

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-THIRD LEGISLATURE
REGULAR SESSION, 2017
NINTH DAY

Charleston, West Virginia, Thursday, February 16, 2017

The Senate met at 11 a.m.

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

Prayer was offered by Pastor Chad Cowan, Pastor of Care Ministries, Bible Center Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Michael J. Romano, a senator from the twelfth district.

Pending the reading of the Journal of Wednesday, February 15, 2017,

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

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

The Clerk presented the following communications from various state agencies as required by the provisions of law:

Transportation, Department of

Office of Administrative Hearings (§17C-5C-2)

Office of Tax Appeals (§11-10A-7)

The Senate then proceeded to the third order of business.

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

Eng. Com. Sub. for House Bill 2006—A Bill to amend and reenact §6C-1-6 of the Code of West Virginia, 1931, as amended, relating to increasing the penalties for violating the Whistle-Blower Law; increasing the civil fine; clarifying that the civil fine is a personal liability; removing the authority of the court to suspend a person from public service; authorizing a Court's finding of

a violation to be deemed a finding of official misconduct and malfeasance in office; providing that a court finding of a violation may be relied upon as admissible evidence in any subsequent proceeding or petition to remove the person from public office; authorizing a Court's finding of a violation to be relied upon by the public body as a basis to impose discipline upon an employee; and clarifying that a civil action, civil penalty or a court finding under this section is not a condition or prerequisite for a public body to take disciplinary action.

Referred to the Committee on the Judiciary.

The Senate proceeded to the fourth order of business.

Senator Sypolt, from the Committee on Agricultural and Rural Development, submitted the following report, which was received:

Your Committee on Agricultural and Rural Development has had under consideration

Senate Bill 25, Creating farm-to-food bank tax credit.

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

Respectfully submitted,

Dave Sypolt,
Chair.

The bill, under the original double committee reference, was then referred to the Committee on Finance.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 132, 133, 134, 135, 136 and 137, DNR rule relating to point system for revocation of hunting; repeal.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill 134 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §64-10-1 and §64-10-2 of the Code of West Virginia, 1931, as amended, all relating to authorizing the Division of Natural Resources to promulgate a legislative rule relating to the point system for the revocation of hunting – repeal; authorizing the Division of Natural Resources to promulgate a legislative rule relating to revocation of hunting and fishing licenses; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special waterfowl hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to the commercial sale of wildlife; authorizing the Division of Natural Resources to promulgate a legislative rule relating to miscellaneous permits and licenses; and authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to certification, recertification and training of EMT-Miners and the certification of EMT-M instructors.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 202, Limiting pawnbrokers from purchasing gift cards as pawn.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill 202 (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §47-26-2a, relating generally to pawnbrokers; prohibiting pawnbrokers from purchasing, accepting in pawn, receiving in trade, accepting in exchange for goods any general-use prepaid card, gift certificate or store gift card; creating misdemeanor offense of pawnbrokers purchasing, accepting in pawn, receiving in trade or exchanging for goods a general-use prepaid card, gift certificate or store gift card; defining terms; creating exceptions; and establishing penalties.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Swope, from the Committee on the Workforce, submitted the following report, which was received:

Your Committee on the Workforce has had under consideration

Senate Bill 222, Providing disqualification for unemployment benefits for individual who left or lost job as result of strike.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill 222 (originating in the Committee on the Workforce)—A Bill to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended, relating to disqualification for unemployment benefits; providing that an individual is disqualified for benefits for any week or portion of a week in which he or she left or lost his or her job as a result of a strike or other bona fide labor dispute; clarifying that a lockout is not a strike; providing that operation of a facility by nonstriking employees, contractors or other personnel is not reason to grant benefits; establishing the circumstances when a worker is determined to leave or lose employment by reason of a lockout; providing the circumstances when a worker is determined to be permanently replaced by another employee; providing that contractors or employees who perform the work of

a striking worker on a temporary basis are not to be determined to have permanently replaced a striking worker; and describing the circumstances under which employees and contractors are hired to perform striking employees' work on a temporary basis.

With the recommendation that the committee substitute do pass; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Chandler Swope,
Chair.

