

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2016
TWENTY-EIGHTH DAY

Charleston, W. Va., Tuesday, February 9, 2016

The Senate met at 11 a.m.

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

Prayer was offered by the Reverend Jim Walther, Jr., St. Andrew Presbyterian Church, Pinch, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Ronald F. Miller, a senator from the tenth district.

Pending the reading of the Journal of Monday, February 8, 2016,

At the request of Senator Ashley, 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 a communication from the Court of Claims, submitting its annual report as required by §14-2-25 of the Code of West Virginia.

Which communication and report were received and filed with the Clerk.

The Senate then proceeded to the third order of business.

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

Eng. Com. Sub. for Senate Bill 342, Decreasing appropriations from State Fund, General Revenue, to DHHR, Division of Human Services and Bureau of Senior Services.

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

Eng. Senate Bill 357, Supplemental appropriation from Lottery Net Profits to Bureau of Senior Services, Lottery Senior Citizens Fund.

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

Eng. Senate Bill 360, Supplemental appropriation to Division of Human Services.

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

Eng. Com. Sub. for House Bill 2101, Eliminating obsolete government entities.

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 2366—A Bill to amend and reenact §61-3C-14b of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8A-4 of said code, all relating generally to the solicitation of minors; clarifying the law pertaining to the use of a computer to solicit a minor; creating a new felony offense of soliciting a minor through use of a computer and committing any overt act designed to bringing himself or herself within the physical presence of the minor to engage in prohibited sexual activity with the minor; establishing penalties; establishing the offense as a lesser included crime; and prohibiting the use or distribution of obscene materials by an adult to solicit or seduce a person who is known or believed to be a minor at least four years younger than the adult for unlawful sexual activity.

Referred to the Committee on the Judiciary.

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 2511—A Bill to amend and reenact §33-15-1 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §33-15F-1, §33-15F-2 and §33-15F-3; and to amend and reenact §33-16-1 of said code, all relating to creating the “Health Care Sharing Ministries Freedom to Share Act;” exempting health care sharing ministries from state statutory requirements of individual and group accident and health insurance policies; setting forth the conditions that must be met; providing a short title; and defining a term.

Referred to the Committee on Banking and Insurance.

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 4145—A Bill to repeal §20-2-6a of the Code of West Virginia, 1931, as amended; to amend and reenact §61-7-3, §61-7-4, §61-7-6 and §61-7-11a of said code; and to amend said code by adding thereto two new sections, designated §61-7-4a and §61-7-15a, all relating to carry or use of a handgun or deadly weapon; establishing that criminal penalties for carrying a concealed deadly weapon without state license or other lawful authorization applies only to persons under twenty-one years of age and prohibited persons; requiring an applicant for a concealed weapon permit be a United States citizen or legal resident thereof, a resident of this state and of the county in which application is made; permitting persons eighteen years and older to obtain a concealed carry permit; requiring actual live firing of ammunition in training; requiring an applicant for a concealed carry permit to provide a copy of instructor’s certification; requiring that on or after January 1, 2017, all duplicate license cards issued by county sheriffs be uniform across all fifty-five

counties and feature a photograph of the licensee; requiring State Police, in cooperation with the Sheriffs' Bureau of Professional Standards, prepare uniform applications for licenses and license cards; entitling a person who is granted a license and pays fees under Chapter 61, Article 7 after the effective date of §61-7-4 to a tax credit equal to the amount actually paid not to exceed \$100; creating a provisional license to carry concealed deadly weapons for persons between eighteen and twenty-one years of age; establishing provisional license application requirements and procedures; exempting members of the United States Armed Forces, Reserve or National Guard from permit requirements; permitting prosecuting attorneys, assistant prosecuting attorneys or investigators employed by a prosecuting attorney to elect to carry a concealed firearm pursuant to the federal Law Enforcement Officers Safety Act; eliminating the requirement for persons twenty-one years of age and older to possess a permit to carry a concealed deadly weapon provided that certain conditions are met, including being a United States citizen or legal resident, being twenty-one years of age or older and not prohibited from possessing firearms; providing that a person who displays a valid photo identification or concealed weapon permit may not be unreasonably detained for purposes of verifying whether that person is a prohibited person; requiring a school principal to report certain violations to the State Police; and permitting private schools written policies to govern whether a person may possess a firearm or other deadly weapon in or on a private primary or secondary education building, structure or facility; providing enhanced penalties for use of a firearm during the planning or commission of a felony; and excepting enhanced penalties in certain circumstances when a firearm is used in defense of self or others.

