

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-THIRD LEGISLATURE  
REGULAR SESSION, 2017  
TWENTY-FIRST DAY

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Charleston, West Virginia, Tuesday, February 28, 2017

The Senate met at 11 a.m.

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

Prayer was offered by the Reverend Jeff Biddle, Emmanuel Baptist Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Corey Palumbo, a senator from the seventeenth district.

Pending the reading of the Journal of Monday, February 27, 2017,

At the request of Senator Hall, 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.

On motion of Senator Ferns, the Senate recessed for five minutes to permit Jacob Martin to address the Senate on behalf of the Governor's School for the Arts and Emma Locarnini to address the Senate on behalf of the Governor's Honors Academy.

Upon expiration of the recess, the Senate reconvened and 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 2001**—A Bill to amend and reenact §6B-2-1, §6B-2-2, §6B-2-2a, §6B-2-3a, §6B-2-4, §6B-2-5, §6B-2-6 and §6B-2-10 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new chapter, designated §6D-1-1, §6D-1-2 and §6D-1-3, all relating to ethics and transparency in government generally; providing for the disclosure of interested parties to a government contract; defining terms; prohibiting contracting with a state agency unless business entity submits disclosure of interested parties; requiring submission of supplemental disclosure within thirty days of completion or termination of the contract; providing exceptions to the disclosure requirement for certain contracts; requiring the

Ethics Commission create disclosure form; specifying contents to be included in the disclosure form; requiring state agencies to submit completed forms to the Ethics Commission; requiring the Ethics Commission to make disclosures publicly available; requiring the Ethics Commission to post disclosures on the commission website when technologically able; authorizing members of the Ethics Commission and members of the Probable Cause Review Board to participate and vote via video conferencing; clarifying and expanding the violations in which a complaint may be referred to the Probable Cause Review Board; clarifying that the Probable Cause Review Board conducts investigations and not hearings to determine probable cause; clarifying and expanding the violations in which a complaint may be initiated by the Ethics Commission; clarifying that the Probable Cause Review Board is the entity to receive evidence bearing on the issue of probable cause; clarifying that the commission and review board may ask a respondent to disclose specific amounts received from a source and request other detailed information; clarifying that both the Ethics Commission and the Probable Cause Review Board have subpoena power; clarifying that confidentiality provisions apply to both the commission and the review board; specifying that at least five members of the commission approve of a decision on the truth or falsity of the charges against a respondent and a decision to impose sanctions; clarifying and expanding the violations in which sanctions may be imposed by the Ethics Commission; prohibiting a public official or public employee from knowingly and intentionally influencing, attempting to influence, showing favoritism or granting patronage in the employment or working conditions of his or her relative or a person with whom he or she resides; eliminating the voting prohibition on personnel matters involving a public official's spouse or relative; prohibiting public officials, except certain members of the Legislature, from voting on the employment or working conditions of the public official's relative or person with whom the public official resides; prohibiting public officials, except certain members of the Legislature, from voting on the appropriation of moneys or award of contract to a nonprofit corporation if the public official or an immediate family member is employed by or an officer or board member of the nonprofit, whether compensated or not; clarifying the timeframe in which a candidate for public office must file a financial disclosure statement and providing an exception to filing such a financial disclosure statement if the candidate has previously filed a statement for the previous calendar year; and amending statutory cross-references to reflect proper reference to other statutes.

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 2028**—A Bill to amend and reenact §14-2-2 of the Code of West Virginia, 1931, as amended, relating to the venue for suits and other actions against the state; allowing a plaintiff or petitioner to file a claim or petition against the state, a state officer, or state agency in the circuit court of a county in which the plaintiff or petitioner resides or in which a claim arose or, alternatively, in the circuit court of Kanawha County.

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 2359**—A Bill to amend and reenact §30-14-12 of the Code of West Virginia, 1931, as amended, relating to offenses and penalties for practicing osteopathic medicine without a license; and creating a felony crime of practicing or attempting to practice osteopathic medicine without a license or permit and providing criminal penalties.

Referred to the Committee on Government Organization; and then 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 2479**—A Bill to repeal §48-1-233.3, §48-1-233.4 and §48-9-404 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §48-31-101, §48-31-102, §48-31-103, §48-31-104, §48-31-105, §48-31-106, §48-31-107, §48-31-201, §48-31-202, §48-31-203, §48-31-204, §48-31-205, §48-31-301, §48-31-302, §48-31-303, §48-31-304, §48-31-305, §48-31-306, §48-31-307, §48-31-308, §48-31-309, §48-31-310, §48-31-311, §48-31-401, §48-31-402, §48-31-403, §48-31-404, §48-31-501, §48-31-502 and §48-31-503, all relating to adoption of the “Uniform Deployed Parents Custody and Visitation Act”; defining terms; providing for enforcement through assessment of attorney fees and costs; establishing procedures to determine matters of child custody and visitation when parents are deployed in military or other national service; requiring notices from deployed parent; providing for out-of-court agreements and establishing minimum requirements therefor; prohibiting consideration of past or future deployments in determining the best interest of the child; authorizing orders for payment of child support during deployment; providing for modification and termination of orders and agreements; and giving guidance for interpretation and construction in conjunction with other laws and orders.

Referred to the Committee on the Judiciary.

The Senate proceeded to the fourth order of business.

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

Your Committee on Natural Resources has had under consideration

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

And has amended same.

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

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on Government Organization, with amendments from the Committee on Natural Resources pending.

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 190**, Eliminating bidders' preference for in-state vendors on state contracts.

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

**Com. Sub. for Senate Bill 190** (originating in the Committee on Government Organization)—A Bill to amend and reenact §5A-3-37 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-5-4 of said code, all relating to eliminating preferences for certain vendors bidding on state contracts for commodities or printing; establishing a reciprocal preference that is to be applied to resident vendors against a nonresident vendor from any state that gives or requires a preference to bidders from that state; and providing resident vendor qualifications.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Craig Blair,  
*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 344**, Relating to application of payments on consumer credit sale and loans.

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

**Com. Sub. for Senate Bill 344** (originating in the Committee on Banking and Insurance)—A Bill to amend and reenact §46A-2-115 of the Code of West Virginia, 1931, as amended; and to amend and reenact §46A-3-111, §46A-3-112 and §46A-3-113 of said code, all relating to consumer credit sales and consumer loans, except credit cards; specifying application of payments and partial payments; modifying provisions related to delinquency charges; permitting certain payments be held in a suspense or unapplied funds account; and stating requirements concerning funds held in a suspense or unapplied funds account.

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,

C. Edward Gaunch,  
*Chair.*

The bill (Com. Sub. for S. B. 344), under the original double committee reference, was then referred to the Committee on the Judiciary.

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

Your Committee on Natural Resources has had under consideration

**Senate Bill 410**, Relating to marking traps with DNR identification tag.

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

**Com. Sub. for Senate Bill 410** (originating in the Committee on Natural Resources)—A Bill to amend and reenact §20-2-19 of the Code of West Virginia, 1931, as amended, relating to marking traps with a Division of Natural Resources identification number.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Mark R. Maynard,  
*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 439**, Relating to venue for civil and criminal actions at Salem Correctional Center.

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

**Com. Sub. for Senate Bill 439** (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 §25-1-9, relating to venue for civil and criminal actions arising from or committed on the property comprising the Salem Correctional Center.

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 Smith, Sypolt and Blair:**

**Senate Bill 458**—A Bill to amend and reenact §24-2-1 of the Code of West Virginia, 1931, as amended, relating to eliminating the need for certain power-generating facilities to obtain siting certificates from the Public Service Commission.