The bill (Com. Sub. for S. B. 222), under the original double committee reference, was then referred to the Committee on the Judiciary.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 249, Relating to information required in abstract of judgment.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill 249 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §38-3-4 of the Code of West Virginia, 1931, as amended, relating generally to the information required in an abstract of judgment; including, to the extent possible, the present address and date of birth of the judgment debtor in abstract of judgment; and clarifying that compliance with this section does not constitute a violation of state law or create a civil cause of action.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

The Senate proceeded to the sixth order of business.

On motions for leave, severally made, the following bills were introduced, read by their titles and referred to the appropriate committees:

By Senators Woelfel, Plymale, Palumbo and Stollings:

Senate Bill 329—A Bill to amend and reenact §60A-1-101 of the Code of West Virginia, 1931, as amended; to amend and reenact §60A-2-204 of said code; and to amend said code by adding thereto a new section, designated §60A-4-414, all relating to addressing the recent increase in fentanyl, fentanyl derivatives and analogs, including misrepresented substances, in this state; defining "fentanyl derivative or analog"; adding fentanyl derivative or analog to the list of Schedule I drugs and substances; creating a felony offense for manufacturing, possessing, distributing, dispensing, or transporting any quantity of fentanyl, or any fentanyl derivative or analog, unless

otherwise authorized, and providing penalties; creating a felony offense for selling or distributing any Schedule I controlled substance while misrepresenting the identity of the Schedule I controlled substance being sold or distributed as a legitimate pharmaceutical product and providing penalties; and stating that these new felony offenses are separate offenses from others in the code.

Referred to the Committee on the Judiciary; and then to the Committee on Health and Human Resources.

By Senators Trump, Boso and Blair:

Senate Bill 330—A Bill to amend and reenact §21-5G-1 and §21-5G-7 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Workplace Freedom Act; eliminating the term “state” from the definitions section of the act; eliminating provisions addressing the construction of the West Virginia Workplace Freedom Act; eliminating language regarding the applicability of the West Virginia Workplace Freedom Act to collective bargaining or collective bargaining agreements in the building and construction industry; clarifying dates of applicability; and specifying that changes are to be applied retroactively.

Referred to the Committee on the Judiciary.

By Senators Sypolt, Smith, Boso, Blair, Cline and Miller:

Senate Bill 331—A Bill to amend and reenact §11-14C-2 and §11-14C-9 of the Code of West Virginia, 1931, as amended, all relating to exempting heating oil for residential use from the motor fuel excise tax.

Referred to the Committee on Finance.

By Senators Sypolt, Boso, Smith and Miller:

Senate Bill 332—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17A-3-7a, relating to providing for the refusal to renew a motor vehicle registration for failure to pay child support payments for six months or more.

Referred to the Committee on the Judiciary.

By Senators Takubo, Palumbo, Stollings, Romano, Cline and Maroney:

Senate Bill 333—A Bill to amend and reenact §60A-9-5a of the Code of West Virginia, 1931, as amended, relating to requiring any in- or out-patient facility licensed by the Secretary of the Department of Health and Human Resources to access the West Virginia Controlled Substances Monitoring Database; providing for inclusion in a patient’s medical chart of the information obtained; and providing for rulemaking.

Referred to the Committee on Health and Human Resources; and then to the Committee on the Judiciary.

By Senators Weld, Cline and Miller:

Senate Bill 334—A Bill to amend and reenact §61-8-19 of the Code of West Virginia, 1931, as amended, relating to cruelty to animals; creating the felony offense of aggravated cruelty to animals; and providing a criminal penalty for the offense.

Referred to the Committee on the Judiciary.

By Senators Karnes, Carmichael (Mr. President), Maroney, Mullins, Maynard, Weld, Clements, Ferns, Cline, Smith, Sypolt, Rucker, Azinger, Swope, Blair, Gaunch, Takubo, Boso, Mann and Trump:

Senate Bill 335—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13A-26; to amend said code by adding thereto a new section, designated §11-15-34; to amend said code by adding thereto a new section, designated §11-15A-30; to amend said code by adding thereto a new article, designated §11-15C-1, §11-15C-2, §11-15C-3, §11-15C-4, §11-15C-5, §11-15C-6, §11-15C-7, §11-15C-8, §11-15C-9, §11-15C-10, §11-15C-11, §11-15C-12, §11-15C-13, §11-15C-14, §11-15C-15, §11-15C-16, §11-15C-17, §11-15C-18, §11-15C-19, §11-15C-20, §11-15C-21, §11-15C-22, §11-15C-23, §11-15C-24, §11-15C-25, §11-15C-26 and §11-15C-27; to amend said code by adding thereto a new section, designated §11-21-97; to amend said code by adding thereto a new article, designated §11-21A-1, §11-21A-2, §11-21A-3, §11-21A-4, §11-21A-5, §11-21A-6 and §11-21A-7; and to amend and reenact §11-24-4 of said code, all relating generally to the prospective repeal of the consumers sales and service tax and of the use tax; repealing personal income tax and the phase out and repeal of corporation net income tax and to the enactment of the general consumption tax law and of the temporary single rate income tax; making findings; defining terms; imposing the tax; authorizing exemptions; providing compliance procedures; and establishing an effective date with respect thereto.

Referred to the Select Committee on Tax Reform; and then to the Committee on Finance.

By Senators Trump, Boso, Blair, Romano, Sypolt and Maroney:

Senate Bill 336—A Bill to amend and reenact §29-22B-1101 of the Code of West Virginia, 1931, as amended, relating to increasing number of limited video lottery terminals allowed at retail locations; requiring Lottery Commission to conduct bid only open to current permit holders prior to September 1, 2017, for permits expiring June 30, 2021; and establishing procedure for bid process.

Referred to the Committee on the Judiciary; and then to the Committee on Finance.

By Senator Blair:

Senate Bill 337—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §25-1-11f, relating to the hiring of correctional officers without regard to their placement on the correctional officer register.

Referred to the Committee on Government Organization; and then to the Committee on the Judiciary.

By Senators Trump, Smith, Blair, Swope, Azinger, Mullins, Ferns, Weld, Gaunch and Cline:

Senate Bill 338—A Bill to amend and reenact §55-7B-2, §55-7B-4, §55-7B-10 and §55-7B-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §55-7B-9e, all relating to medical professional liability; defining the term “occurrence”; providing venue preference; establishing an attorney’s fee schedule based upon amount recovered; establishing the effective date; and providing for severability.

Referred to the Committee on the Judiciary.

By Senators Takubo, Cline and Maroney:

Senate Bill 339—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-52-1, §16-52-2, §16-52-3, §16-52-4, §16-52-5 and §16-52-6, all relating to creating a legislative coalition on chronic pain management; setting forth findings

and purpose; providing for administrative functions of the coalition to be performed by legislative staff; setting forth membership of the coalition; providing for appointments to be made by the President of the Senate and Speaker of the House of Delegates; setting forth powers and duties of the coalition; setting forth required reporting; setting forth reporting data elements; providing for compensation of members; and providing a sunset date.

Referred to the Committee on Health and Human Resources; and then to the Committee on Government Organization.

Senators Sypolt, Boso and Maroney offered the following resolution:

Senate Concurrent Resolution 16—Urging West Virginia’s congressional delegation to require the federal Department of Health and Human Services to renegotiate state Medicaid expansion contracts to allow new ideas that have been approved for other states to be incorporated into existing contracts of any state.

Whereas, When the federal Department of Health and Human Services has allowed another state to do something different with its Medicaid expansion contracts, then it should be required to allow other states to include these other “new” options in their contracts, at least every four years; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of the State of West Virginia urges West Virginia’s congressional delegation to require the federal Department of Health and Human Services to renegotiate state Medicaid expansion contracts to allow new ideas that have been approved for other states to be incorporated into existing contracts of any state; and, be it

Further Resolved, That Clerk of the Senate is hereby directed to forward a copy of this resolution to: United States Senators Joe Manchin III and Shelley Moore Capito; and to Congressional Representatives David McKinley, Alex Mooney and Evan Jenkins.

Which, under the rules, lies over one day.

Senators Karnes, Plymale, Romano, Gaunch, Sypolt, Blair, Cline, Trump, Swope, Maroney, Smith, Mann and Rucker offered the following resolution:

Senate Resolution 14—Designating Thursday, February 16, 2017, as West Virginia Homeschool Day at the Capitol.