Referred to the Committee on the Judiciary.

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 4163—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto four new sections, designated §8-13-24, §8-13-25, §8-13-26 and §8-13-27, all relating to providing the authority and procedure for municipalities to give notice to, and publish the names of, entities delinquent in paying business and occupation taxes.

Referred to the Committee on Government Organization.

The Senate proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 8th day of February, 2016, 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:

(S. B. 1), Establishing WV Workplace Freedom Act.

And,

(H. B. 4005), Repealing prevailing hourly rate of wages requirements.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
John B. McCuskey,
Chair, House Committee.

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 73, Creating felony crime of knowingly leaving scene of crash resulting in serious bodily injury.

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

Com. Sub. for Senate Bill 73 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §17C-4-1 of the Code of West Virginia, 1931, as amended, relating to crashes involving death or physical injuries; creating crimes of leaving scene of a crash resulting in serious bodily injury and leaving the scene of a crash; defining terms; clarifying knowledge requirement; and providing criminal penalties of fine and imprisonment.

And,

Senate Bill 465, Allowing professional employer insure certain risks through pure insurance captive.

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

Com. Sub. for Senate Bill 465 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §33-31-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-46A-9 of said code, all relating to allowing professional employer organizations to insure certain risks through an insurance captive; establishing that professional employer organizations holding the appropriate license may insure its risks for insurance for accident and sickness as defined in current code; providing that such coverage for all employees and covered employees may be through a captive insurance company; eliminating prohibition against professional employer organizations offering or establishing self-funding health plans; providing that professional employer organizations can offer plans not fully insured by authorized insurers so long as the plan complies with current code requirements; clarifying that all employees covered by a professional employer organization's health benefit plan shall be considered employees of the professional employer organization; and clarifying that health benefit plans offered under this provision shall be treated as a single employer welfare benefit plan.

With the recommendation that the two committee substitutes do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Gaunch, from the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration

Senate Bill 394, Creating felony crime of prohibited sexual contact by psychotherapist.

And reports the same back without recommendation as to passage; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

C. Edward Gaunch,
Chair.

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

Senator Gaunch, from the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration

Senate Bill 429, Adopting National Association of Insurance Commissioners' model.

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

Com. Sub. for Senate Bill 429 (originating in the Committee on Banking and Insurance)—A Bill to amend and reenact §33-24-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-25-6 of said code; to amend and reenact §33-25A-24 of said code; to amend and reenact §33-25D-26 of said code; to amend and reenact §33-40-1, §33-40-2, §33-40-3, §33-40-6 and §33-40-7 of said code; and to amend said code by adding thereto a new article, designated §33-40A-1, §33-40A-2, §33-40A-3, §33-40A-4, §33-40A-5, §33-40A-6, §33-40A-7, §33-40A-8, §33-40A-9, §33-40A-10, §33-40A-11 and §33-40A-12, all relating to risk-based capital; making health organizations subject to statutory provisions concerning risk-based capital reporting; defining terms associated with risk-based capital reporting for health organizations; requiring health organizations to file risk-based capital reports with Insurance Commissioner; requiring health organizations to perform certain actions if risk-based capital report indicates a negative financial trend or hazardous financial condition; requiring Insurance Commissioner to conduct certain actions if risk-based capital report of a health organization indicates negative financial trend or hazardous financial condition; providing health organization right to a confidential hearing with respect to certain notifications; specifying confidential and privileged nature of risk-based capital reports and plans and related matters; prohibiting use of risk-based capital reports in rate-making of a health organization; granting Insurance Commissioner authority to propose rules for legislative approval; providing immunity to Insurance Commissioner and his employees and agents for actions taken with respect to monitoring the financial stability of a health organization; and changing the definition of "company action level event" for a life and health insurer.

Senate Bill 501, Making technical corrections to WV Uniform Trust Code dealing with trusts.