Referred to the Committee on Energy, Industry and Mining; and then to the Committee on Government Organization.

**By Senators Boso and Rucker:**

**Senate Bill 459**—A Bill to amend and reenact §17A-3-14 of the Code of West Virginia, 1931, as amended, relating to placing the existing “In God We Trust” license plate into the statutory list of special license plates.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on Finance.

**By Senators Boley and Blair:**

**Senate Bill 460**—A Bill to amend and reenact §17A-7-2 of the Code of West Virginia, 1931, as amended, relating generally to the registration of motor vehicles; replacing the issuance of 48-hour stickers with the issuance of temporary sixty-day registrations plates; requiring a \$25 fee to be collected; and designating the fund where the moneys from that fee are to be deposited.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on Finance.

**By Senators Hall, Takubo and Stollings:**

**Senate Bill 461**—A Bill to amend and reenact §5A-3-1 and §5A-3-3 of the Code of West Virginia, 1931, as amended, all relating to exempting the West Virginia State Police from state purchasing requirements.

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

**By Senators Jeffries, Boso, Karnes, Miller, Prezioso, Romano, Rucker, Stollings, Swope, Plymale, Maroney and Unger:**

**Senate Bill 462**—A Bill to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating to exempting all monetary benefits derived from military retirement from personal income tax obligations.

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

**By Senators Palumbo, Gaunch, Plymale, Prezioso, Takubo, Trump, Woelfel and Stollings:**

**Senate Bill 463**—A Bill to repeal §3-12-1, §3-12-2, §3-12-3, §3-12-4, §3-12-5, §3-12-6, §3-12-7, §3-12-8, §3-12-9, §3-12-10, §3-12-11, §3-12-12, §3-12-13, §3-12-14, §3-12-15 and §3-12-16 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-1A-5 of said code, relating to eliminating the West Virginia Supreme Court of Appeals Public Campaign Financing Program.

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

**By Senators Hall and Plymale:**

**Senate Bill 464**—A Bill to amend and reenact §33-3-15 of the Code of West Virginia, 1931, as amended, relating to eliminating taxation on annuity considerations collected and received by a life insurer.

Referred to the Committee on Finance.

**By Senators Takubo, Stollings and Maroney:**

**Senate Bill 465**—A Bill to amend and reenact §55-7B-6 of the Code of West Virginia, 1931, as amended, relating to medical professional liability; allowing for admissibility of letter of merit in actions against health care providers; and allowing testimony in a judicial proceeding or by deposition upon issuing a letter of merit.

Referred to the Committee on the Judiciary.

**By Senators Blair, Trump and Palumbo:**

**Senate Bill 466**—A Bill to amend and reenact §29-22B-1408 of the Code of West Virginia, 1931, as amended, relating to calculation of the state's share of gross terminal income and fixing the state's share at fifty percent.

Referred to the Committee on Finance.

**By Senators Blair and Trump:**

**Senate Bill 467**—A Bill to amend and reenact §29-22B-903 of the Code of West Virginia, 1931, as amended, relating to maximum wager per limited video lottery game and bill denominations accepted by limited video lottery terminals.

Referred to the Committee on Finance.

**By Senators Blair and Trump:**

**Senate Bill 468**—A Bill to amend and reenact §29-22-9 of the Code of West Virginia, 1931, as amended, relating to removing restrictions on where certain traditional lottery games may be played.

Referred to the Committee on Finance.

**By Senators Takubo, Jeffries, Maynard and Cline:**

**Senate Bill 469**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-2-5i, relating to prohibiting the waste of game animals, game birds or game fish; and providing criminal penalties.

Referred to the Committee on Natural Resources; and then to the Committee on the Judiciary.

**By Senators Stollings, Unger and Cline:**

**Senate Bill 470**—A Bill to amend and reenact §48-10-203 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §48-10-204, all relating to creating visitation rights for certain great-grandparents; and defining "grandchild".

Referred to the Committee on the Judiciary.

**By Senators Maynard, Stollings and Cline:**

**Senate Bill 471**—A Bill to amend and reenact §20-2-3 of the Code of West Virginia, 1931, as amended, relating to state ownership of wildlife.

Referred to the Committee on Natural Resources; and then to the Committee on the Judiciary.

**By Senators Maynard, Stollings and Cline:**

**Senate Bill 472**—A Bill to amend and reenact §20-2-22a of the Code of West Virginia, 1931, as amended, relating to natural resources; and permitting bear hunting with guides.

Referred to the Committee on Natural Resources.

**By Senators Maynard and Cline:**

**Senate Bill 473**—A Bill to amend and reenact §20-2-4 and §20-2-11 of the Code of West Virginia, 1931, as amended, all relating to wildlife; permitting the collection, possession and sale of naturally shed deer antlers; and clarifying the trade or barter of wildlife or parts thereof.

Referred to the Committee on Natural Resources.

**By Senators Maynard and Cline:**

**Senate Bill 474**—A Bill to amend and reenact §20-2-27 of the Code of West Virginia, 1931, as amended, relating to hunting licenses; and exempting the list of names, addresses and contact information for license holders from public disclosure with certain exceptions.

Referred to the Committee on Natural Resources; and then to the Committee on the Judiciary.

**By Senators Ojeda, Facemire, Jeffries, Plymale, Romano, Stollings, Swope, Unger and Cline:**

**Senate Bill 475**—A Bill to amend and reenact §25-1-11d of the Code of West Virginia, 1931, as amended; and to amend and reenact §31-20-27 of said code, all relating to creating incentives for the hiring and retention of Division of Corrections and Regional Jail Authority and Correctional Facility Authority correctional officers.

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

**By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):**

**Senate Bill 476**—A Bill expiring funds to the unappropriated balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2017, in the amount of \$101,700,000 from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701.

Referred to the Committee on Finance.

**By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):**

**Senate Bill 477**—A Bill to amend and reenact §11-14C-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-15-18b of said code; to amend and reenact §17A-2-13 of said code; to amend and reenact §17A-3-4 of said code; to amend and reenact §17A-4-1 and §17A-4-10 of said code; to amend and reenact §17A-4A-10 of said code; to amend and reenact §17A-7-2 of said code; to amend and reenact §17A-10-3, §17A-10-10 and §17A-10-11 of said code; to amend and reenact §17B-2-1, §17B-2-3a, §17B-2-5, §17B-2-6, §17B-2-8 and §17B-2-11 of said code; to amend and reenact §17C-5A-2a of the said code; and to amend and reenact §17D-2-2 of said code, all relating generally to increasing the funding for the State Road Fund by increasing Division of Motor Vehicles administrative fees and motor fuel excise taxes; changing the flat rate component of the motor fuel excise tax from 20.5 cents to 30.5 cents per invoiced gallon of motor fuel and on each gallon equivalent for alternative fuel; increasing the minimum average wholesale price of motor fuels for purposes of the five percent variable fuel tax as of specified date; deleting superfluous language relating to floorstocks; specifying effective date; increasing Division of Motor Vehicles administrative fees; increasing the fee for vehicle records and the certified record fee; increasing the registration fee for Class A motor vehicles; increasing the fee for the issuance and duplication of various documents by the division including titles, registration, plates and decals; increasing the fee for recording liens and releases; increasing the



vehicle transfer fees; increasing the fee for issuance, duplication and renewal of a driver's license and identification card; requiring the payment of the fee for each attempt at the written and road skills test; increasing the fee for driving records; increasing said administrative Division of Motor Vehicles fees every five years on September 1 based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index; and specifying effective dates.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on Finance.

