(z)~~ (aa) 'Normal retirement age' means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service; (2) while still in covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or (4) attainment of age 62 years and completion of five or more years of regular contributory service.

~~(aa)~~ (bb) 'Plan' means the West Virginia Municipal Police Officers and Firefighters Retirement System established by this article.

~~(bb)~~ (cc) 'Plan year' means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

~~(ee)~~ (dd) 'Qualified public safety employee' means any employee of a participating state or political subdivision who provides police protection, firefighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by section 72(t) (10) (B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b) (2) (v) as they may be amended from time to time.

~~(dd)~~ (ee) 'Regular contributory service' means a member's credited service excluding active military duty, disability service and accrued annual and sick leave service.

~~(ee)~~ (ff) 'Regular interest' means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

~~(ff)~~ (gg) 'Required beginning date' means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age ~~70 and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise separates from covered employment.

~~(gg)~~ (hh) 'Retirement income payments' means the monthly retirement income payments payable.

~~(hh)~~ (ii) 'Spouse' means the person to whom the member is legally married on the annuity starting date.

~~(ii)~~ (jj) 'Surviving spouse' means the person to whom the member was legally married at the time of the member's death and who survived the member.

~~(jj)~~ (kk) 'Totally disabled' means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subsection: (1) A member is totally disabled only if his or her physical or mental impairment or impairments ~~is~~ are so severe that he or she is not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration; and (2) 'Physical or mental impairment' is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory

diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

~~(kk)~~ (ll) 'Vested' means eligible for retirement income payments after completion of five or more years of regular contributory service.

~~(ll)~~ (mm) 'Year of service' means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based on the hours of service performed as covered employment and credited to the member during the plan year based on the following schedule:

| Hours of Service | Year of Service Credited |
|------------------|--------------------------|
| Less than 500    | 0                        |
| 500 to 999       | 1/3                      |
| 1,000 to 1,499   | 2/3                      |
| 1,500 or more    | 1                        |

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §8-22A-17 and §8-22A-18 of this code."

With the further title amendment, sponsored by Delegate Summers, amending the title of the bill to read as follows:

**Com. Sub. for H. B. 4613** - "A Bill to amend and reenact §8-22A-2 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Municipal Police Officers and Firefighters Retirement System; increasing the multiplier for use in determining accrued benefit; defining employer error, and updating required beginning date to comply with federal law."

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 696**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Brown, Cooper and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4613) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 4627**, To provide for no more than two licensed laboratories for medical cannabis testing in this state.

On motion of Delegate Kessinger, the House concurred in the following amendment by the Senate, with further amendment:

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

**“ARTICLE 7. MEDICAL CANNABIS CONTROLS.**

**§16A-7-4. Laboratory.**

(a) A grower and processor shall contract with an independent laboratory to test the medical cannabis produced by the grower or processor. The bureau shall approve the laboratory and require that the laboratory report testing results in a manner as the bureau shall determine, including requiring a test at harvest and a test at final processing. The possession by a laboratory of medical cannabis shall be a lawful use.

(b) All medical cannabis produced pursuant to this chapter shall be subject to testing as directed by the bureau.



(c) The bureau shall ensure that there is sufficient testing capacity to meet patient demand.

(d) All laboratories providing testing pursuant to this section shall be certified to do so by the Office of Laboratory Services: Provided, That no more than two laboratories in this state may be certified pursuant to this section and any limitation relating to the number of certified laboratories shall terminate on January 1, 2025. Provided, however, that in no event may the two laboratories conspire to fix prices to artificially increase costs for laboratory services and must at all times adhere to the laws, regulations, policies, and guidance regulating medical cannabis programs in the State of West Virginia.”

With the further title amendment, sponsored by Delegate Capito, amending the title of the bill to read as follows:

**H. B. 4627** – “A Bill to amend and reenact §16A-7-4 of the Code of West Virginia, 1931, as amended, relating to providing for no more than two licensed laboratories for medical cannabis testing in this state; providing that this limitation shall terminate on January 1, 2025; and prohibiting conspiracy between the two certified laboratories.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 697**), and there were—yeas 71, nays 25, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Barnhart, Barrett, Burkhammer, Clark, Conley, Dean, Fast, Gearheart, Hardy, D. Jeffries, J. Jeffries, Jennings, Kessinger, Kimble, Kimes, Mallow, Mandt, Martin, Maynard, Paynter, Phillips, Pinson, Sypolt, B. Ward and G. Ward.

Absent and Not Voting: Boggs, Brown, Cooper and Walker.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (H. B. 4627) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**H. B. 4642**, Relating to pecuniary interests of county and district officers, teachers and school officials in contracts.

On motion of Delegate Kessinger, the House concurred in the following amendment of the bill by the Senate:

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

**“ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.**

**§61-10-15. Pecuniary interest of county and district officers, teachers and school officials in contracts; exceptions; offering or giving compensation; penalties.**

(a) It is unlawful for any member of a county commission, district school officer, secretary of a Board of Education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control: *Provided*, That nothing in this section prevents or makes unlawful the employment of the spouse of a member, officer, secretary, supervisor, superintendent, principal or teacher as a principal or teacher or auxiliary or service employee in the public schools of any county or prevents or makes unlawful the employment by any joint county and circuit clerk of his or her spouse.

(b) Any person who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined.

(c) Any person convicted of violating the provisions of subsection (a) of this section shall also be removed from his or her office and the certificate or certificates of any teacher, principal, supervisor, or superintendent so convicted shall, upon conviction thereof, be immediately revoked: *Provided*, That no person may be removed from office and no certificate may be revoked for a violation of the provisions of this section unless the person has first been convicted of the violation.

(d) Any person, firm or corporation that offers or gives any compensation or thing of value or who forebears to perform an act to any of the persons named in subsection (a) of this section or to or for any other person with the intent to secure the influence, support or vote of the person for any contract, service, award or other matter as to which any county or school district becomes or may become the paymaster is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$2,500 and, ~~in the court's discretion~~, the person or any member of the firm or, if it is a corporation, any agent or officer of the corporation offering or giving any compensation or other thing of value may, in addition to a fine, be confined in jail for a period not to exceed one year.

(e) The provisions of subsection (a) of this section do not apply to any person who is a salaried employee of a vendor or supplier under a contract subject to the provisions of said subsection if the employee, his or her spouse or child:

(1) Is not a party to the contract;

(2) Is not an owner, a shareholder, a director, or an officer of a private entity under the contract;

(3) Receives no commission, bonus or other direct remuneration or thing of value by virtue of the contract;

(4) Does not participate in the deliberations or awarding of the contract; and

(5) Does not approve or otherwise authorize the payment for any services performed or supplies furnished under the contract.

(f) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a bank within the county serving or under consideration to serve as a depository of funds for the county or Board of Education, as the case may be, if the person does not participate in the deliberations or any ultimate determination of the depository of the funds.

(g) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a public utility which is subject to regulation by the Public Service Commission of this state.

(h) Where the provisions of subsection (a) of this section would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship or other substantial interference with the operation of a governmental body or agency, the affected governmental body or agency may make written application to the West Virginia Ethics Commission pursuant to subsection (d), section five, article two, chapter six-b of this code for an exemption from subsection (a) of this section.

(i) The provisions of this section do not apply to publications in newspapers required by law to be made.

(j) No school employee or school official subject to the provisions of subsection (a) of this section has an interest in the sale, proceeds or profits in any book or other thing used or to be used in the free school system of this state, as proscribed in section nine, article XII of the Constitution of West Virginia, if they qualify for the exceptions set forth in subsection (e), (f),(g) or (h) of this section.

(k) The provisions of subsection (a) of this section do not prevent or make unlawful the employment of the spouse of any member of a county commission as a licensed health care provider

at government-owned hospitals or other government agencies who provide health care services: *Provided*, That the member of a county commission whose spouse is employed or to be employed may not:

(1) Serve on the board for the government-owned hospital or other government agency who provides health care services where his or her spouse is employed or to be employed;

(2) Vote on the appointment of members to the board for the government-owned hospital or other government agency who provides health care services where his or her spouse is employed or to be employed; or

(3) Seek to influence the hiring or promotion of his or her spouse by the government-owned hospital or other government agency who provides health care services.

(l) The provisions of subsection (a) of this section do not make unlawful the employment of a spouse of any elected county official by that county official: *Provided*, That the elected county official may not:

(1) Directly supervise the spouse employee; or

(2) Set the salary of the spouse employee: *Provided*, That the provisions of this subsection shall only apply to spouse employees who were neither married to nor engaged to the elected county official at the time of their initial hiring.

(m) The provisions of subsection (a) of this section do not prohibit reimbursement of a member of a development authority established under §7-12-1 *et seq.* of this code for:

(1) His or her necessary expenditures in connection with the performance of his or her general duties as such member, as permitted by §7-12-5(a) of this code; or

(2) His or her reasonable and necessary expenses, including but not limited to compensation, in connection with his or her performance of other duties as assigned by the authority in

connection with the June 2016 flooding event in West Virginia, if such duties and such reimbursement is first approved by a vote of the authority, with the member to be reimbursed being recused from voting upon the question, as permitted by §7-12-5(a) of this code.