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

Com. Sub. for Senate Bill 501 (originating in the Committee on Banking and Insurance)—A Bill to amend and reenact §38-1-13 of the Code of West Virginia, 1931, as amended; to amend and reenact §44D-1-103 and §44D-1-107 of said code; to amend said code by adding thereto a new section, designated §44D-1-113; to amend and reenact §44D-3-303 of said code; to amend and reenact §44D-4-403, §44D-4-405, §44D-4-409 and §44D-4-414 of said code; to amend and reenact §44D-5-505 of said code; to amend and reenact §44D-6-604 of said code; and to amend and reenact §44D-8-817 of said code, all relating generally to trusts and their administration; and making clarifications, technical improvements and updates.

And,

Senate Bill 517, Clarifying PEIA plans are exempt from regulation by Insurance Commissioner.

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

Com. Sub. for Senate Bill 517 (originating in the Committee on Banking and Insurance)—A Bill to amend and reenact §5-16-22 of the Code of West Virginia, 1931, as amended, relating to the Public Employees Insurance Agency; clarifying that the plans established and administered by the Public Employees Insurance Agency are exempt from regulation by the Insurance Commissioner unless specifically stated otherwise; and providing that the Public Employees Insurance Agency is not an “insurer” or in the “business of insurance”.

With the recommendation that the three committee substitutes do pass.

Respectfully submitted,

C. Edward Gaunch,
Chair.

Senator Gaunch, from the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration

Senate Bill 468, Allowing lender to charge and receive interest on rescindable loan during rescission period.

And,

Senate Bill 472, Providing communication by lender or debt collector is not violation of WV Computer Crime and Abuse Act.

And reports the same back with the recommendation that they each do pass; but under the original double committee references first be referred to the Committee on the Judiciary.

Respectfully submitted,

C. Edward Gaunch,
Chair.

The bills, under the original double committee references, were 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 469, Clarifying what personal funds are exempt from levy following judgment.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on Government Organization has had under consideration

Senate Bill 524, Relating to Board of Barbers and Cosmetologists.

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

Com. Sub. for Senate Bill 524 (originating in the Committee on Government Organization)—A Bill to amend and reenact §30-27-1, §30-27-3, §30-27-4, §30-27-5, §30-27-8, §30-27-8a, §30-27-9, §30-27-10, §30-27-11, §30-27-12, §30-27-13, §30-27-14, §30-27-16, §30-27-17, §30-27-18 and §30-27-19 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-27-8b, all relating to the Board of Barbers and Cosmetologists; providing jurisdiction to the board over hairstyling, makeup, waxing and shampoo assisting; amending definitions and providing for required clock hours of training; licensing of schools or programs by the Department of Education; composition of the board; requiring examinations meet national standards; requiring licensed schools have one chair per student; on-site and temporary services; barber apprentice program; requirements to sponsor a barber apprentice; providing for certification; certification of waxing specialists and make-up artists; reciprocity standards; continuing education requirements; instructor certification; and eliminating biennial license renewal.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Craig Blair,
Chair.

The Senate proceeded to the sixth order of business.

On motions for leave, severally made, the following bill was introduced, read by its title, and referred to the appropriate committee:

By Senator Yost, Kessler, Unger and Ferns:

Senate Bill 559—A Bill supplementing, amending line items and transferring between items of the existing appropriations of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2016, to line 15a, dedicated to the Greater Weirton Area Senior Center, by supplementing, amending and transferring the appropriations for the fiscal year ending June 30, 2016.

Referred to the Committee on Finance.

Senators Miller, Facemire, Leonhardt, Plymale, Williams and Laird offered the following resolution:

Senate Resolution 26—Recognizing Bryan Humphreys for distinction and professionalism as West Virginia's Outstanding Logger.