**By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):**

**Senate Bill 478**—A Bill to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended, relating generally to severance taxes imposed on the privilege of producing coal for sale, profit or commercial use; specifying effective date; and making technical corrections.

Referred to the Committee on Energy, Industry and Mining; and then to the Committee on Finance.

**By Senators Blair, Rucker, Takubo, Maroney, Cline and Stollings:**

**Senate Bill 479**—A Bill to amend and reenact §60-3-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60-3A-17, §60-3A-18 and §60-3A-25 of said code, all relating to Sunday sales of liquor by retail licensees; and authorizing the Legislature to set the maximum wholesale markup percentage on all liquor, other than wine.

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

**By Senator Blair:**

**Senate Bill 480**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-2I-1, §5B-2I-2, §5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6 and §5B-2I-7, all relating to authorizing local units of government to adopt local energy efficiency partnership programs and to create districts to promote use of energy efficiency improvements by owners of certain real property; providing for financing of programs through voluntary property assessments, commercial lending and other means; authorizing local unit of government to issue bonds, notes and other evidences of indebtedness and to pay the cost of energy efficiency improvements from the proceeds thereof; providing for repayment of bonds, notes and other evidences of indebtedness; authorizing certain fees; prescribing the powers and duties of certain governmental officers and entities; and providing remedies.

Referred to the Committee on Government Organization.

**By Senator Blair:**

**Senate Bill 481**—A Bill to amend and reenact §8-10-2a and §8-10-2b of the Code of West Virginia, 1931, as amended, all relating to municipal courts notification to the Division of Motor Vehicles of a person's failure to appear and failure to pay assessed costs, fines, forfeitures or penalties.

Referred to the Committee on Government Organization.

**By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):**

**Senate Bill 482**—A Bill to repeal §17-16A-18a, §17-16A-23 and §17-16A-30 of the Code of West Virginia, 1931, as amended; to amend and reenact §17-16A-1, §17-16A-5, §17-16A-6, §17-16A-10, § 17-16A-11, §17-16A-13, §17-16A-13a, §17-16A-18, §17-16A-21, §17-16A-22 and §17-16A-29 of said code; to amend said code by adding thereto a new section, designated §17-16A-

11a; to amend and reenact §17-16D-3 of said code; to amend said code by adding thereto a new section, designated §17A-2-25; to amend and reenact §17A-3-7 of said code; and to amend said code by adding thereto a new section, designated §17A-10-17, all relating generally to the West Virginia Parkways Authority; defining certain terms; adding the power of the authority to study, investigate and evaluate, and, if feasible, develop and implement, a single fee program; adding the power of the authority to impose in connection with any single fee program a flat fee in connection with any or all certificates of passenger motor vehicle registration and renewal thereof by the Division of Motor Vehicles; adding the power of the authority to enter into reciprocal toll enforcement agreements; creating and designating a special revenue account within the State Road Fund known as the State Road Construction Account; authorizing the deposit of proceeds of parkway revenue bonds to the State Road Construction Account; creating and designating a special revenue account within the State Treasury known as the West Virginia Parkways Authority Single Fee Program Fund; clarifying notice and public meeting requirements and procedures for fixing initial rates or tolls or increasing or changing rates or tolls; clarifying the power of the Parkways Authority to fix rates or tolls for Corridor L toll collection facility; expanding the authority of the Parkways Authority to issue revenue bonds or refunding revenue bonds for parkways' projects and for the West Virginia Turnpike; eliminating approval by county commissions and establishment by Governor of local committees prior to approval of any parkway project; authorizing electronic toll collection and enforcement of tolls on all roads, highways and bridges in the state; adding the power of the Division of Motor Vehicles to act as collection agent for the authority under any single fee program; and expanding the grounds for refusing to register a motor vehicle.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on Finance.

**By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):**

**Senate Bill 483**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-2A-24, relating to imposing, administering and collecting a license tax on successful bidders for road construction contracts; imposing license tax; requiring notification and method for payment of license tax; dedicating taxes collected; requiring bonding; creating a special revenue account; and specifying effective date.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on Finance.

**By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):**

**Senate Bill 484**—A Bill to amend and reenact §11-13X-4 and §11-13X-13 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-15-3, §11-15-8 and §11-15-9 of said code; to amend and reenact §11-15A-2 of said code; to amend and reenact §11-16-13 of said code; to amend said code by adding thereto a new section, designated §11-21-97; and to amend said code by adding thereto a new article, designated §11-28-1, §11-28-2, §11-28-3, §11-28-4, §11-28-5, §11-28-6, §11-28-7, §11-28-8, §11-28-9, §11-28-10, §11-28-11, §11-28-12, §11-28-13, §11-28-14 and §11-28-15, all relating generally to taxation; eliminating new film tax credits but preserving credit for taxpayers authorized to claim credit prior to specified date; increasing rate of consumers sales and service tax and use tax to 6.5 percent; providing for rate of tax to revert to six percent on and after July 1, 2020, as long as certain parameters are met with respect to the revenue shortfall reserve funds; limiting the exemption or exception of certain professional services from consumers sales and service tax and use tax; terminating exemption from consumers sales and service tax and use tax for certain advertising services; eliminating exemption from consumers sales and service tax for certain purchases of materials acquired for

use in state highway projects; increasing rate of barrel tax on nonintoxicating beer; creating the West Virginia Personal Income Tax Study Commission to study the feasibility of eliminating the West Virginia personal income tax; providing for the members and operation of the commission; requiring the commission to submit a report by specified date; permitting certain confidential information to be disclosed to the commission; prohibiting further disclosure of confidential information received by the commission; exempting certain information received by the commission from the West Virginia Freedom of Information Act; providing criminal and civil penalties for unauthorized disclosure; imposing new tax on privilege of engaging in commercial activity in this state; defining terms; specifying measure of commercial activity tax; providing for administration of commercial activity tax; exempting certain entities from commercial activity tax; providing credit against commercial activity tax for payment of certain gross receipts' taxes to state; imposing criminal penalties for noncompliance; providing for severability; specifying effective date; and providing sunset date of July 1, 2020, for elimination of the commercial activity tax as long as certain parameters are met with respect to the revenue shortfall reserve funds.

Referred to the Committee on Finance.

Senators Romano, Facemire and Stollings offered the following resolution:

**Senate Concurrent Resolution 24**—Requesting the Division of Highways to name bridge number 17-58-0.01 (17A225), (39.25187, -80.31860), locally known as the Stonewood Bridge, carrying WV 58 over Elk Creek in Harrison County, the “U. S. Army PFC Joe Messe, Sr., Memorial Bridge”.

Whereas, Joe Messe, Sr., was born in Stonewood, Harrison County, West Virginia, on May, 7, 1922; and

Whereas, Joe answered the call to serve his country during World War II, joining the 517th Field Artillery Battalion; and

Whereas, During the war, Joe served as a heavy artillery gun crewman, with specializations in rifle marksmanship and T. S. M. G. sharpshooting, employing his skills for the betterment of the American war effort in the Northern Solomon and Luzon Campaigns; and

Whereas, Joe’s battalion performed laudably in both the Solomon Islands and the Philippines, ultimately receiving a commendation from Brigadier General of the U. S. Army H. R. Barter for their impeccable performance in the line of duty; and

Whereas, Joe’s service to his country honors his family, his community and the entire State of West Virginia; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number: 17-58-0.01 (17A225), (39.25187, -80.31860), locally known as the Stonewood Bridge, carrying WV 58 over Elk Creek in Harrison County, the “U. S. Army PFC Joe Messe, Sr., Memorial Bridge”; and, be it

*Further Resolved*, That the Commissioner of the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “U. S. Army PFC Joe Messe, Sr., 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.