(n) It is not a violation of subsection (a) of this section for any member of a county commission, district school officer, secretary of a Board of Education, supervisor or superintendent, principal, or teacher of public schools or any member of any other county or district board or any county or district officer to have a pecuniary interest in a contract where he or she may have any voice, influence, or control in the award or letting of the contract if:

(1) It is not a contract for services;

(2) The contract has been put out for competitive bid, and the contract is awarded based on lowest cost;

(3) If the party to the contract is in a voting or other decision-making position as to the contract, he or she recuses himself or herself from voting or decision-making; and

(4) The party to the contract has previously obtained a written advisory opinion from the West Virginia Ethics Commission permitting the employee to have a pecuniary interest in the contract.”

And,

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

**H. B. 4642** – “A Bill to amend and reenact §61-10-15 of the Code of West Virginia, 1931, as amended, relating to pecuniary interest of county employees in contracts where the employee has a voice, influence, or control; making an exception to criminal violation to have a pecuniary interest in a contract where certain criteria are met.”

Delegate Martin moved the previous question, which demand was sustained.

On this motion, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 698**), and there were—yeas 74, nays 19, absent and not voting 7, with the nays and the absent and not voting being as follows:

Nays: Barach, Bates, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Lovejoy, Pethtel, Pushkin, Rowe, Statler, Thompson, Williams, Worrell and Zukoff.

Absent and Not Voting: Boggs, Brown, Cooper, Hornbuckle, Linville, Skaff and Walker.

So, a majority of the members present having voted in the affirmative, the previous question was ordered on the bill.

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 699**), and there were—yeas 73, nays 20, absent and not voting 7, with the nays and the absent and not voting being as follows:

Nays: Barach, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Graves, Griffith, Hansen, Lovejoy, Mandt, Pethtel, Pushkin, Rowe, Thompson, Toney, Williams, Young and Zukoff.

Absent and Not Voting: Boggs, Brown, Cooper, Hornbuckle, Linville, Skaff and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4642) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4668, Relating to air bag fraud.**

Delegate Summers moved that the House concur in the following amendment of the bill by the Senate:

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

**“ARTICLE 15. EQUIPMENT.**

**§17C-15-50. Deployed restraint systems resale or reinstallation  
Air bag fraud; counterfeit and nonfunctional air bags  
prohibited; penalties; applicability; exceptions.**

~~A person who knowingly installs or reinstalls any object in lieu of an air bag or anything other than a not previously deployed air bag that was designed in accordance with federal safety regulations for the make, model and year of vehicle, as part of a vehicle inflatable restraint system, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand nor more than \$5,000, or imprisoned in the county or regional jail not more than one year, or both fined and imprisoned.~~

(a) For purposes of this section:

(1) ‘Air bag’ means an inflatable occupant supplemental restraint system, including all component parts, such as the cover, sensors, controllers, inflators, and wiring, designed to activate in a motor vehicle in the event of a crash to mitigate injury or ejection and that meets the federal motor vehicle safety standards set forth in 49 C.F.R. 571.208 for the make, model, and model year of the motor vehicle.

(2) ‘Counterfeit air bag’ means an air bag or component of an air bag displaying a mark identically or substantially similar to the genuine mark of a motor vehicle manufacturer or supplier of parts to a motor vehicle manufacturer, without the authorization of the motor vehicle manufacturer or supplier, respectively.



(3) 'Disable' means to deliberately disconnect or otherwise render inoperable and includes the failure to replace a previously deployed airbag with a functional airbag.

(4) 'Nonfunctional air bag' means any of the following:

(A) A replacement air bag that has been previously deployed or damaged;

(B) A replacement air bag that has an electric fault that is detected by the vehicle's air bag diagnostic system when the installation procedure is completed and the vehicle is returned to the customer who requested the work to be performed or when ownership is intended to be transferred;

(C) A counterfeit air bag, air bag cover, or some other object that is installed in a motor vehicle in order to mislead or deceive an owner or operator of the motor vehicle into believing that a functional air bag has been installed; or

(D) An air bag subject to the prohibitions of 49 U.S.C. §30120(j).

(b) A person who does any of the following is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000, or confined in a regional jail for not more than one year, or both fined and confined: *Provided, That if the violation results in the serious bodily injury or death of any person, the person in violation of this section is guilty of a felony, and, upon conviction thereof, shall be fined not less than \$2,500 nor more than \$10,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned:*

(1) Knowingly import, manufacture, sell, offer for sale, install, or reinstall in a motor vehicle, a counterfeit air bag, a nonfunctional air bag, or an object that does not comply with Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208) for the make, model, and year of the motor vehicle;

(2) Knowingly sell, offer for sale, install, or reinstall in any motor vehicle a device that causes a motor vehicle's diagnostic system to inaccurately indicate that the motor vehicle is equipped with a properly functioning air bag; or

(3) Knowingly sell, lease, trade or transfer a motor vehicle if the person knows that a counterfeit air bag, a nonfunctional air bag, or an object that does not comply with Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208) for the make model, and year of the motor vehicle has been installed as part of the motor vehicle's inflatable restraint system.

(c) This section does not apply to an owner or employee of a motor vehicle dealership or the owner of a vehicle who, before the sale of the vehicle, does not have knowledge that the vehicle's air bag, or another component of the vehicle's supplemental restraint system, is counterfeit or nonfunctioning.

(d) Nothing in this section shall be construed as to limit the liability in a civil action of any person who violates the provisions of this section.

(e) Nothing in this section shall be construed as to create a duty that, before the sale of a vehicle, an owner or employee of a motor vehicle dealership or the owner of a vehicle inspect a vehicle in possession of the dealership or owner to determine whether the air bag, or another component of the vehicle's supplemental restraint system is counterfeit or nonfunctional.

(f) The provisions of this section do not apply where:

(1) An individual who disables an airbag in a passenger vehicle owned by him or her and which is used exclusively for his or her personal use;

(2) An individual renders assistance in disabling an airbag in a passenger vehicle which is used exclusively for personal use; and

(3) An individual sells a passenger vehicle used exclusively for his or her personal use with an airbag he or she knows to be

disabled, and the individual selling the passenger vehicle discloses in writing to the buyer that the airbag of the vehicle is disabled.”

Delegate Capito moved the previous question, which demand was sustained.

The motion was adopted and the previous question was ordered on the motion.

The motion to concur was then adopted.

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 700**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Brown, Cooper and Walker.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4668) passed.

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

A message from the Senate, by

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

**Com. Sub. for H. B. 2838**, Authorize the ordering of restitution to the state for reimbursement of costs incurred for misuse of public funds, and to create the State Auditor’s Public Integrity and Fraud Fund for use of said funds,

**H. B. 3082**, Stabilizing funding sources for the DEP Division of Air Quality,

**Com. Sub. for H. B. 3231**, Public Utilities not required to pay interest on security deposits,

**Com. Sub. for H. B. 4002**, Creating the Certified Sites and Development Readiness Program,

**Com. Sub. for H. B. 4021**, Relating to the Medical Student Loan Program,

**H. B. 4110**, Relating to staffing levels at multi-county vocational centers,

**H. B. 4288**, Relating to expanding the practice of auricular acudetox to professions approved by the acupuncturist board,

**H. B. 4296**, To revise outdated provisions within Chapter 23 of the West Virginia Code, which pertains to workers' compensation,

**Com. Sub. for H. B. 4329**, To clarify the definition of an "interested person" for purposes of the West Virginia Small Estate Act,

**Com. Sub. for H. B. 4336**, Providing for the valuation of natural resources property,

**Com. Sub. for H. B. 4393**, To increase the managed care tax if the managed care organization receives a rate increase,

**H. B. 4433**, Providing that retirement benefits are not subject to execution,

**Com. Sub. for H. B. 4488**, Relating to coal mining and changing fees for permitting actions,

**H. B. 4496**, Allowing interest and earnings on federal COVID-19 relief moneys to be retained in the funds or accounts where those moneys are invested,

**Com. Sub. for H. B. 4497**, Extending the regional jail per diem through July 1, 2023,

**Com. Sub. for H. B. 4540**, To update all retirement plans to comport with federal law,

**Com. Sub. for H. B. 4559**, Providing for legislative rulemaking relating to the disposition of unidentified and unclaimed remains in the possession of the Chief Medical Examiner,

**Com. Sub. for H. B. 4565**, To exempt temporary employees and employees of the Higher Education Policy Commission from automatic enrollment into the state's 457 (b) plan,

**H. B. 4568**, To allow phased rehabilitations of certified historic structures,

**Com. Sub. for H. B. 4570**, To allow veterinary telehealth in West Virginia with out of state providers,

**Com. Sub. for H. B. 4608**, To require the State Fire Commission to propose minimum standards for persons to be certified as probationary status volunteer firefighters,

**Com. Sub. for H. B. 4634**, Relating to occupational licensing or other authorization to practice,

**Com. Sub. for H. B. 4644**, Prohibiting the restriction, regulation, use or administration of lawn care and pest care products,

**H. B. 4743**, Relating to security and surveillance requirements of medical cannabis organization facilities,

**H. B. 4778**, Permit banks to transact business with any one or more fiduciaries on multiple fiduciary accounts,

And,

**H. B. 4829**, Modifying definitions of certain school cafeteria personnel.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates as follows:

**Com. Sub. for H. B. 4756**, Relating to authorizing municipalities to create pension funding programs to reduce the unfunded liability of certain pension and relief funds.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect July 1, 2022, a bill of the House of Delegates as follows:

**H. B. 4450**, Removing the \$0.50 fee charged and deposited in the Combined Voter Registration and Driver's Licensing Fund for each driver's license issued by the Department of Motor Vehicles,

And,

**H. B. 4463**, To increase the compensation members of the State Athletic Commission may receive for their attendance and participation in the commission's public meetings.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had receded from its amendments, and again passed, a bill of the House of Delegates as follows:

**H. B. 2300**, Including Family Court Judges in the Judges' Retirement System.

A message from the Senate, by

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

**H. B. 2817**, Donated Drug Repository Program,

**Com. Sub. for H. B. 4001**, Generally relating to broadband,

**Com. Sub. for H. B. 4003**, Relating generally to commercial benefit of substances removed from waters of the state by the treatment of mine drainage,

And,

**H. B. 4848**, Relating to nonintoxicating beer, wine and liquor licenses.

A message from the Senate, by

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

**Com. Sub. for S. B. 138**, Relating to Board of Medicine composition,

**S. B. 172**, Increasing compensation of elected county officials,

**Com. Sub. for S. B. 246**, Requiring newly constructed public schools and public schools with major improvements to have water bottle filling stations,

**Com. Sub. for S. B. 261**, Requiring video cameras in certain special education classrooms,

**Com. Sub. for S. B. 262**, Relating generally to financial institutions engaged in boycotts of energy companies,

**Com. Sub. for S. B. 268**, Creating exemption from compulsory school attendance for child who participates in learning pod or micro school,

**Com. Sub. for S. B. 424**, Relating generally to 2022 Farm Bill,

**Com. Sub. for S. B. 438**, Relating generally to WV Security for Public Deposits Act,

**Com. Sub. for S. B. 441**, Providing confidentiality of video and other records of correctional juvenile facilities,

**Com. Sub. for S. B. 468**, Creating Unborn Child with Down Syndrome Protection and Education Act,

**S. B. 529**, Encouraging additional computer science education in WV schools,

**Com. Sub. for S. B. 533**, Relating to funding for health sciences and medical schools in state,

**Com. Sub. for S. B. 536**, Relating generally to controlled substance criminal offenses,

**S. B. 548**, Authorizing Workforce WV employers to obtain employment classifications and work locations,

**Com. Sub. for S. B. 552**, Relating to tax sale process,

**Com. Sub. for S. B. 568**, Relating to health insurance loss ratio information,

**S. B. 570**, Establishing training for law-enforcement in handling individuals with Alzheimer's and dementias,

**Com. Sub. for S. B. 582**, Creating WV Workforce Resiliency Act,

**Com. Sub. for S. B. 584**, Relating to WV Infrastructure and Jobs Development Council.

**Com. Sub. for S. B. 611**, Removing cap on bidder's contract bond,

And,

**Com. Sub. for S. B. 704**, Allowing parents, grandparents, and guardians to inspect instructional materials in classroom.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, to take effect July 1, 2022, of

**Com. Sub. for S. B. 312**, Authorization for Department of Revenue to promulgate legislative rules,

**S. B. 531**, Increasing annual salaries of certain state employees,

**Com. Sub. for S. B. 641**, Requiring Consolidated Public Retirement Board to set contributions to Deputy Sheriff's Retirement System,



And,

**Com. Sub. for S. B. 656**, Providing tax credit for certain corporations with child-care facilities for employees.

A message from the Senate, by

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

**Com. Sub. for S. B. 274**, Requiring secretary of DHHR to allocate CPS workers by Bureau of Social Services' district annually.

**S. B. 492**, Relating to electronic collection of tolls,

**Com. Sub. for S. B. 518**, Allowing nurses licensed in another state to practice in WV,

**Com. Sub. for S. B. 528**, Supplementing and amending appropriations to DHHR, Consolidated Medical Services Fund,

**Com. Sub. for S. B. 571**, Declaring certain claims to be moral obligations of state,

**Com. Sub. for S. B. 643**, Removing residency requirement of members appointed to county airport authority,

**S. B. 686**, Clarifying use of notes and bonds of WV Housing Development Fund,

**S. B. 726**, Relating to pre-trial diversion agreements and deferred prosecution agreements,

And,

**S. B. 729**, Relating to funding for infrastructure and economic development projects in WV.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had concurred in the changed effective date, to take effect from passage, of

**Com. Sub. for H. B. 4012**, Prohibiting the showing of proof of a COVID-19 vaccination.

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on and the passage, as amended by said report, of

**H. B. 4097**, To prohibit nonpublic funding sources for election administration and related expenses without prior written approval by the State Election Commission,

And,

**Com. Sub. for H. B. 4333**, Relating to the sunset of the Board of Hearing-Aid Dealers and Fitters.

A message from the Senate, by

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

**Com. Sub. for H. B. 4098**, Relating to Geothermal Energy Development,

**Com. Sub. for H. B. 4688**, Relating to Emergency Medical Services Retirement System Act,

And,

**Com. Sub. for H. B. 4787**, Creating the Highly Automated Motor Vehicle Act.

A message from the Senate, by

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

**S. B. 1**, Creating Mining Mutual Insurance Company.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of concurrent resolutions of the House of Delegates as follows:

**H. C. R. 1**, “Alex Perdue Memorial Bridge”,

**H. C. R. 5**, James “Big Jim” Shaffer Memorial Bridge,

**H. C. R. 6**, Elmer Galford Memorial Road,

**H. C. R. 10**, Lance CPL Leonard Joe Zelaski Memorial Bridge,

**H. C. R. 48**, WVSP Sergeant John S. Syner Memorial Road,

**H. C. R. 49**, Charles M. “Charlie” Biggs Memorial Highway,

**H. C. R. 52**, U.S. Army SGT Roy E. Givens Memorial Road,

**H. C. R. 90**, U.S. Army PVT Robert (Bob) Mullins Sr. Memorial Bridge,

And,

**H. C. R. 95**, Clemmer Brothers WWII Veterans Memorial Bridge.

### **Committee Reports**

In accordance with House Rule 68, Delegate D. Jeffries, Chair of the Joint Committee on Enrolled Bills, filed multiple reports with the Clerk indicating that:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the dates listed, 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:

**March 12, 2022**

**Com. Sub. for S. B. 515**, Supplementing and amending appropriations of public moneys to Department of Administration, Public Defender Services,

**S. B. 517**, Expiring funds from unappropriated balance in State Excess Lottery Revenue Fund,

**S. B. 525**, Expiring funds from unappropriated balance in Lottery Net Profits,

**S. B. 526**, Supplementing and amending appropriations to Department of Commerce, Office of Secretary,

**S. B. 527**, Supplementing and amending appropriations to Department of Administration, Office of Technology,

**S. B. 626**, Supplementing, amending, and increasing existing items of appropriation from State Road Fund to DOT, DMV,

**S. B. 627**, Supplementing, amending, and increasing existing item of appropriation from State Road Fund to DOT, DOH,

**S. B. 628**, Supplementing and amending appropriations to Department of Commerce, DNR,

**S. B. 629**, Supplementing and amending appropriations to Department of Education, WV BOE, Vocational Division,

**S. B. 630**, Supplementing and amending appropriations to Higher Education Policy Commission, Administration – Control Account,

**S. B. 636**, Supplementing and amending appropriations to Department of Revenue, Office of Tax Appeals,

And,

**S. B. 637**, Supplementing and amending appropriations to Executive, Governor’s Office – Civil Contingent Fund.

### **March 15, 2022**

**Com. Sub. for S. B. 25**, Updating provisions of Medical Professional Liability Act,

**S. B. 135**, Relating to acquisition and disposition of property by urban development authority,

**S. B. 172**, Increasing compensation of elected county officials,

**S. B. 181**, Creating Core Behavioral Health Crisis Services System,

**S. B. 213**, Establishing licensed professional counseling compact,

**Com. Sub. for S. B. 245**, Revising wage payment and collection,

**Com. Sub. for S. B. 274**, Requiring secretary of DHHR to allocate CPS workers by Bureau of Social Services' district annually,

**Com. Sub. for S. B. 330**, Authorizing DOT to promulgate legislative rules,

**S. B. 427**, Permitting WV Board of Medicine investigators to carry concealed weapon,

**S. B. 440**, Establishing Uniform Commercial Real Estate Receivership Act,

**Com. Sub. for S. B. 443**, Including police and firefighter as electors of trustees for certain pension funds,

**Com. Sub. for S. B. 466**, Relating to limitations on civil actions or appeals brought by inmates,

**Com. Sub. for S. B. 470**, Relating generally to health care decisions,

**Com. Sub. for S. B. 476**, Relating to imposition of minimum severance tax on coal,

**S. B. 478**, Relating to Neighborhood Investment Program,

**S. B. 492**, Relating to electronic collection of tolls,

**Com. Sub. for S. B. 505**, Updating laws on licensure and regulation of money transmitters,

**Com. Sub. for S. B. 508**, Requiring certain attire for deer hunters with muzzleloaders,

**Com. Sub. for S. B. 522**, Combining offices of WV State Americans with Disabilities Act and WV Equal Employment Opportunity,