Whereas, Bryan Humphreys, owner of B. T. Humphreys Logging, is a board member of the West Virginia Forestry Association (WVFA), a member of the West Virginia Loggers Council and the 2014 WVFA Logger of the Year; and

Whereas, Safety is a top priority at B. T. Humphreys Logging and crew members receive proper training and are all West Virginia Certified Loggers; and

Whereas, B. T. Humphreys Logging's attention to detail in application of Best Management Practices, reclamation work and resource utilization is of the utmost importance to B. T. Humphreys Logging in the company's effort to protect and sustain resources for future generations; and

Whereas, In thirteen years of business, B. T. Humphreys Logging has never had a Best Management Practice compliance citation, as the company takes every precaution when harvesting sites; and

Whereas, Bryan Humphreys, for his excellence in logging, was named the 2015 Forest Resources Association's Appalachian Region Outstanding Logger of the Year; and

Whereas, Bryan Humphreys has displayed excellence in his industry and dedicated public service to his community and is a shining example to all West Virginians of what can be accomplished with hard work, dedication and spirit; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes Bryan Humphreys for distinction and professionalism as West Virginia's Outstanding Logger; and, be it

Further Resolved, That the Senate congratulates Bryan Humphreys for being named the 2015 Forest Resources Association's Appalachian Region Outstanding Logger of the Year; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to Bryan Humphreys.

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

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

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Kessler, Leonhardt, Beach, Williams and Laird offered the following resolution:

Senate Resolution 27—Designating February 9, 2016, as Fairness West Virginia Day at the Legislature.

Whereas, Fairness West Virginia is a statewide civil rights advocacy organization dedicated to the fair treatment and civil rights of lesbian, gay, bisexual and transgender West Virginians; and

Whereas, Fairness West Virginia works to ensure lesbian, gay, bisexual and transgender West Virginians can be open, honest and safe at home, work and in the community; and

Whereas, Fairness West Virginia works to promote diversity in West Virginia; and

Whereas, There are 57,000 lesbian, gay, bisexual and transgender West Virginians living, working and raising families in the Mountain State; and

Whereas, The Senate invites all members of the West Virginia Legislature and all citizens of West Virginia to join in recognizing the value and importance of lesbian, gay, bisexual and transgender West Virginians; therefore, be it

Resolved by the Senate:

That the Senate hereby designates February 9, 2016, as Fairness West Virginia Day at the Legislature; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the representatives of Fairness West Virginia.

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

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

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Karnes, Plymale, Williams and Kessler offered the following resolution:

Senate Resolution 28—Designating February 9, 2016, as Forestry Day at the Legislature.

Whereas, The West Virginia Division of Forestry created the “Loggers of Excellence” program as a recognition initiative designed and implemented to place positive emphasis on those professional loggers who go above and beyond industry standards during a given calendar year; and

Whereas, Professional loggers must qualify for the following minimum criteria on an annual basis: The company must maintain a valid timber license for the entire year; must be in compliance with the laws of the state, specifically referring to their business license, workers’ compensation and unemployment compensation; must receive no orders for noncompliance from the Division of Forestry; and must be a professional logger who has harvested at least 100 acres during the year; and

Whereas, Professional loggers are the keystone for the entire forest products industry which provides tremendous economic benefit to the state; and

Whereas, In 2015, one hundred eighty-one professional loggers exceeded these standards and twenty-seven of those exceeded these standards for five consecutive calendar years, from 2011 through 2015; and

Whereas, Forest management and sustainability is impossible without the efforts of professional loggers; therefore, be it

Resolved by the Senate:

That the Senate hereby designates February 9, 2016, as Forestry Day at the Legislature; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate officials representing the Division of Forestry.

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 Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Ferns, Plymale, Williams, Beach, Kessler and Laird offered the following resolution:

Senate Resolution 29—Designating February 9, 2016, as Women’s and Girls’ Day at the Legislature.

Whereas, The West Virginia Women's Commission is celebrating nearly four decades of promoting the status and empowerment of all West Virginia women through advocacy, research, education and consensus building; and

Whereas, The West Virginia Women's Commission strives to foster women's economic, political, educational and social development, to ensure their full participation in society and to recognize their achievements; and

Whereas, The West Virginia Women's Commission has continued its history of honoring women across the state through programs such as Celebrating a Legacy of Women in Public Service during Women's History Month, educating women and legislators during their Annual Women's Day at the Legislature, completing an annual policy statement highlighting legislation of importance to women and families and by recognizing the Annual Women's Equality Day Celebration commemorating the passage of the 19th amendment; and