Which, under the rules, lies over one day.

Senators Stollings, Plymale, Takubo, Unger and Ojeda offered the following resolution:

**Senate Resolution 24**—Congratulating the Chapmanville Lady Tigers softball team for winning the 2016 Class AA state championship.

Whereas, The Chapmanville Lady Tigers softball team had another dominant year on the field, finishing with a 33-6 record and winning its sixth state championship; and

Whereas, The Chapmanville Lady Tigers softball team is led by head coach Ronnie Ooten, and assistant coaches Barb Ooten, Dave Elkins, John Carter and D. A. Harless; and

Whereas, The Chapmanville Lady Tigers softball team's roster is comprised of: Shian Meeks, Savannah Wiley, Hollie Carter, Kerston Kennedy, Mallory Kennedy, Jacy Baxter, Grace Belcher, Kara Browning, Sara Butcher, Jadalynn Freeman, Alli Harless, Karah Little, Kenzie McCann, Tabitha Adkins, Cassidy Browning, Makayla Lambert, Bailey Parsons, Taylor Plumley, Shea Pridemore, Amber Richards, Kelsy Shadd and Chloe Sweeney; and

Whereas, The Chapmanville Lady Tigers softball team, under the leadership of Ronnie Ooten, has built a reputation, both in West Virginia and around the country, as a premier softball program, having won state titles in 1999, 2004, 2007, 2009, 2010 and 2016; and

Whereas, The 2016 Chapmanville Lady Tigers softball team will be remembered as one of the best high school softball teams in West Virginia history; therefore, be it

*Resolved by the Senate:*

That the Senate hereby congratulates the Chapmanville Lady Tigers softball team for winning the 2016 Class AA state championship; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to the Chapmanville Lady Tigers softball team.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senators Stollings, Ojeda and Maynard regarding the adoption of Senate Resolution 24 were ordered printed in the Appendix to the Journal.

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

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

At the request of Senator Romano, and by unanimous consent, Senators Romano and Facemire offered the following resolution from the floor:

**Senate Resolution 25**—Commending and congratulating Jeffrey Stutler of Harrison County as West Virginia's Outstanding Tree Farmer for 2017.

Whereas, Jeffrey Stutler owns and manages a 315-acre tree farm in Harrison County, West Virginia; and

Whereas, For all of these efforts, Jeffrey Stutler was selected as West Virginia's Outstanding Tree Farmer for 2017 by the West Virginia Tree Farm Committee and its state sponsor, the West Virginia Forestry Association; and

Whereas, This outstanding tree farmer made a formal commitment to sound forest management practices by enrolling in the West Virginia Tree Farm Program; and

Whereas, Jeffrey Stutler is committed to the long-term productivity of his property by performing sustainable forest management, single-tree selection, timberland improvement, wildlife habitat improvement, water resource enhancement and recreational practices; and

Whereas, Jeffrey Stutler has held tours as part of a successful bid to win the State Conservation Farmer of the Year Contest; and

Whereas, Jeffrey Stutler has spent years managing his forest and pastures under the direction of forest stewardship plans, with oversight, assistance and input from the State Division of Forestry Forester Juergen A. Wildman, all of which has benefited this important natural resource; and

Whereas, It is the policy of this Legislature to recognize and commend outstanding West Virginians who promote our state, its people and its resources; therefore, be it

*Resolved by the Senate:*

That the Senate hereby commends and congratulates Jeffrey Stutler of Harrison County for being selected as West Virginia's Outstanding Tree Farmer for 2017; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to Jeffrey Stutler.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senator Romano regarding the adoption of Senate Resolution 25 were ordered printed in the Appendix to the Journal.

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 23**, Johnny O'Dell Linville 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 125**, Authorizing DHHR promulgate legislative rules.

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

On the passage of the bill, the yeas were: Azinger, Beach, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Blair and Miller—2.

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. 125) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Blair and Miller—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 125) takes effect from passage.

*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 214**, Adopting Uniform Electronic Legal Material Act.

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

On the passage of the bill, the yeas were: Azinger, Beach, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Blair and Miller—2.

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. 214) passed with its title.

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

At the request of Senator Ferns, and by unanimous consent, the Senate returned to the second order of business and the introduction of guests.

The Senate again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

**Eng. Senate Bill 321**, Reporting requirements of employee information to CPRB.

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

On the passage of the bill, the yeas were: Azinger, Beach, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Blair and Miller—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 321) 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 426**, Repealing DNR legislative rule on litter control grant program.

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

On the passage of the bill, the yeas were: Azinger, Beach, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Blair and Miller—2.

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.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Blair and Miller—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 426) takes effect from passage.

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

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

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

On pages twelve and thirteen, section seventeen, lines sixty-five through sixty-eight, by striking out all of subsection (h) and inserting in lieu thereof a new subsection, designated subsection (h), to read as follows:

(h) No special volunteer pharmacist license is required for a pharmacist holding one or more unrestricted license granted by another state or foreign country serving as a volunteer in a noncompensated role for a charitable function for a period not to exceed seven days.

The bill (Com. Sub. for S. B. 4), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 5**, Disqualifying CDL for DUI conviction in certain cases.

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 9**, Regulating unmanned aircraft systems.

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

On motion of Senator Trump, the following amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

On page six, section five, line one, after the word “designated” by inserting the word “industrial”;

On page six, section five, line four, after the word “designated” by inserting the word “industrial”;

On page seven, section six, line two, after the word “Police” by inserting a comma and the words “the West Virginia Sheriffs’ Bureau for Professional Standards”;

On page eight, section eight, line three, after the word “publication” by inserting the words “to the general public”;



And,

On page eight, section eight, after line thirteen, by adding a new subsection, designated subsection (e), to read as follows:

(e) Nothing in this article may be construed to prohibit the operation of an unmanned aircraft system by a person holding a valid commercial license for purposes of newsgathering if the operation of the unmanned aircraft system is in compliance with all applicable rules and requirements of the Federal Communications Commission and the Federal Aviation Administration and the operation of the unmanned aircraft system does not violate the provisions of section three of this article.

On motion of Senator Prezioso, the following amendment to the bill (Com. Sub. for S. B. 9) was next reported by the Clerk and adopted:

On page four, section three, line thirteen, after the word "thereof" by changing the period to a colon and inserting the following proviso: *Provided*, That the provisions of this subdivision do not apply to a person operating an unmanned aircraft system in the airspace above the person's real property, real property upon which the person has the consent of the owner to operate the unmanned aircraft system, or public property.

The bill (Com. Sub. for S. B. 9), as amended, was then ordered to engrossment and third reading.

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

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 225**, Allowing magistrates to conduct proceeding for temporary emergency protective order dealing with temporary custody by family court.

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 236**, Relating to damages for medical monitoring.

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

At the request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the right for amendments to be considered on that reading.

**Com. Sub. for Senate Bill 261**, Relating to increasing salary or wages of judgment debtor.

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

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

**Com. Sub. for Com. Sub. for Senate Bill 345**, Allowing hunting and trapping on Sundays.

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

**Senate Bill 346**, Relating generally to jurisdiction of PSC over motor carriers.

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 347**, Relating to modernization of Physician Assistant Practice Act.