**Com. Sub. for S. B. 528**, Supplementing and amending appropriations to DHHR, Consolidated Medical Services Fund,

**S. B. 531**, Increasing annual salaries of certain state employees,

**Com. Sub. for S. B. 535**, Providing for revocation of school personnel certification or licensure in certain circumstances,

**S. B. 546**, Expanding uses of fees paid by students at higher education institutions,

**Com. Sub. for S. B. 553**, Relating to powers of WV Health Care Authority,

**S. B. 570**, Establishing training for law-enforcement in handling individuals with Alzheimer's and dementias,

**Com. Sub. for S. B. 571**, Declaring certain claims to be moral obligations of state,

**Com. Sub. for S. B. 575**, Ensuring that imposition of certain sexual offenses apply to persons working in juvenile facilities,

**Com. Sub. for S. B. 584**, Relating to WV Infrastructure and Jobs Development Council,

**Com. Sub. for S. B. 585**, Creating administrative medicine license for physicians not practicing clinical medicine,

**S. B. 591**, Relating to process for filling vacancies in state Legislature,

**Com. Sub. for S. B. 593**, Allowing Marshall University's Forensic Analysis Laboratory access and participation in WV DNA database for certain purposes,

**Com. Sub. for S. B. 595**, Relating to Dangerousness Assessment Advisory Board,

**S. B. 603**, Prohibiting licensure and re-licensure in WV if applicant is prohibited from practicing in another jurisdiction,

**Com. Sub. for S. B. 616**, Relating to confidentiality of court files and law-enforcement records of certain enumerated offenses,

**S. B. 624**, Making supplementary appropriation to DHHR, Division of Health, Laboratory Services,

**Com. Sub. for S. B. 625**, Making supplementary appropriation to DHHR, Division of Health, Vital Statistics Account,

**S. B. 633**, Supplementing and amending appropriations to DHHR, Consolidated Medical Services Fund,

**S. B. 634**, Making supplementary appropriation to DHHR, Division of Health – Hospital Services Revenue Account Special Fund Capital Improvement, Renovation and Operations,

**Com. Sub. for S. B. 641**, Requiring Consolidated Public Retirement Board to set contributions to Deputy Sheriff's Retirement System,

**Com. Sub. for S. B. 643**, Removing residency requirement of members appointed to county airport authority,

**Com. Sub. for S. B. 694**, Relating to oil and gas conservation,

**Com. Sub. for S. B. 698**, Relating to number and selection of members for Governor's Veterans Council,

**S. B. 715**, Decreasing and increasing existing items of appropriations from State Fund, General Revenue,

**S. B. 716**, Supplemental appropriation to DOE, WV BOE, Strategic Staff Development,

**S. B. 717**, Supplemental appropriation to Miscellaneous Boards and Commissions, Board of Medicine, Medical Licensing Board,

**S. B. 718**, Supplemental appropriation to Department of Administration, Travel Management, Aviation Fund,

**S. B. 719**, Supplemental appropriation to DHS, Fire Commission, Fire Marshal Fees,

**S. B. 720**, Supplementing and amending appropriations to Executive, Governor's Office, Civil Contingent Fund,

**S. B. 722**, Expiring funds to DEP, Division of Environmental Protection, Reclamation of Abandoned and Dilapidated Property Program Fund,

**S. B. 723**, Making supplementary appropriation to Department of Agriculture, WV Spay Neuter Assistance Fund,

**S. B. 724**, Making supplementary appropriation to DHS, Division of Corrections and Rehabilitation, Regional Jail and Correctional Facility Authority,

And,

**S. B. 725**, Supplementing and amending appropriations to DHS, WV State Police.

### **March 17, 2022**

**H. B. 2631**, Provide for WVDNR officers to be able to work "off duty",

**Com. Sub. for H. B. 3223**, Prohibit state, county, and municipal governments from dedicating or naming any public structure for a public official who is holding office at the time,

**H. B. 4019**, Relating to deadlines for public charter schools,



**Com. Sub. for H. B. 4050**, Defining terms related to livestock trespassing,

**Com. Sub. for H. B. 4065**, Allowing the Division of Natural Resources to teach hunter's safety courses in school,

**Com. Sub. for H. B. 4282**, Relating to establishing next generation 911 services in this state,

**H. B. 4286**, Relating to exempting persons employed as attorneys from the civil service system,

**Com. Sub. for H. B. 4295**, To transfer the State Office of the National Flood Insurance Program from the Offices of the Insurance Commissioner to the Division of Emergency Management,

**Com. Sub. for H. B. 4297**, To facilitate the sharing of information between the Department of Health and Human Resources and the State Auditor's office in order to investigate reports of financial abuse and neglect of a vulnerable adult,

**Com. Sub. for H. B. 4311**, Creating criminal penalties for illegal voting activity,

**Com. Sub. for H. B. 4345**, Relating to motor vehicle registration cards by establishing electronic or mobile registration cards,

**H. B. 4396**, Reducing federal adjusted gross income relating to tolls for travel on West Virginia toll roads paid electronically,

**Com. Sub. for H. B. 4406**, To establish the West Virginia Military Hall of Fame,

**Com. Sub. for H. B. 4408**, Relating to contracts for construction of recreational facilities in state parks and forests,

**H. B. 4410**, Specifying allocation, apportionment and treatment of income of flow-through entities,

**Com. Sub. for H. B. 4418**, Relating to the Small Business Supplier Certification Assistance Program,

**Com. Sub. for H. B. 4420**, To modify definitions of school bus operators,

**Com. Sub. for H. B. 4426**, Repeal article 33-25G-1 *et seq.* creating provider sponsored networks,

**Com. Sub. for H. B. 4430**, Relating to definitions of base salary and overtime for police and firemen pensions,

**Com. Sub. for H. B. 4451**, Eliminating the requirement that otherwise qualified investment assets be located or installed at or within 2 miles of a preexisting manufacturing facility,

**Com. Sub. for H. B. 4461**, Relating to the consolidation of all administrative fees collected by the agency into the existing "Tax Administration Services Fund",

**H. B. 4462**, Relating to Deferred Retirement Option Plan evaluations,

**Com. Sub. for H. B. 4484**, Declaring certain claims against agencies of the state to be moral obligations of the state,

**Com. Sub. for H. B. 4489**, Require counties to post open positions on statewide job bank,

**Com. Sub. for H. B. 4491**, To establish requirements for carbon dioxide sequestration,

**H. B. 4517**, Relating to the repealing requirements to display video ratings,

**Com. Sub. for H. B. 4562**, Relating generally to the suspension and dismissal of school personnel by board and the appeals process,

**H. B. 4578**, Relating to authorizing the Superintendent of the State Police to administer the Handle with Care program,

**Com. Sub. for H. B. 4583**, Clarifying the definition of incapacity so that incarceration in the penal system or detention outside of the United States may not be inferred as resulting in a lack of capacity to execute a power of attorney,

**H. B. 4604**, Relating to abolishing the Workforce Development Initiative Program Advisory Council,

**Com. Sub. for H. B. 4631**, Establishing a bone marrow and peripheral blood stem donation awareness program,

**H. B. 4649**, Transferring the operations of the West Virginia Children's Health Insurance Program to the Bureau for Medical Services,

**Com. Sub. for H. B. 4675**, Relating to autonomous delivery vehicles,

**H. B. 4758**, Relating to developing and maintaining a database to track reclamation liabilities in the West Virginia Department of Environmental Protection Special Reclamation Program,

**H. B. 4769**, Eliminate the requirement to send recommended decisions by certified mail,

**Com. Sub. for H. B. 4785**, Relating to judicial vacancies,

**Com. Sub. for H. B. 4797**, To create an EV Infrastructure Deployment Plan for West Virginia that describes how our state intends to use its share of NEVI Formula Program funds,

**S. B. 1**, Creating Mining Mutual Insurance Company,

**Com. Sub. for S. B. 138**, Relating to Board of Medicine composition,

**Com. Sub. for S. B. 205**, Expanding PEIA Finance Board membership,

**S. B. 228**, Providing tuition and fee waivers at state higher education institutions for volunteers who have completed service in AmeriCorps programs in WV,

**Com. Sub. for S. B. 231**, Relating generally to broadband connectivity,

**Com. Sub. for S. B. 232**, Relating to punishment for third offense felony,

**Com. Sub. for S. B. 242**, Restricting authority to prevent or limit owner's use of natural resources or real property in certain agricultural operations,

**Com. Sub. for S. B. 246**, Requiring newly constructed public schools and public schools with major improvements to have water bottle filling stations,

**Com. Sub. for S. B. 247**, Relating to certified community behavioral health clinics,

**Com. Sub. for S. B. 250**, Budget Bill,

**Com. Sub. for S. B. 261**, Requiring video cameras in certain special education classrooms,

**Com. Sub. for S. B. 262**, Relating generally to financial institutions engaged in boycotts of energy companies,

**Com. Sub. for S. B. 264**, Relating to conservation districts law of WV,

**Com. Sub. for S. B. 268**, Creating exemption from compulsory school attendance for child who participates in learning pod or micro school,