Whereas, Through the West Virginia Women's Commission's programs and collaborations with partner organizations, women have the opportunity to participate in learning experiences through workshops focused on citizen advocacy; and

Whereas, West Virginia citizens are proud of the accomplishments and achievements of women in our state, both in the private and public sectors and appreciates their many contributions to our communities as they continue to advance in leadership roles in our society; therefore, be it

Resolved by the Senate:

That the Senate designates February 9, 2016, as Women's and Girls' Day at the Legislature; and, be it

Further Resolved, That the Senate expresses its sincere appreciation to women for the many contributions they make to the state of West Virginia in all facets of our society; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the West Virginia Women's Commission.

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

On motion of Senator Carmichael, 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 28, U.S. Marine Corps CPL Ronald 'Duke' Varney Memorial 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. Com. Sub. for Senate Bill 6, Requiring drug screening and testing of applicants for TANF program.

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill 6 pass?"

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Kessler and Laird—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 6) passed with its title.

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

Eng. Com. Sub. for Senate Bill 39, Regulating off-road motorcycles within Hatfield-McCoy Recreation Area.

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill 39 pass?"

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 39) passed with its title.

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

Eng. Com. Sub. for Senate Bill 43, Clarifying means of posting to prohibit hunting or trespassing.

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill 43 pass?"

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 43) passed with its title.

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

Eng. Com. Sub. for Senate Bill 309, Relating to child-care center licensing and exempting county parks and recreation from licensure.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 309) passed with its title.

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

Eng. Senate Bill 345, Relating to parking on state-owned or leased property.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 345) passed with its title.

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

Eng. Senate Bill 346, Updating projects managed by Project Management Office.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 346) passed with its title.

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

Eng. Senate Bill 349, Updating meaning of federal adjusted gross income.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 349) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 349) takes effect from passage.

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

Eng. Senate Bill 426, Continuing Office of Coalfield Community Development.

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

Pending discussion,

The question being "Shall Engrossed Senate Bill 426 pass?"

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 426) passed with its title.

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

The Senate proceeded to the ninth order of business.

Com. Sub. for Senate Bill 7, Establishing wrongful conduct rule prohibiting recovery of damages in certain circumstances.

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

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

Senate Bill 419, Terminating taxes imposed under Workers' Compensation Debt Reduction Act of 2005.

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

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

Eng. Com. Sub. for House Bill 2800, Adding law-enforcement officers' contact information and names of family members to the list of exemptions from public records requests.

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

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

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

That §29B-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-4. Exemptions.

(a) There is a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance: *Provided*, That this article does not preclude an individual from inspecting or copying his or her own personal, medical or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(4) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage the record, archive, document or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body- ;

(9) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law-enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law-enforcement and other agencies within the Department of Military Affairs and Public Safety;

(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

(13) Computing, telecommunications and network security records, passwords, security codes or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

(14) Security or disaster recovery plans, risk assessments, tests or the results of those tests;

(15) Architectural or infrastructure designs, maps or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

(16) Codes for facility security systems; or codes for secure applications for facilities referred to in subdivision (15) of this subsection;

(17) Specific engineering plans and descriptions of existing public utility plants and equipment;

(18) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U. S. C. §222; ~~and~~

(19) Records of the Division of Corrections, Regional Jail and Correctional Facility Authority and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if released, could be used by an inmate or resident to escape a facility, or to cause injury to another inmate, resident or to facility personnel-; ~~;~~

(20) Information related to applications under section four, article seven, chapter sixty-one of this code, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit: *Provided:* That information in the aggregate that does not identify any permit holder other than by county or municipality is not exempted: *Provided, however,* That information or other records exempted under this subdivision may be disclosed to a law enforcement agency or officer: (i) To determine the validity of a permit; (ii) to assist in a criminal investigation or prosecution; or (iii) for other lawful law-enforcement purposes-; ~~;~~ and

(21) Personal information of employees of a public body maintained by the public body in the ordinary course of the employer-employee relationship. As used in this paragraph, "personal information" means an employee's social security number, health information, home address, personal address, personal telephone numbers and personal email addresses and those of his or her spouse, parents and children as well as the names of the employee's spouse, parents and children.