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

On motions of Senators Takubo and Stollings, the following amendment to the bill was reported by the Clerk and adopted:

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

That §30-3E-8 of the Code of West Virginia, 1931, as amended, be repealed; that §16-5-19 of said code be amended and reenacted; that §30-3-5 of said code be amended and reenacted; that §30-3E-1, §30-3E-2, §30-3E-3, §30-3E-4, §30-3E-6, §30-3E-7, §30-3E-9, §30-3E-10, §30-3E-11, §30-3E-12, §30-3E-15, §30-3E-16 and §30-3E-17 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §30-3E-12a, all to read as follows:

**§16-5-19. Death registration.**

(a) A certificate of death for each death which occurs in this state shall be filed with the section of vital statistics, or as otherwise directed by the state Registrar, within five days after death, and prior to final disposition, and shall be registered if it has been completed and filed in accordance with this section.

(1) If the place of death is unknown, but the dead body is found in this state, the place where the body was found shall be shown as the place of death.

(2) If the date of death is unknown, it shall be approximated. If the date cannot be approximated, the date found shall be shown as the date of death.

(3) If death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where it is first removed shall be considered the place of death.

(4) If death occurs in a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this state, the death shall be registered in this state but the certificate shall show the actual place of death insofar as can be determined.

(5) In all other cases, the place where death is pronounced shall be considered the place where death occurred.

(b) The funeral director or other person who assumes custody of the dead body shall:

(1) Obtain the personal data from the next of kin or the best qualified person or source available including the deceased person's social security number or numbers, which shall be placed in the records relating to the death and recorded on the certificate of death;

(2) Within forty-eight hours after death, provide the certificate of death containing sufficient information to identify the decedent to the physician nurse responsible for completing the medical certification as provided in subsection (c) of this section; and

(3) Upon receipt of the medical certification, file the certificate of death: *Provided*, That for implementation of electronic filing of death certificates, the person who certifies to cause of death will be responsible for filing the electronic certification of cause of death as directed by the state Registrar and in accordance with legislative rule.

(c) The medical certification shall be completed and signed within twenty-four hours after receipt of the certificate of death by the physician, a physician assistant or advanced practice registered nurse in charge of the patient's care for the illness or condition which resulted in death except when inquiry is required pursuant to chapter sixty-one, article twelve or other applicable provisions of this code.

(1) In the absence of the physician, a physician assistant or advanced practice registered nurse or with his or her approval, the certificate may be completed by his or her associate physician, any physician who has been placed in a position of responsibility for any medical coverage of the decedent, the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, provided inquiry is not required pursuant to chapter sixty-one, article twelve of this code.

(2) The person completing the cause of death shall attest to its accuracy either by signature or by an approved electronic process.

(d) When inquiry is required pursuant to article twelve, chapter sixty one, or other applicable provisions of this code, the state Medical Examiner or designee or county medical examiner or county coroner in the jurisdiction where the death occurred or where the body was found shall determine the cause of death and shall complete the medical certification within forty-eight hours after taking charge of the case.

(1) If the cause of death cannot be determined within forty-eight hours after taking charge of the case, the medical examiner shall complete the medical certification with a "Pending" cause of death to be amended upon completion of medical investigation.

(2) After investigation of a report of death for which inquiry is required, if the state Medical Examiner or designee or county medical examiner or county coroner decline jurisdiction, the state Medical Examiner or designee or county medical examiner or county coroner may direct the decedent's family physician or the physician who pronounces death to complete the certification of death: *Provided*, That the physician is not civilly liable for inaccuracy or other incorrect statement of death unless the physician willfully and knowingly provides information he or she knows to be false.

(e) When death occurs in an institution and the person responsible for the completion of the medical certification is not available to pronounce death, another physician may pronounce death. If there is no physician available to pronounce death, then a designated licensed health professional who views the body may pronounce death, attest to the pronouncement by signature or an approved electronic process and, with the permission of the person responsible for the medical certification, release the body to the funeral director or other person for final disposition: *Provided*, That if the death occurs in an institution during court-ordered hospitalization, in a correctional facility or under custody of law-enforcement authorities, the death shall be reported directly to a medical examiner or coroner for investigation, pronouncement and certification.

(f) If the cause of death cannot be determined within the time prescribed, the medical certification shall be completed as provided by legislative rule. The attending physician or medical examiner, upon request, shall give the funeral director or other person assuming custody of the body notice of the reason for the delay, and final disposition of the body may not be made until authorized by the attending physician, medical examiner or other persons authorized by this article to certify the cause of death.

(g) Upon receipt of autopsy results, additional scientific study, or where further inquiry or investigation provides additional information that would change the information on the certificate of death from that originally reported, the certifier, or any State Medical Examiner who provides such inquiry under authority of article twelve, chapter sixty-one of this code shall immediately file a supplemental report of cause of death or other information with the section of vital statistics to amend the record, but only for purposes of accuracy.

(h) When death is presumed to have occurred within this state but the body cannot be located, a certificate of death may be prepared by the state Registrar only upon receipt of an order of a court of competent jurisdiction which shall include the finding of facts required to complete the certificate of death. The certificate of death will be marked "Presumptive" and will show on its face the date of death as determined by the court and the date of registration, and shall identify the court and the date of the order.

(i) The local registrar shall transmit each month to the county clerk of his or her county a copy of the certificates of all deaths occurring in the county, and if any person dies in a county other than the county within the state in which the person last resided prior to death, then the state Registrar shall furnish a copy of the death certificate to the clerk of the county commission of the county where the person last resided, from which copies the clerk shall compile a register of deaths, in a form prescribed by the state Registrar. The register shall be a public record.

### **ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.**

#### **§30-3-5. West Virginia Board of Medicine powers and duties continued; appointment and terms of members; vacancies; removal.**

The West Virginia Board of Medicine has assumed, carried on and succeeded to all the duties, rights, powers, obligations and liabilities heretofore belonging to, or exercised by, the Medical Licensing Board of West Virginia. All the rules, orders, rulings, licenses, certificates, permits and other acts and undertakings of the Medical Licensing Board of West Virginia as heretofore constituted have continued as those of the West Virginia Board of Medicine until they expired or were amended, altered or revoked. The board remains the sole authority for the issuance of licenses to practice medicine and surgery and to practice podiatry and to practice as physician assistants in this state under the supervision of physicians licensed under this article. The board

shall continue to be a regulatory and disciplinary body for the practice of medicine and surgery and the practice of podiatry and for physician assistants in this state.

The board shall consist of ~~fifteen~~ sixteen members. One member shall be the state health officer ex officio, with the right to vote as a member of the board. The other ~~fourteen~~ fifteen members shall be appointed by the Governor, with the advice and consent of the Senate. Eight of the members shall be appointed from among individuals holding the degree of doctor of medicine and two shall hold the degree of doctor of podiatric medicine. ~~One member shall be an individual licensed by the board as a physician assistant~~ Two members shall be licensed by the board as physician assistants. Each of these members must be duly licensed to practice his or her profession in this state on the date of appointment and must have been licensed and actively practicing that profession for at least five years immediately preceding the date of appointment. Three lay members shall be appointed to represent health care consumers. Neither the lay members nor any person of the lay members' immediate families shall be a provider of, or be employed by a provider of, health care services. The state health officer's term shall continue for the period that he or she holds office as state health officer. Each other member of the board shall be appointed to serve a term of five years: *Provided*, That the members of the Board of Medicine holding appointments on the effective date of this section shall continue to serve as members of the Board of Medicine until the expiration of their term unless sooner removed. Each term shall begin on October 1 of the applicable year and a member may not be appointed to more than two consecutive full terms on the board.