**Com. Sub. for S. B. 334**, Authorizing miscellaneous agencies and boards to promulgate rules,

**Com. Sub. for S. B. 434**, Updating authority to airports for current operations,

**Com. Sub. for S. B. 438**, Relating generally to WV Security for Public Deposits Act,

**Com. Sub. for S. B. 468**, Creating Unborn Child with Down Syndrome Protection and Education Act,

**Com. Sub. for S. B. 518**, Allowing nurses licensed in another state to practice in WV,

**S. B. 529**, Encouraging additional computer science education in WV schools,

**Com. Sub. for S. B. 533**, Relating to funding for health sciences and medical schools in state,

**Com. Sub. for S. B. 536**, Relating generally to controlled substance criminal offenses,

**S. B. 548**, Authorizing Workforce WV employers to obtain employment classifications and work locations,

**Com. Sub. for S. B. 552**, Relating to tax sale process,

**Com. Sub. for S. B. 568**, Relating to health insurance loss ratio information,

**Com. Sub. for S. B. 573**, Providing system where magistrates shall preside in certain instances outside normal court hours,

**Com. Sub. for S. B. 606**, Relating to WV Medical Practice Act,

**Com. Sub. for S. B. 609**, Allowing DOH Commissioner to accept ownership of rented and leased equipment,

**Com. Sub. for S. B. 647**, Prohibiting discrimination in organ donation process,

**Com. Sub. for S. B. 662**, Relating to creation, expansion, and authority of resort area district,

**S. B. 686**, Clarifying use of notes and bonds of WV Housing Development Fund,

**Com. Sub. for S. B. 704**, Allowing parents, grandparents, and guardians to inspect instructional materials in classroom,

**S. B. 714**, Relating to tie votes by Coal Mine Safety and Technical Review Committee,

**S. B. 729**, Relating to funding for infrastructure and economic development projects in WV,

**S. B. 731**, Making supplementary appropriation to Department of Tourism, Tourism Workforce Development Fund,

**S. B. 732**, Making supplementary appropriation to Hospital Finance Authority, Hospital Finance Authority Fund,

And,

**S. B. 733**, Supplementing and amending appropriation to Executive, Governor's Office.

### **March 18, 2022**

**Com. Sub. for H. B. 4600**, Making it a felony for a "Person in a Position of Trust" to assault, batter, or verbally abuse a child, or neglect to report abuse they witness,

**Com. Sub. for S. B. 530**, Encouraging public-private partnerships in transportation,

**Com. Sub. for S. B. 582**, Creating WV Workforce Resiliency Act,

**Com. Sub. for S. B. 610**, Relating to duties, powers and responsibilities of DOT Secretary,

**Com. Sub. for S. B. 611**, Removing cap on bidder's contract bond,

**Com. Sub. for S. B. 656**, Providing tax credit for certain corporations with child-care facilities for employees,

**S. B. 693**, Clarifying meeting voting requirements for political party executive committees,

And,

**S. B. 726**, Relating to pre-trial diversion agreements and deferred prosecution agreements.

**March 23, 2022**

**Com. Sub. for S. B. 6**, Establishing common law “veil piercing” claims not be used to impose personal liability,

**S. B. 253**, Relating to voting precincts and redistricting,

**Com. Sub. for S. B. 312**, Authorization for Department of Revenue to promulgate legislative rules,

**Com. Sub. for S. B. 424**, Relating generally to 2022 Farm Bill,

**Com. Sub. for S. B. 441**, Providing confidentiality of video and other records of correctional juvenile facilities,

**Com. Sub. for S. B. 463**, Best Interests of Child Protection Act of 2022,

And,

**Com. Sub. for S. B. 487**, Relating to Revenue Shortfall Reserve Fund and Revenue Shortfall Reserve Fund – Part B.

**March 24, 2022**

**Com. Sub. for H. B. 2177**, Permitting the issuance of a state issued identification card without a photo on the card under certain conditions,

**H. B. 2300**, Including Family Court Judges in the Judges’ Retirement System,

**Com. Sub. for H. B. 2838**, Authorize the ordering of restitution to the state for reimbursement of costs incurred for

misuse of public funds, and to create the State Auditor's Public Integrity and Fraud Fund for use of said funds,

**H. B. 3073**, Relating to the West Virginia Emergency School Food Act,

**H. B. 3082**, Stabilizing funding sources for the DEP Division of Air Quality,

**Com. Sub. for H. B. 3231**, Public Utilities not required to pay interest on security deposits,

**Com. Sub. for H. B. 4002**, Creating the Certified Sites and Development Readiness Program,

**Com. Sub. for H. B. 4012**, Prohibiting the showing of proof of a COVID-19 vaccination,

**Com. Sub. for H. B. 4021**, Relating to the Medical Student Loan Program,

**Com. Sub. for H. B. 4059**, Clarifying that new Department of Health and Human Resources' Deputy Commissioners are exempt from civil service,

**H. B. 4110**, Relating to staffing levels at multi-county vocational centers,

**Com. Sub. for H. B. 4141**, Authorizing the Governor's Committee on Crime, Delinquency and Corrections to promulgate a legislative rule relating to Law Enforcement Training and Certification Standards,

**Com. Sub. for H. B. 4242**, Authorizing the Division of Labor to promulgate a legislative rule relating to Child Labor,

**Com. Sub. for H. B. 4285**, Relating to real estate appraiser licensing board requirements,

**H. B. 4288**, Relating to expanding the practice of auricular acudetox to professions approved by the acupuncturist board,



**H. B. 4291**, Relating to authorizing legislative rules regarding higher education,

**H. B. 4307**, Increase some benefits payable from Crime Victims Compensation Fund,

**H. B. 4331**, West Virginia's Urban Mass Transportation Authority Act,

**Com. Sub. for H. B. 4336**, Providing for the valuation of natural resources property,

**H. B. 4355**, Relating to the disclosure by state institutions of higher education of certain information regarding textbooks and digital courseware and certain charges assessed for those items,

**Com. Sub. for H. B. 4373**, To exclude fentanyl test strips from the definition of drug paraphernalia,

**Com. Sub. for H. B. 4380**, Relating to transportation of athletic teams,

**H. B. 4419**, Allowing candidate committees and campaign committees to make contributions to affiliated state party executive committees,

**H. B. 4433**, Providing that retirement benefits are not subject to execution,

**H. B. 4438**, Applying current requirements for certain voting systems to be independent and non-networked to all voting systems that seek certification in West Virginia,

**H. B. 4450**, Removing the \$0.50 fee charged and deposited in the Combined Voter Registration and Driver's Licensing Fund for each driver's license issued by the Department of Motor Vehicles,

**H. B. 4463**, To increase the compensation members of the State Athletic Commission may receive for their attendance and participation in the commission's public meetings,

**Com. Sub. for H. B. 4466**, Relating to School Building Authority's review of school bond applications,

**Com. Sub. for H. B. 4488**, Relating to coal mining and changing fees for permitting actions,

**H. B. 4496**, Allowing interest and earnings on federal COVID-19 relief moneys to be retained in the funds or accounts where those moneys are invested,

**Com. Sub. for H. B. 4497**, Extending the regional jail per diem through July 1, 2023,

**Com. Sub. for H. B. 4559**, Providing for legislative rulemaking relating to the disposition of unidentified and unclaimed remains in the possession of the Chief Medical Examiner,

**Com. Sub. for H. B. 4565**, To exempt temporary employees and employees of the Higher Education Policy Commission from automatic enrollment into the state's 457 (b) plan,

**H. B. 4568**, To allow phased rehabilitations of certified historic structures,

**Com. Sub. for H. B. 4570**, To allow veterinary telehealth in West Virginia with out of state providers,

**Com. Sub. for H. B. 4608**, To require the State Fire Commission to propose minimum standards for persons to be certified as probationary status volunteer firefighters,

**Com. Sub. for H. B. 4634**, Relating to occupational licensing or other authorization to practice,

**Com. Sub. for H. B. 4636**, Clarifying when business and occupation taxes owed to a city or municipality are considered to be remitted on time,

**H. B. 4642**, Relating to pecuniary interests of county and district officers, teachers and school officials in contracts,

**Com. Sub. for H. B. 4644**, Prohibiting the restriction, regulation, use or administration of lawn care and pest care products,

**H. B. 4647**, Relating to the Board of Funeral Service Examiners,

**Com. Sub. for H. B. 4662**, Relating to licensure of Head Start facilities in this state,

**Com. Sub. for H. B. 4667**, Prohibition on county, city, or municipality restrictions on advanced air mobility aircraft,

**H. B. 4743**, Relating to security and surveillance requirements of medical cannabis organization facilities,

**H. B. 4778**, Permit banks to transact business with any one or more fiduciaries on multiple fiduciary accounts,

**H. B. 4827**, Relating to the promotion and development of public-use vertiports,

And,

**H. B. 4847**, Relating to missing persons generally.

### **March 25, 2022**

**Com. Sub. for H. B. 2096**, Reinstating the film investment tax credit,

**Com. Sub. for H. B. 2733**, Relating to the establishment of a Combat Action Badge and Combat Action Ribbon special registration plates,