Whereas, The State of West Virginia is committed to excellence in education; and

Whereas, The State of West Virginia recognizes that parental involvement and individualized attention to educational success are the unique and basic ingredients of homeschooling; and

Whereas, Homeschooled students exhibit self-confidence and good citizenship and are prepared academically to meet the challenges of today’s society; and

Whereas, Contemporary studies continue to confirm that children who are educated at home score exceptionally well on nationally-normed achievement tests; and

Whereas, Homeschooled students have scored above the national average on the SAT and on the ACT tests; and

Whereas, Homeschooled students have been shown to be competitive with publicly and privately schooled students at the college level; therefore, be it

Resolved by the Senate:

That the Senate hereby designates Thursday, February 16, 2017, as West Virginia Homeschool Day at the Capitol; and, be it

Further Resolved, That the Senate hereby recognizes all West Virginia homeschool families for their dedication to excellence and their success in the education of West Virginia's children; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the West Virginia Home Educators Association and the Christian Home Educators of West Virginia.

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

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and proceeded to the seventh order of business.

Senate Concurrent Resolution 13, US Army CPL James Russell Carter Memorial Road.

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

Senate Concurrent Resolution 14, US Army PVT Oren J. "Junior" Johnson Memorial Bridge.

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

Senate Concurrent Resolution 15, Herbert "Herb" Linkous Bridge.

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

The Senate proceeded to the eighth order of business.

Eng. Senate Bill 174, Exempting transportation of household goods from PSC jurisdiction.

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

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

The Senate proceeded to the ninth order of business.

Com. Sub. for Senate Bill 127, Authorizing Department of Revenue to promulgate legislative rules.

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

Com. Sub. for Senate Bill 230, Relating to WV officials carrying concealed firearm nationwide.

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

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

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

The Senate proceeded to the tenth order of business.

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

Com. Sub. for Senate Bill 116, Governor's Committee on Crime, Delinquency and Correction rule relating to law-enforcement training and certification standards.

Senate Bill 172, Eliminating salary for Water Development Authority board members.

Senate Bill 215, Allowing county commissions authority to amend proposed rates, fees and charges proposed by public service districts.

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

And,

Com. Sub. for Senate Bill 248, Clarifying composition and chairmanship of Commission on Special Investigations.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Woelfel.

Thereafter, at the request of Senator Blair, and by unanimous consent, the remarks by Senator Woelfel were ordered printed in the Appendix to the Journal.

Pending announcement of meetings of standing and select committees of the Senate,

On motion of Senator Ferns, the Senate adjourned until tomorrow, Friday, February 17, 2017, at 11 a.m.

SENATE CALENDAR

**Friday, February 17, 2017
11:00 AM**

SPECIAL ORDER OF BUSINESS Thursday, March 09, 2017 – 11:00 AM

Consideration of executive nominations

UNFINISHED BUSINESS

S. C. R. 16 - Urging WV congressional delegation require DHHR renegotiate state Medicaid expansion contracts

THIRD READING

Eng. Com. Sub. for S. B. 127 - Authorizing Department of Revenue to promulgate legislative rules (original similar to HB2230)

Eng. S. B. 174 - Exempting transportation of household goods from PSC jurisdiction

Eng. Com. Sub. for S. B. 230 - Relating to WV officials carrying concealed firearm nationwide

Eng. Com. Sub. for S. B. 233 - Excluding from protection oral communications uttered in child care center under Wiretapping and Electronic Surveillance Act (original similar to HB2505)

SECOND READING

Com. Sub. for S. B. 116 – Governor's Committee on Crime, Delinquency and Correction rule relating to law-enforcement training and certification standards (original similar to HB2252)

S. B. 172 - Eliminating salary for Water Development Authority board members

S. B. 215 - Allowing county commissions authority to amend proposed rates, fees and charges proposed by public service districts

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

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

FIRST READING

- Com. Sub. for S. B. 134 - Authorizing Bureau of Commerce to promulgate legislative rules (original similar to HB2231)
- Com. Sub. for S. B. 202 - Relating to pawnbrokers generally (original similar to HB2452)
- Com. Sub. for S. B. 249 - Relating to information required in abstract of judgment

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2017

Friday, February 17, 2017

9 a.m.	Judiciary	(Room 208W)
9:30 a.m.	Confirmations	(Room 451M)
1 p.m.	Select Committee on Tax Reform	(Room 451M)