A person is not eligible for membership on the board who is a member of any political party executive committee or, with the exception of the state health officer, who holds any public office or public employment under the federal government or under the government of this state or any political subdivision thereof.

In making appointments to the board, the Governor shall, so far as practicable, select the members from different geographical sections of the state. When a vacancy on the board occurs and less than one year remains in the unexpired term, the appointee shall be eligible to serve the remainder of the unexpired term and two consecutive full terms on the board.

No member may be removed from office by the Governor except for official misconduct, incompetence, neglect of duty or gross immorality: *Provided*, That the expiration, surrender or revocation of the professional license by the board of a member of the board shall cause the membership to immediately and automatically terminate.

### **ARTICLE 3E. PHYSICIAN ASSISTANTS PRACTICE ACT.**

#### **§30-3E-1. Definitions.**

As used in this article:

(1) "Advance duties" means medical acts that require additional training beyond the basic education program training required for licensure as a physician assistant.

(2) "~~Alternate supervising collaborating~~ supervising collaborating physician" means one or more physicians licensed in this state and designated by the ~~supervising collaborating~~ supervising collaborating physician to provide ~~supervision of collaboration with~~ a physician assistant in accordance with an authorized practice agreement.

(3) "Approved program" means an educational program for physician assistants approved and accredited by the Accreditation Review Commission on Education for the Physician Assistant or its successor. Prior to 2001, approval and accreditation would have been by either the Committee on Allied Health Education and Accreditation or the Accreditation Review Commission on Education for the Physician Assistant.

(4) "Boards" means the West Virginia Board of Medicine and the West Virginia Board of Osteopathic Medicine.

(5) "Chronic condition" means 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 include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures and obesity.

(6) "Collaborating physician" means a doctor of medicine, osteopathy or podiatry fully licensed, by the appropriate board in this state, without restriction or limitation, who collaborates with physician assistants.

(7) "Collaboration" means overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant. Constant physical presence of the collaborating physician is not required as long as the collaborating physician and physician assistant are, or can be, easily in contact with one another by telecommunication. Collaboration does not require the personal presence of the collaborating physician at the place or places where services are rendered if the physician assistant's normal place of employment is the same premises as the collaborating physician.

~~(6)~~ (8) "Endorsement" means a summer camp or volunteer endorsement authorized under this article.

~~(7)~~ (9) "Health care facility" means any licensed hospital, nursing home, extended care facility, state health or mental institution, clinic or physician's office.

~~(8)~~ (10) "Hospital" means a facility licensed pursuant to article five-b, chapter sixteen of this code, and any acute-care facility operated by the state government that primarily provides inpatient diagnostic, treatment or rehabilitative services to injured, disabled or sick persons under the supervision of physicians and includes psychiatric hospitals.

~~(9)~~ (11) "License" means a license issued by either of the boards pursuant to the provisions of this article.

~~(10)~~ (12) "Licensee" means a person licensed pursuant to the provisions of this article.

~~(11)~~ (13) "Physician" means a doctor of allopathic or osteopathic medicine who is fully licensed pursuant to the provisions of either article three or fourteen of this chapter to practice medicine and surgery in this state.

~~(12)~~ (14) "Physician assistant" means a person who meets the qualifications set forth in this article and is licensed pursuant to this article to practice medicine under ~~supervision~~ collaboration.

~~(13)~~ (15) "Practice agreement" means a document that is executed between a ~~supervising~~ collaborating physician and a physician assistant pursuant to the provisions of this article, and is filed with and approved by the appropriate licensing board.

~~(14)~~ "Supervising physician" means a doctor of medicine, osteopathy or podiatry fully licensed, by the appropriate board in this state, without restriction or limitation, who supervises physician assistants.

~~(15)~~ "Supervision" means ~~overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant. Constant physical presence of the supervising physician is not required as long as the supervising physician and physician assistant are, or can be, easily in contact with one another by telecommunication. Supervision does not require the personal presence of the supervising physician at the place or places where services are rendered if the physician assistant's normal place of employment is the same premises as the supervising physician.~~

### **§30-3E-2. Powers and duties of the boards.**

In addition to the powers and duties set forth in this code for the boards, the boards shall:

- (1) Establish the requirements for licenses and temporary licenses pursuant to this article;
- (2) Establish the procedures for submitting, approving and rejecting applications for licenses and temporary licenses;
- (3) Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article;
- (4) Compile and publish an annual report that includes a list of currently licensed physician assistants, their ~~supervising~~ collaborating physicians and their locations in the state; and
- (5) Take all other actions necessary and proper to effectuate the purposes of this article.

### **§30-3E-3. Rulemaking.**

(a) The boards shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a 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 agreements;
- (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 at the direction of his or her supervising collaborating physician, including the following:

~~(A) A list of drugs and pharmacologic categories, or both, the prescription of which may not be delegated to a physician assistant, including all drugs listed in Schedules I and II of the Uniform Controlled Substances Act, antineoplastic and chemotherapeutic agents, or both, used in the active treatment of current cancer, radiopharmaceuticals, general anesthetics, radiographic contrast materials and any other limitation or exclusions of specific drugs or categories of drugs as determined by the boards;~~

(A) A state formulary classifying those categories of drugs which shall not be prescribed by advanced physician assistance 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 practice agreement 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. The prescriber authorized in this section shall note on the prescription the chronic disease being treated; and

~~(C)~~ (B) A description of the education and training requirements for a physician assistant to be eligible to receive delegated prescriptive writing authority as part of a practice agreement;

(8) The authority a supervising collaborating physician may delegate for prescribing, dispensing and administering of controlled substances, prescription drugs or medical devices if the practice agreement includes:

(A) A notice of intent to delegate prescribing of controlled substances, prescription drugs or medical devices;

(B) An attestation that all prescribing activities of the physician assistant shall comply with applicable federal and state law governing the practice of physician assistants;

(C) An attestation that all medical charts or records shall contain a notation of any prescriptions written by a physician assistant;

(D) An attestation that all prescriptions shall include the physician assistant's name and the supervising collaborating physician's name, business address and business telephone number legibly written or printed; and

(E) An attestation that the physician assistant has successfully completed each of the requirements established by the appropriate board to be eligible to prescribe pursuant to a practice agreement accompanied by the production of any required documentation establishing eligibility;

(9) A fee schedule; and



(10) Any other rules necessary to effectuate the provisions of this article.

(b) The boards may propose emergency rules pursuant to article three, chapter twenty-nine-a of this code to ensure conformity with this article.

**§30-3E-4. License to practice as a physician assistant.**

(a) A person seeking licensure as a physician assistant shall apply to the Board of Medicine or to the Board of Osteopathic Medicine. The appropriate board shall issue a license to practice as a physician assistant ~~under the supervision~~ with the collaboration of that board's licensed physicians or podiatrists.