**H. B. 2817**, Donated Drug Repository Program,

**Com. Sub. for H. B. 2910**, To modify the allowable number of magistrate judges per county,

**Com. Sub. for H. B. 4001**, Generally relating to broadband,

**Com. Sub. for H. B. 4003**, Relating generally to commercial benefit of substances removed from waters of the state by the treatment of mine drainage,

**Com. Sub. for H. B. 4008**, Relating to Higher Education Policy Commission funding formula,

**Com. Sub. for H. B. 4020**, Relating to reorganizing the Department of Health and Human Resources,

**H. B. 4097**, To prohibit nonpublic funding sources for election administration and related expenses without prior written approval by the State Election Commission,

**Com. Sub. for H. B. 4098**, Relating to Geothermal Energy Development,

**Com. Sub. for H. B. 4112**, Provide consumers a choice for pharmacy services,

**Com. Sub. for H. B. 4113**, Public Health definitions and powers of secretary and commissioner,

**Com. Sub. for H. B. 4257**, Require visitation immediately following a procedure in a health care facility,

**H. B. 4296**, To revise outdated provisions within Chapter 23 of the West Virginia Code, which pertains to workers' compensation,

**Com. Sub. for H. B. 4324**, To update collaborative pharmacy practice agreements,

**Com. Sub. for H. B. 4329**, To clarify the definition of an "interested person" for purposes of the West Virginia Small Estate Act,

**Com. Sub. for H. B. 4333**, Relating to the sunset of the Board of Hearing-Aid Dealers and Fitters,

**Com. Sub. for H. B. 4340**, Relating to maximizing the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education,

**Com. Sub. for H. B. 4353**, Relating to On Cycle Elections - Voter Turnout Act,

**Com. Sub. for H. B. 4377**, To update the involuntary commitment process.

**Com. Sub. for H. B. 4393**, To increase the managed care tax if the managed care organization receives a rate increase,

**Com. Sub. for H. B. 4479**, Establishing the Coalfield Communities Grant Facilitation Commission,

**Com. Sub. for H. B. 4492**, Creating the Division of Multimodal Transportation,

**Com. Sub. for H. B. 4499**, Relating to making the procurement process more efficient by modifying and updating outdated processes and requirements,

**Com. Sub. for H. B. 4502**, Establishing the BUILD WV Act,

**Com. Sub. for H. B. 4511**, To make numerous amendments to modernize and increase efficiencies in the administration of the West Virginia Unclaimed Property Act,

**H. B. 4535**, Repeal section relating to school attendance and satisfactory academic progress as conditions of licensing for privilege of operation of motor vehicle,

**Com. Sub. for H. B. 4540**, To update all retirement plans to comport with federal law,

**Com. Sub. for H. B. 4560**, Relating generally to motor vehicle dealers, distributors, wholesalers and manufacturers,

**Com. Sub. for H. B. 4563**, Provide for a license plate for auto mechanics,

**H. B. 4566**, Creating the Economic Enhancement Grant Fund,

**Com. Sub. for H. B. 4567**, Relating to business and occupation or privilege tax,

**H. B. 4571**, Modifying foundation allowance to account for transportation by electric powered buses,

**Com. Sub. for H. B. 4596**, Relating generally to additional persons qualifying for the provisions of the Law-Enforcement Officers Safety Act,

**Com. Sub. for H. B. 4629**, Relating to procedures for certain actions against the state,

**Com. Sub. for H. B. 4668**, Relating to air bag fraud,

**Com. Sub. for H. B. 4688**, Relating to Emergency Medical Services Retirement System Act,

**Com. Sub. for H. B. 4712**, Require the prompt enrollment in payment plans for costs, fines, forfeitures, restitution, or penalties in circuit court and magistrate court,

**Com. Sub. for H. B. 4756**, Relating to authorizing municipalities to create pension funding programs to reduce the unfunded liability of certain pension and relief funds,

**Com. Sub. for H. B. 4779**, Permit banks the discretion to choose whether to receive deposits from other banks, savings banks, or savings and loan associations when arranging for the re-deposits of county, municipal, and state funds,

**Com. Sub. for H. B. 4787**, Creating the Highly Automated Motor Vehicle Act,

**Com. Sub. for H. B. 4826**, Relating to e-sports,

**H. B. 4829**, Modifying definitions of certain school cafeteria personnel,

And,

**H. B. 4848**, Relating to nonintoxicating beer, wine and liquor licenses.

### **Messages from the Executive**

The following proclamation was issued by His Excellency, the Governor, on March 12, 2022 and is printed in the Journal.

STATE OF WEST VIRGINIA  
EXECUTIVE DEPARTMENT  
Charleston

#### **A PROCLAMATION**

By the Governor

**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 Twenty-Two, such Regular Session being scheduled to conclude on the Twelfth day of March, Two Thousand Twenty-Two; 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 for such further period as may, in his or her judgment, be necessary for the passage of the Budget Bill if the Budget Bill shall not have been finally acted upon three days before the expiration of its Regular Session; and

**WHEREAS**, the Budget Bill had not been finally acted upon by the Legislature three days before the expiration of its Regular Session, requiring under the provisions of the Constitution a proclamation be issued; and

**WHEREAS**, an extension of the Regular Session is not necessary for the passage of the Budget Bill; and

**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 Twenty-Two Regular Session of the Legislature for no additional

period, as no additional period is necessary for the passage of the Budget Bill.

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



**DONE** at the Capitol in the City of Charleston, State of West Virginia, on this the Twelfth day of March, in the Year of our Lord, Two Thousand Twenty-Two, and in the One Hundred Fifty-Ninth Year of the State.

James Justice,  
*Governor.*

By the Governor

Mac Warner  
Secretary of State

Subsequent to the adjournment of the session, communications were received from His Excellency, the Governor, advising that on March 15, 2022, he approved **Com. Sub. for S. B. 515, S. B. 517, S. B. 525, S. B. 526, S. B. 527, S. B. 626, S. B. 627, S. B. 628, S. B. 629, S. B. 630, S. B. 636 and S. B. 637**; on March 18, 2022, he approved **Com. Sub. for S. B. 528, S. B. 624, S. B. 633, S. B. 634, S. B. 715, S. B. 716, S. B. 717, S. B. 718, S. B. 719, S. B. 720, S. B. 722, S. B. 723, S. B. 724, S. B. 725, S. B. 731, S. B. 732 and S. B. 733**; and on March 21, 2022, he approved **S. B. 172, Com. Sub. for S. B. 468 and Com. Sub. for S. B. 647**; and on March 23, 2022, he approved **Com. Sub. for S. B. 25, S. B. 135, Com. Sub. for S. B. 181, S. B. 213, Com. Sub. for S. B. 245, Com. Sub. for S. B. 330, S. B. 427, S. B. 440, Com. Sub. for S. B. 443, S. B. 448, Com. Sub. for S. B. 466, Com. Sub. for S. B. 470, S. B. 478, Com. Sub. for S. B. 508, Com. Sub. for S. B. 520, Com. Sub. for S. B. 522, Com. Sub. for S. B. 523, Com. Sub. for S. B. 524, Com. Sub. for S. B. 535, Com. Sub. for S. B. 537, S. B. 542, S. B. 546, S. B. 570, Com. Sub. for S. B. 575, Com. Sub. for S. B.**