(b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term "terrorist act" means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

- (1) Intimidate or coerce the civilian population;
- (2) Influence the policy of a branch or level of government by intimidation or coercion;
- (3) Affect the conduct of a branch or level of government by intimidation or coercion; or
- (4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section do not make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.

The bill (Eng. Com. Sub. for H. B. 2800), as amended, was then ordered to 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, Increasing number of limited video lottery terminals allowed at retail location.

Senate Bill 341, Expiring funds from Insurance Commissioner, Examination Revolving Fund and Insurance Commission Fund to State Fund, General Revenue.

Com. Sub. for Senate Bill 378, Relating to truancy intervention.

Senate Bill 437, Updating and clarifying code relating to rules governing mixed martial arts.

Senate Bill 449, Supplemental appropriation from State Fund, General Revenue to Department of Administration, Public Defender Services.

Senate Bill 450, Supplemental appropriation from State Fund, General Revenue to DHHR, Division of Health.

Senate Bill 451, Supplemental appropriation from State Fund, General Revenue to Department of Military Affairs.

And,

Senate Bill 509, Removing 10-day requirement Division of Labor has to inspect amusement rides and attractions.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Trump, Plymale, Blair and Snyder.

Thereafter, at the request of Senator Carmichael, and by unanimous consent, the remarks by Senators Trump and Plymale were ordered printed in the Appendix to the Journal.

At the request of Senator Snyder, unanimous consent being granted, the remarks by Senator Blair were ordered printed in the Appendix to the Journal.

At the request of Senator Blair, and by unanimous consent, the remarks by Senator Snyder were ordered printed in the Appendix to the Journal.

Pending announcement of meetings of standing committees of the Senate, including a minority party caucus,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Wednesday, February 10, 2016, at 11 a.m.

SENATE CALENDAR

**Wednesday, February 10, 2016
11:00 AM**

THIRD READING

Eng. Com. Sub. for H. B. 2800 - Adding law-enforcement officers' contact information and names of family members to the list of exemptions from public records requests - (Com. title amend. pending) (original similar to SB 310).

SECOND READING

- Com. Sub. for S. B. 7 - Establishing wrongful conduct rule prohibiting recovery of damages in certain circumstances.
- Com. Sub. for S. B. 116 - Increasing number of limited video lottery terminals allowed at retail location.
- S. B. 341 - Expiring funds from Insurance Commissioner, Examination Revolving Fund and Insurance Commission Fund to State Fund, General Revenue.
- Com. Sub. for S. B. 378 - Relating to truancy intervention.
- S. B. 419 - Terminating taxes imposed under Workers' Compensation Debt Reduction Act of 2005.
- S. B. 437 - Updating and clarifying code relating to rules governing mixed martial arts.
- S. B. 449 - Supplemental appropriation from State Fund, General Revenue to Department of Administration, Public Defender Services.
- S. B. 450 - Supplemental appropriation from State Fund, General Revenue to DHHR, Division of Health.
- S. B. 451 - Supplemental appropriation from State Fund, General Revenue to Department of Military Affairs.
- S. B. 509 - Removing 10-day requirement Division of Labor has to inspect amusement rides and attractions.

FIRST READING

- Com. Sub. for S. B. 73 - Creating felony crime of knowingly leaving scene of crash resulting in serious bodily injury.
- Com. Sub. for S. B. 429 - Adopting two National Association of Insurance Commissioners' models to protect enrollees and general public and permit greater oversight.

- Com. Sub. for S. B. 465 - Allowing professional employer insure certain risks through pure insurance captive.
- S. B. 469 - Clarifying what personal funds are exempt from levy following judgment.
- Com. Sub. for S. B. 501 - Relating to trusts.
- Com. Sub. for S. B. 517 - Clarifying PEIA plans that are exempt from regulation by Insurance Commissioner.
- Com. Sub. for S. B. 524 - Rewriting Board of Barbers and Cosmetologists article.

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2016

Wednesday, February 10, 2016

10 a.m.	Military	(Room 451M)
1 p.m.	Economic Development	(Room 451M)
2 p.m.	Natural Resources	(Room 451M)