(b) A license may be granted to a person who:

(1) Files a complete application;

(2) Pays the applicable fees;

(3) Demonstrates to the board's satisfaction that he or she:

(A) Obtained a baccalaureate or master's degree from an accredited program of instruction for physician assistants;

(B) Prior to July 1, 1994, graduated from an approved program of instruction in primary health care or surgery; or

(C) Prior to July 1, 1983, was certified by the Board of Medicine as a physician assistant then classified as Type B;

(4) Has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;

~~(5) Has a current certification from the National Commission on Certification of Physician Assistants;~~

~~(6)~~ (5) Is mentally and physically able to engage safely in practice as a physician assistant;

~~(7)~~ (6) Has not had a physician assistant license, certification or registration in any jurisdiction suspended or revoked;

~~(8)~~ (7) Is not currently subject to any limitation, restriction, suspension, revocation or discipline concerning a physician assistant license, certification or registration in any jurisdiction: *Provided*, That if a board is made aware of any problems with a physician assistant license, certification or registration and agrees to issue a license, certification or registration notwithstanding the provisions of this subdivision or subdivision (7) of this subsection;

~~(9)~~ (8) Is of good moral character; and

~~(10)~~ (9) Has fulfilled any other requirement specified by the appropriate board.

(c) A board may deny an application for a physician assistant license to any applicant determined to be unqualified by the board.

**§30-3E-6. License renewal requirements.**

(a) A licensee shall renew biennially, on a schedule established by the appropriate licensing board, by submitting:

(1) A complete renewal application;

(2) The renewal fee; and

~~(3) Proof that he or she is currently certified and has been continuously certified during the preceding licensure period by the National Commission on Certification of Physician Assistants; and~~

~~(4)~~ (3) An attestation that all continuing education requirements for the reporting period have been met.

(b) If a licensee fails to timely renew his or her license, then the license automatically expires.

**§30-3E-7. Expired license requirements.**

(a) If a license automatically expires and reinstatement is sought within one year of the automatic expiration, then an applicant shall submit:

(1) A complete reinstatement application;

(2) The applicable fees;

~~(3) Proof that he or she is currently certified and has been continuously certified during the preceding licensure period and expiration period by the National Commission on Certification of Physician Assistants; and~~

(4) An attestation that all continuing education requirements have been met.

(b) If a license automatically expires and more than one year has passed since the automatic expiration, then an applicant shall apply for a new license.

**§30-3E-9. Practice requirements.**

(a) A physician assistant may not practice independent of a ~~supervising~~ collaborating physician.

(b) Before a licensed physician assistant may practice and before a ~~supervising~~ collaborating physician may delegate medical acts to a physician assistant, the ~~supervising~~ collaborating physician and the physician assistant shall:

(1) File a practice agreement with the appropriate licensing board, including any designated alternate ~~supervising~~ collaborating physicians;

(2) Pay the applicable fees; and

(3) Receive written authorization from the appropriate licensing board to commence practicing as a physician assistant pursuant to the practice agreement.

(c) A physician applying to ~~supervise~~ collaborate with a physician assistant shall affirm that:

(1) The medical services set forth in the practice agreement are consistent with the skills and training of the ~~supervising~~ collaborating physician and the physician assistant; and

(2) The activities delegated to a physician assistant are consistent with sound medical practice and will protect the health and safety of the patient.

(d) A ~~supervising~~ collaborating physician may enter into practice agreements with up to five full-time physician assistants at any one time. A physician is prohibited from being a ~~supervising~~ collaborating or alternate ~~supervising~~ collaborating physician to more than five physician assistants at any one time. However, a physician practicing medicine in an emergency department of a hospital or a physician who ~~supervises~~ collaborates with a physician assistant who is employed by or on behalf of a hospital may provide ~~supervision~~ collaboration for up to five physician assistants per shift if the physician has an authorized practice agreement in place with the ~~supervised~~ physician assistant or the physician has been properly authorized as an alternate ~~supervising~~ collaborating physician for each physician assistant.

(e) A physician assistant:

(1) Licensed pursuant to the provisions of this article;

(2) Has a practice agreement as required by this article; and

(3) Who is treating patients pursuant to the practice agreement but the collaborating physician is not in the room;

Shall be entitled to one hundred percent of the allowable reimbursement rate given to a physician or advanced practice registered nurse from all private insurance plans regulated pursuant to the provisions of chapter thirty-three of this code and all public insurance plans, including the Public Employees Insurance Agency and the state Medicaid program.

### **§30-3E-10. Practice agreement requirements.**

(a) A practice agreement shall include:

(1) A description of the qualifications of the ~~supervising~~ collaborating physician, the alternate ~~supervising~~ collaborating physicians, if applicable, and the physician assistant;

(2) A description of the settings in which the ~~supervising~~ collaborating physician assistant will practice;

(3) A description of the continuous physician ~~supervision~~ collaborating mechanisms that are reasonable and appropriate for the practice setting, and the experience and training of the physician assistant;

(4) A description of the medical acts that are to be delegated;

(5) An attestation by the ~~supervising~~ collaborating physician that the medical acts to be delegated are:

(A) Within the ~~supervising~~ collaborating physician's scope of practice; and

(B) Appropriate to the physician assistant's education, training and level of competence;

(6) A description of the medical care the physician assistant will provide in an emergency, including a definition of an emergency; ~~and~~

(7) A description of the limitation of the ability of the physician assistant to prescribe as set forth in paragraph (A), subdivision (7), subsection (a), section three of this article; and

~~(7)~~ (8) Any other information required by the boards.

(b) A licensing board may:

(1) Decline to authorize a physician assistant to commence practicing pursuant to a practice agreement, if the board determines that:

(A) The practice agreement is inadequate; or

(B) The physician assistant is unable to perform the proposed delegated duties safely; or

(2) Request additional information from the ~~supervising~~ collaborating physician and/or the physician assistant to evaluate the delegation of duties and advanced duties.

(c) A licensing board may authorize a practice agreement that includes advanced duties which are to be performed in a hospital or ambulatory surgical facility, if the practice agreement has a certification that:

(1) A physician, with credentials that have been reviewed by the hospital or ambulatory surgical facility as a condition of employment as an independent contractor or as a member of the medical staff, ~~supervises~~ collaborates with the physician assistant;

(2) The physician assistant has credentials that have been reviewed by the hospital or ambulatory surgical facility as a condition of employment as an independent contractor or as a member of the medical staff; and

(3) Each advanced duty to be delegated to the physician assistant is reviewed and approved within a process approved by the governing body of the health care facility or ambulatory surgical facility before the physician assistant performs the advanced duties.

(d) If a licensing board declines to authorize a practice agreement or any proposed delegated act incorporated therein, the board shall provide the ~~supervising~~ collaborating physician and the physician assistant with written notice. A physician assistant who receives notice that the board has not authorized a practice agreement or a delegated act shall not practice under the agreement or perform the delegated act.

(e) If a practice agreement is terminated, then a physician assistant shall notify the appropriate licensing board in writing within ten days of the termination. Failure to provide timely notice of the termination constitutes unprofessional conduct and disciplinary proceedings may be instituted by the appropriate licensing board.

**§30-3E-11. Supervision of Collaboration with physician assistants.**

(a) A licensed physician or podiatrist may supervise a physician assistant:

(1) As a ~~supervising~~ collaborating physician in accordance with an authorized practice agreement; or

(2) As an alternate ~~supervising~~ collaborating physician who:

(A) ~~Supervises~~ Collaborates in accordance with an authorized practice agreement;

(B) Has been designated an alternate ~~supervising~~ collaborating physician in the authorized practice agreement; and

(C) Only delegates those medical acts that have been authorized by the practice agreement and are within the scope of practice of both the primary ~~supervising~~ collaborating physician and the alternate ~~supervising~~ collaborating physician.

(b) A ~~supervising~~ collaborating physician is responsible at all times for the physician assistant under his or her supervision with whom he or she is collaborating, including:

(1) The legal responsibility of the physician assistant;

(2) Observing, directing and evaluating the physician assistant's work records and practices; and

(3) ~~Supervising~~ Collaborating with the physician assistant in the care and treatment of a patient in a health care facility.