584, Com. Sub. for S. B. 585, S. B. 591, Com. Sub. for S. B. 593, Com. Sub. for S. B. 595, S. B. 597, Com. Sub. for S. B. 598, S. B. 603, Com. Sub. for S. B. 616, S. B. 638, Com. Sub. for S. B. 643, S. B. 693, Com. Sub. for S. B. 698; and on March 25, 2022, he approved Com. Sub. for S. B. 261 and Com. Sub. for H. B. 4600; and on March 28, 2022, he approved S. B. 1, Com. Sub. for S. B. 6, Com. Sub. for S. B. 138, Com. Sub. for S. B. 205, S. B. 228, Com. Sub. for S. B. 231, Com. Sub. for S. B. 232, Com. Sub. for S. B. 242, Com. Sub. for S. B. 246, Com. Sub. for S. B. 247, S. B. 253, Com. Sub. for S. B. 264, Com. Sub. for S. B. 274, Com. Sub. for S. B. 424, Com. Sub. for S. B. 441, Com. Sub. for S. B. 518, S. B. 531, Com. Sub. for S. B. 536, S. B. 548, Com. Sub. for S. B. 568, Com. Sub. for S. B. 571, Com. Sub. for S. B. 606, Com. Sub. for S. B. 609, Com. Sub. for S. B. 662, Com. Sub. for H. B. 2096, Com. Sub. for H. B. 2177, H. B. 2817, Com. Sub. for H. B. 2838, H. B. 3073, H. B. 3082, Com. Sub. for H. B. 4021, Com. Sub. for H. B. 4050, Com. Sub. for H. B. 4065, H. B. 4098, Com. Sub. for H. B. 4141, Com. Sub. for H. B. 4257, Com. Sub. for H. B. 4295, Com. Sub. for H. B. 4324, Com. Sub. for H. B. 4345, Com. Sub. for H. B. 4373, Com. Sub. for H. B. 4380, Com. Sub. for H. B. 4408, Com. Sub. for H. B. 4418, Com. Sub. for H. B. 4420, Com. Sub. for H. B. 4426, Com. Sub. for H. B. 4430, H. B. 4433, H. B. 4438, Com. Sub. for H. B. 4461, H. B. 4462, H. B. 4463, Com. Sub. for H. B. 4466, Com. Sub. for H. B. 4479, Com. Sub. for H. B. 4484, H. B. 4496, Com. Sub. for H. B. 4497, Com. Sub. for H. B. 4499, Com. Sub. for H. B. 4511, Com. Sub. for H. B. 4563, Com. Sub. for H. B. 4565, H. B. 4566, Com. Sub. for H. B. 4570, H. B. 4571, Com. Sub. for H. B. 4629, Com. Sub. for H. B. 4631, H. B. 4642, H. B. 4647, H. B. 4649, Com. Sub. for H. B. 4675, H. B. 4743, H. B. 4758, H. B. 4769, H. B. 4778, Com. Sub. for H. B. 4779, Com. Sub. for H. B. 4785, Com. Sub. for H. B. 4797, H. B. 4827, H. B. 4829 and H. B. 4847; and on March 30, 2022, he approved Com. Sub. for S. B. 268, Com. Sub. for S. B. 312, Com. Sub. for S. B. 334, Com. Sub. for S. B. 419, Com. Sub. for S. B. 434, Com. Sub. for S. B. 438, Com. Sub. for S. B. 463, Com. Sub. for S. B. 487, S. B. 492, S. B. 499, Com. Sub. for S. B. 505, S. B. 529, Com. Sub. for S. B. 530, Com. Sub. for S. B. 533, Com. Sub. for S. B. 552, Com. Sub. for S. B. 553, Com. Sub. for S. B. 582, Com. Sub. for

**S. B. 610, Com. Sub. for S. B. 611, Com. Sub. for S. B. 641, Com. Sub. for S. B. 650, Com. Sub. for S. B. 656, S. B. 686, Com. Sub. for S. B. 694, Com. Sub. for S. B. 704, S. B. 713, S. B. 726, H. B. 2631, Com. Sub. for H. B. 2733, Com. Sub. for H. B. 2910, Com. Sub. for H. B. 3223, Com. Sub. for H. B. 3231, Com. Sub. for H. B. 4002, Com. Sub. for H. B. 4008, Com. Sub. for H. B. 4012, H. B. 4019, Com. Sub. for H. B. 4059, Com. Sub. for H. B. 4084, H. B. 4097, H. B. 4110, Com. Sub. for H. B. 4112, Com. Sub. for H. B. 4113, Com. Sub. for H. B. 4126, Com. Sub. for H. B. 4242, Com. Sub. for H. B. 4282, Com. Sub. for H. B. 4285, H. B. 4286, H. B. 4288, H. B. 4291, H. B. 4296, Com. Sub. for H. B. 4297, H. B. 4307, Com. Sub. for H. B. 4311, Com. Sub. for H. B. 4329, H. B. 4331, Com. Sub. for H. B. 4333, Com. Sub. for H. B. 4336, Com. Sub. for H. B. 4340, Com. Sub. for H. B. 4353, H. B. 4355, Com. Sub. for H. B. 4377, Com. Sub. for H. B. 4393, H. B. 4396, Com. Sub. for H. B. 4406, Com. Sub. for H. B. 4410, H. B. 4419, Com. Sub. for H. B. 4450, Com. Sub. for H. B. 4451, Com. Sub. for H. B. 4489, Com. Sub. for H. B. 4491, Com. Sub. for H. B. 4492, Com. Sub. for H. B. 4502, H. B. 4517, H. B. 4535, Com. Sub. for H. B. 4540, Com. Sub. for H. B. 4559, Com. Sub. for H. B. 4560, Com. Sub. for H. B. 4562, Com. Sub. for H. B. 4567, H. B. 4568, H. B. 4578, Com. Sub. for H. B. 4583, Com. Sub. for H. B. 4596, H. B. 4604, Com. Sub. for H. B. 4608, Com. Sub. for H. B. 4634, Com. Sub. for H. B. 4636, Com. Sub. for H. B. 4644, Com. Sub. for H. B. 4662, Com. Sub. for H. B. 4667, Com. Sub. for H. B. 4668, Com. Sub. for H. B. 4688, Com. Sub. for H. B. 4712, Com. Sub. for H. B. 4756, H. B. 4773, Com. Sub. for H. B. 4787 and H. B. 4848.**

The following bills became law without the signature of the Governor:

**Com. Sub. for H. B. 4003,** Relating generally to commercial benefit of substances removed from waters of the state by the treatment of mine drainage,

**Com. Sub. for H. B. 4488,** Relating to coal mining and changing fees for permitting actions,

**Com. Sub. for H. B. 4826,** Relating to e-sports,

**Com. Sub. for S. B. 262**, Relating generally to financial institutions engaged in boycotts of energy companies,

**Com. Sub. for S. B. 476**, Relating to imposition of minimum severance tax on coal,

And.

**S. B. 714**, Relating to tie votes by Coal Mine Safety and Technical Review Committee.

Actions of His excellency, the Governor, on other bills are indicated in communications, addressed to the Secretary of State, as follows:

Office of the Governor  
1900 Kanawha Blvd., East  
Charleston, WV 25305

March 18, 2022

**VIA HAND DELIVERY**

The Honorable Mac Warner  
Secretary of State  
Building 1, Suite 157-K  
State Capitol  
Charleston, West Virginia 25305

Re: Enrolled Committee Substitute for Senate Bill No. 250

Dear Secretary Warner:

Pursuant to the provisions of Section Fifty-One, Article VI of the Constitution of West Virginia, I hereby return Enrolled Committee Substitute for Senate Bill No. 250, passed March 12, 2022, approved with the following objection:

My objection is to item 407, in its entirety, on page 190, which states:

## “407 - Department of Revenue

(WV Code Chapter 11)

Fund 0465 FY 2023 org 0701

## General Revenue Fund –

|                              |               |
|------------------------------|---------------|
| Transfer - Surplus.....xxxxx | \$265,000,000 |
|------------------------------|---------------|

The above appropriation for General Revenue Fund - Transfer - Surplus (fund 0465, appropriation #####) shall be credited to Fiscal Year 2023 General Revenue collections.

With the failure of the House Bill to eliminate the Personal Income Tax, HB 4007 and the passage of the Rainy Day Funds bill, SB 487, essentially eliminating the transfer of surpluses to the Rainy Day fund, there is absolutely no reason to set aside surplus revenues in a random agency without any general law purpose.

Further, it would set a bad precedent to set aside funds for a purpose that the Legislature rejected. It would also set bad precedent to appropriate funds to a fund for which there is no stated purpose, doing nothing to accomplish the intended goal but making the funds unavailable for an entire year. As a good steward of taxpayer dollars, I want to be as transparent as possible when it comes to how we are spending the taxpayers' money, let alone the surpluses we have been blessed with by making the right, thoughtful moves.

For the reasons stated herein, I have approved, subject to the above objections, Enrolled Committee Substitute for Senate Bill No. 250.

Sincerely,

Jim Justice,  
*Governor.*

Office of the Governor  
1900 Kanawha Blvd., East  
Charleston, WV 25305

March 18, 2021

**VIA HAND DELIVERY**

The Honorable Mac Warner  
Secretary of State  
Building 1, Suite 157-K  
State Capitol  
Charleston, West Virginia 25305

Re: Enrolled Committee Substitute for Senate Bill No. 625

Dear Secretary Warner:

Pursuant to the provisions of Section Fifty-One, Article VI of the Constitution of West Virginia, I hereby return Enrolled Committee Substitute for Senate Bill No. 625, passed March 10, 2022, approved with the following objection:

My objection is on page 1, line 3, which states the appropriation code “01300” for the “Current Expenses” line item in the amount of \$800,000. The appropriation code for Current Expenses is not “01300”; therefore, I am striking “01300” in line 3.

For the reasons stated herein, I have approved, subject to the above objections, Enrolled Committee Substitute for Senate Bill No. 625.

Sincerely,

Jim Justice,  
*Governor.*

Office of the Governor  
1900 Kanawha Blvd., East  
Charleston, WV 25305

March 29, 2022

**VIA HAND DELIVERY**

The Honorable Mac Warner  
Secretary of State  
State Capitol Complex  
Building 1, Suite 157-K  
Charleston, West Virginia 25305

Re: Enrolled Senate Bill 729

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of the State of West Virginia, I hereby disapprove and return Enrolled Senate Bill 729. I completely support the concepts embodied by this legislation, including the creation of two new funds in the State Treasury known as the “Infrastructure Investment Reimbursement Fund” and the “Economic Development Project Fund,” and the various requirements placed on use of the funds so they will be held until they can be used when truly needed, for high impact projects. Unfortunately, however, the bill contains a fatal technical flaw that renders me unable to sign it into law.