(c) A health care facility is only legally responsible for the actions or omissions of a physician assistant when the physician assistant is employed by or on behalf of the facility. Credentialed medical facility staff and attending physicians of a hospital who provide direction to or utilize physician assistants employed by or on behalf of the hospital are considered alternate ~~supervising~~ collaborating physicians.

### **§30-3E-12. Scope of practice.**

(a) A license issued to a physician assistant by the appropriate state licensing board shall authorize the physician assistant to perform medical acts:

(1) Delegated to the physician assistant as part of an authorized practice agreement;

(2) Appropriate to the education, training and experience of the physician assistant;

(3) Customary to the practice of the ~~supervising~~ collaborating physician; and

(4) Consistent with the laws of this state and rules of the boards.

(b) This article does not authorize a physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, dental hygienists, optometrists or pharmacists, or certified as nurse anesthetists.

### **§30-3E-12a. Physician assistant signatory authority.**

(a) A physician assistant may provide an authorized signature, certification, stamp, verification, affidavit or endorsement on documents within the scope of their practice, including, but not limited to, the following documents:

(1) Death certificates: *Provided*, That the physician assistant has received training on the completion of death certificates;

(2) “Physician orders for life sustaining treatment”, “physician orders for scope of treatment” and “do not resuscitate” forms;

(3) Handicap hunting certificates; and

(4) Utility company forms requiring maintenance of utilities regardless of ability to pay.

(b) A physician assistant may not sign a certificate of merit for a medical malpractice claim against a physician.

**§30-3E-15. Summer camp or volunteer endorsement — West Virginia licensee.**

(a) The appropriate licensing board may grant a summer camp or volunteer endorsement to provide services at a children’s summer camp or volunteer services for a public or community event to a physician assistant who:

- (1) Is currently licensed by the appropriate licensing board;
- (2) Has no current discipline, limitations or restrictions on his or her license;
- (3) Has submitted a timely application; and
- (4) Attests that:

(A) The organizers of the summer camp and public or community event have arranged for a ~~supervising~~ collaborating physician to be available as needed to the physician assistant;

(B) The physician assistant shall limit his or her scope of practice to medical acts which are within his or her education, training and experience; and

(C) The physician assistant will not prescribe any controlled substances or legend drugs as part of his or her practice at the summer camp or public or community event.

(b) A physician assistant may only receive one summer camp or volunteer endorsement annually. The endorsement is active for one specifically designated period annually, which period cannot exceed three weeks.

(c) A fee cannot be assessed for the endorsement if the physician assistant is volunteering his or her services without compensation or remuneration.

**§30-3E-16. Summer camp or volunteer endorsement — out-of-state licensee.**

(a) The appropriate licensing board may grant a summer camp or volunteer endorsement to provide services at a children’s summer camp or volunteer services for a public or community event to a physician assistant licensed from another jurisdiction who:

(1) Is currently licensed in another jurisdiction and has a current certification from the National Commission on Certification of Physician Assistants;

(2) Has no current discipline, limitations or restrictions on his or her license;

(3) Has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;

(4) Has submitted a timely application;

(5) Has paid the applicable fees; and

(6) Attests that:

(A) The organizers of the summer camp and public or community event have arranged for a ~~supervising~~ collaborating physician to be available as needed to the physician assistant;

(B) The physician assistant shall limit his or her scope of practice to medical acts which are within his or her education, training and experience; and

(C) The physician assistant will not prescribe any controlled substances or legend drugs as part of his or her practice at the summer camp or public or community event; and

(7) Has fulfilled any other requirements specified by the appropriate board.

(b) A physician assistant may only receive one summer camp or volunteer endorsement annually. The endorsement is active for one specifically designated period annually, which period cannot exceed three weeks.

### **§30-3E-17. Complaint process.**

(a) All hearings and procedures related to denial of a license, and all complaints, investigations, hearings and procedures regarding a physician assistant license and the discipline accorded thereto, shall be in accordance with the processes and procedures set forth in articles three and/or fourteen of this chapter, depending on which board licenses the physician assistant.

(b) The boards may impose the same discipline, restrictions and/or limitations upon the license of a physician assistant as they are authorized to impose upon physicians and/or podiatrists.

(c) The boards shall direct to the appropriate licensing board a complaint against a physician assistant, a ~~supervising~~ collaborating physician and/or an alternate ~~supervising~~ collaborating physician.

(d) In the event that independent complaint processes are warranted by the boards with respect to the professional conduct of a physician assistant or a ~~supervising~~ collaborating and/or alternate ~~supervising~~ collaborating physician, the boards are authorized to work cooperatively and to disclose to one another information which may assist the recipient appropriate licensing board in its disciplinary process. The determination of what information, if any, to disclose shall be at the discretion of the disclosing board.

(e) A physician assistant licensed under this article may not be disciplined for providing expedited partner therapy in accordance with article four-f, chapter sixteen of this code.

The bill (Com. Sub. for S. B. 347), as amended, was then ordered to engrossment and third reading.

The Senate proceeded to the thirteenth order of business.

On motion of Senator Ferns, a leave of absence for the day was granted Senator Miller.

At the request of Senator Maynard, and by unanimous consent, the Senate returned to the eleventh order of business and the introduction of guests.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate adjourned until tomorrow, Wednesday, March 1, 2017, at 11 a.m.

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## **SENATE CALENDAR**

**Wednesday, March 01, 2017  
11:00 AM**

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

Consideration of executive nominations

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#### **UNFINISHED BUSINESS**

S. C. R. 24 - US Army PFC Joe Messe, Sr., Memorial Bridge

#### **THIRD READING**

- Eng. Com. Sub. for S. B. 4 - Allowing licensed professionals donate time to care of indigent and needy in clinical setting (original similar to HB2692)
- Eng. Com. Sub. for S. B. 5 - Disqualifying CDL for DUI conviction in certain cases
- Eng. Com. Sub. for S. B. 9 - Regulating unmanned aircraft systems (original similar to SB218)
- Eng. Com. Sub. for S. B. 180 - Relating to PSC jurisdiction over certain telephone company and internet services
- Eng. Com. Sub. for S. B. 225 - Allowing magistrates to conduct proceeding for temporary emergency protective order dealing with temporary custody by family court
- Com. Sub. for S. B. 236 - Relating to damages for medical monitoring - (With right to amend) (original similar to HB2580)
- Eng. Com. Sub. for S. B. 261 - Relating to increasing salary or wages of judgment debtor
- Eng. Com. Sub. for S. B. 337 - Hiring correctional officers without regard to placement on correctional officer register
- Eng. Com. Sub. for Com. Sub. for S. B. 345 - Allowing hunting and trapping on Sundays
- Eng. S. B. 346 - Relating generally to jurisdiction of PSC over motor carriers
- Eng. Com. Sub. for S. B. 347 - Relating to modernization of Physician Assistant Practice Act (original similar to HB2753)

#### **FIRST READING**

- Com. Sub. for S. B. 190 - Eliminating preferences for vendors bidding on state contracts for commodities or printing
- Com. Sub. for S. B. 410 - Relating to marking traps with DNR identification tag
- Com. Sub. for S. B. 439 - Relating to venue for civil and criminal actions at Salem Correctional Center

**ANNOUNCED SENATE COMMITTEE MEETINGS**

**Regular Session 2017**

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**Wednesday, March 1, 2017**

2 p.m.

Agriculture & Rural Development

(Room 208W)