The title of the bill states, among other things, that the bill permits the Economic Development Authority to invest the moneys in the Economic Development Project Fund. The language providing investment and reinvestment authority was removed from the bill after origination, perhaps inadvertently in the last days of the Regular Session, but the title retains the reference. With the amount of money intended to go into this Fund, we must be certain to be able to invest these dollars and earn a return. The original intent of this bill was to create a self-sustaining fund available for investment in economic development. Since 2005, the interest earned on economic development loans has served as the primary source for further lending capacity. The ability to invest these funds is absolutely key in accomplishing the intent of the legislation. We must not let this money sit idly and forego investment earnings that will allow us to reinvest in even more opportunities for economic growth around this State.

For this reason, I must disapprove and return Enrolled Senate Bill 729, but I will work with leadership in both the House of Delegates and the Senate to arrange for a Special Session within the next 30 days to revisit this important bill, addressing the concerns addressed in this letter. An unfortunate victim of this disapproval is the loss of the “Infrastructure Investment Reimbursement Fund,” that will benefit our Department of Transportation and enable even more great work on the roads of this State. I will ask the Legislature to be sure to include this vital piece of the legislation to their work in the upcoming Special Session.

Finally, I will note that, because these are surplus dollars at issue, the subject transfer of monies will not occur until August at the earliest. In order to ensure the utmost confidence in this process, however, I am directing the Economic Development Authority to use any funds that may be transferred only in conformance with the intent of this legislation until the upcoming Special Session.

Sincerely,

Jim Justice,  
*Governor.*

Office of the Governor  
1900 Kanawha Blvd., East  
Charleston, WV 25305

March 30, 2022

**VIA HAND DELIVERY**

The Honorable Mac Warner  
Secretary of State  
State Capitol Complex  
Building 1, Suite 157-K  
Charleston, West Virginia 25305

Re: Enrolled House Bill 2300

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of the State of West Virginia, I hereby disapprove and return Enrolled House Bill 2300. I completely support the concept embodied by this legislation, to include Family Court Judges in the Judges' Retirement System; however, the bill materially conflicts with an important piece of legislation that is required to update the various retirement systems throughout the State to ensure those systems comply with federal law.

Because this bill would undermine the vital updates to all retirement systems in our state provided for in Enrolled House Bill 4540, I unfortunately must disapprove and return Enrolled House Bill 2300. I look forward to working with Legislative leadership to reintroduce this legislation with the inclusion of those necessary changes made by Enrolled House Bill 4540. I fully support providing Family Court Judges with the opportunity to participate in the Judges' Retirement System and believe that we can work swiftly to accomplish this goal.

Sincerely,

Jim Justice,  
*Governor.*

Office of the Governor  
1900 Kanawha Blvd., East  
Charleston, WV 25305

March 30, 2022

**VIA HAND DELIVERY**

The Honorable Mac Warner .  
Secretary of State  
State Capitol Complex  
Building 1, Suite 157-K  
Charleston, West Virginia 25305

Re: Enrolled Committee Substitute for House Bill 4001



Dear Secretary Warner: .

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill 4001, which generally relates to broadband. Although I fully support the intent of this legislation and have worked tremendously to expand broadband access across the State, this bill contains fatal flaws and provisions which are prohibited by federal law. .

For example, Enrolled Committee Substitute for House Bill 4001 establishes, within \*31 G7-2, rate and billing regulations that are prohibited by the Federal Communications Act of 1934, 47 U.S.C. 151 *et seq.*, 47 U.S.C. 542, and 47 C.F.R. 54.712. If this law were to become effective, the bill would be subject to a federal court injunction, potentially delaying the deployment of vital broadband throughout this State.

Additional concerns have been expressed by many broadband providers of all sizes that do business in the State, from the West Virginia Office of Broadband, from members of the Broadband Enhancement Council, and from local government officials, all of whom have significant experience in broadband expansion projects around the State.

For these reasons, I must disapprove and return Enrolled Committee Substitute for House Bill 4001 as it was presented to me. I have directed the Department of Economic Development to work with Legislative leadership, the sponsors of this bill, and all interested and knowledgeable parties to revisit and perfect this important legislation. This group includes, but is not limited to, consumer advocates, the Public Service Commission, and the Broadband Enhancement Council. I will request the Legislature take up this important matter, with input from all interested parties, in the upcoming Special Session to make sure the deployment of broadband all over this State is as efficient and is as successful as possible.

Sincerely,

Jim Justice,  
*Governor.*

Office of the Governor  
1900 Kanawha Blvd., East  
Charleston, WV 25305

March 30, 2022

**VIA HAND DELIVERY**

The Honorable Mac Warner  
Secretary of State  
State Capitol Complex  
Building 1, Suite 157-K  
Charleston, West Virginia 25305

Re: Enrolled House Bill 4020

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of the State of West Virginia, I hereby disapprove and return Enrolled House Bill 4020. The Department of Health and Human Resources (the “DHHR”) works diligently every day to support the health and safety of all West Virginians across our State. There have been issues, however, within the DHHR for decades, and some of those issues are likely the result of the sheer size and diverse scope of the agency. While I certainly understand the motivation of this legislation, Enrolled House Bill 4020 as presented to me does not fully accomplish the expressed intent.

First, the bill was introduced to address the expansive size and scope of the DHHR. The statutory provisions relevant to the DHHR span many sections across various chapters and articles of the West Virginia Code. The bill intends in just eight pages and by amending just two sections of Code, however, to divide this complex organization that manages over \$7 billion dollars of State and Federal funds and employs thousands of individuals across the State. The bill as presented does not provide adequate direction on the many questions that must be addressed in this massive endeavor, including important questions regarding how the federal funds will flow to ensure we don’t jeopardize significant federal funding. This bill also purports to divide the DHHR into two new

agencies, effective January 1, 2023. Budgetary changes, however, may not be made effective until July 1, 2023,' under the bill. It is unclear how the different effective dates could work in concert.

For the above reasons, I must disapprove and return Enrolled House Bill 4020. I am committed, however, to address and correct the very real issues within DHHR. I am engaging national experts and industry leaders to coordinate and complete a top-to-bottom review of DHHR so that we may clearly identify the issues, bottlenecks, and inefficiencies in the agency in its current form. We will work to develop a plan to address any and all problems identified in an efficient and effective way—which may very well require a full reorganization of the agency—that will best serve the people of the State of West Virginia without any lapse in vital support or services. I look forward to working with the Legislature and interested parties in developing and implementing that plan.

Sincerely,

Jim Justice,  
*Governor.*

Office of the Governor  
1900 Kanawha Blvd., East  
Charleston, WV 25305

March 30, 2022

**VIA HAND DELIVERY**

The Honorable Mac Warner  
Secretary of State  
State Capitol Complex  
Building 1, Suite 157-K  
Charleston, West Virginia 25305

Re: Enrolled Senate Bill 573

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of the State of West Virginia, I hereby disapprove and return Enrolled Senate Bill 573. This bill requests the Chief Justice of the Supreme Court of Appeals to develop a system to rotate magistrates temporarily. I support this concept as it would work to increase efficiency in the magistrate court system throughout the State. Unfortunately, there is a Code conflict between the provisions of this bill and the provisions of Enrolled House Bill 2910, which latter bill is needed to create a more balanced magistrate system and provide a more feasible caseload for magistrates throughout the State.

Because the provisions of Enrolled Senate Bill 573 conflict with the provisions of another necessary law meant to provide a more permanent solution to the problem of large caseloads for our magistrates, I must disapprove and return Enrolled Senate Bill 573. I look forward to working with the leadership in both the House of Delegates and the Senate to reintroduce this legislation in the future, incorporating the changes made by Enrolled House Bill 2910, to ensure that once magistrates' caseloads are addressed, we can continue to increase the efficiency of our State's court system.

Sincerely,

Jim Justice,  
*Governor.*

### **Miscellaneous Business**

Pursuant to House Rule 132, unanimous consent was requested and obtained to print the remarks of the following Members in the Appendix to the Journal:

- Delegate Hanshaw, Mr. Speaker regarding Com. Sub. for S. B. 250
- Delegate Kessinger regarding Com. Sub. for S. B. 468
- Delegate Steele regarding Com. Sub. for H. B. 4025

- Delegate Linville regarding Com. Sub. for S. B. 262 on yesterday

Delegate Summers filed an Absent Vote Explanation, indicating that she would have voted “Yea” on Com. Sub. for S. B. 533.

Delegate Sypolt filed an Absent Vote Explanation, indicating that she would have voted “Yea” on H. B. 3073, Com. Sub. for H. B. 4001, Com. Sub. for H. B. 4012, Com. Sub. for H. B. 4340, Com. Sub. for H. B. 4502, Com. Sub. for S. B. 463 and Com. Sub. for S. B. 530.

The constitutional expiration of the Regular Session having arrived, the House of Delegates was adjourned *sine die* at 12:00 midnight on March 12, 2022.

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*We hereby certify that the forgoing record of the proceedings of the House of Delegates, Second Regular Session, 2022, is the Official Journal of the House of Delegates for said session.*

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Roger Hanshaw  
*Speaker of the House of Delegates*

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Stephen J. Harrison  
*Clerk of the House of Delegates*





