

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-FOURTH LEGISLATURE  
REGULAR SESSION, 2019  
TWENTY-EIGHTH DAY

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Charleston, West Virginia, Tuesday, February 5, 2019

The Senate met at 11:10 a.m.

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

Prayer was offered by Prayer by Pastor Matt Friend, Senior Pastor, Bible Center Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Paul Hardesty, a senator from the seventh district.

Pending the reading of the Journal of Monday, February 4, 2019,

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

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

The Senate then proceeded to the third order of business.

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

**Eng. Senate Bill 27**, Removing restrictions on where certain traditional lottery games may be played.

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

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

On page one, section nine, line twelve, after the words "the winner" by inserting the words "except as authorized under §29-22D-1 *et seq.* of this code";

And,

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

**Eng. Senate Bill 27**—A Bill to amend and reenact §29-22-9 of the Code of West Virginia, 1931, as amended, relating to types of lottery games to be to be conducted by the state lottery commission; removing restrictions on where certain traditional lottery games may be played; and conforming language to recently enacted legislation.

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

Engrossed Senate Bill 27, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, and Carmichael (Mr. President)—27.

The nays were: Azinger, Plymale, Prezioso, Roberts, and Unger—5.

Absent: Boso and Mann—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 27) passed with its House of Delegates amended title.

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

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

**Eng. Com. Sub. for House Bill 2607**—A Bill to repeal §16-5C-16 and §16-5C-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5C-2, §16-5C-4, §16-5C-5, §16-5C-6, §16-5C-7, §16-5C-8, §16-5C-9, §16-5C-9a, §16-5C-10, §16-5C-11, §16-5C-12, §16-5C-12a, §16-5C-13, §16-5C-14, §16-5C-15, §16-5C-18, §16-5C-20, §16-5C-21, and §16-5C-22 of said code, all relating to the licensure of nursing homes; repealing duplicative sections of code; defining terms; clarifying rule requirements; and clarifying enforcement action and due process procedures.

Referred to the Committee on Health and Human Resources.

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 2612**—A Bill to amend and reenact §16-1-9c of the Code of West Virginia, 1931, as amended, to authorize that the Secretary of the Department of Health and Human Resources to propose rules related to source water protection plans; and staggering the timeframes of source water protection plan reporting.

Referred to the Committee on Government Organization.

The Senate proceeded to the fourth order of business.

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

Your Committee on Finance has had under consideration

**Senate Bill 16**, Authorizing expenditure of surplus funds by Wyoming County Commission.

**Com. Sub. for Senate Bill 323**, Establishing revenue fund and source to support Department of Agriculture's improvement to facilities.

And,

**Senate Bill 346**, Changing rate which certain judges are paid for mileage when traveling within state.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Craig Blair,  
*Chair.*

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

Your Committee on Finance has had under consideration

**Senate Bill 30**, Eliminating tax on annuity considerations collected by life insurer.

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

**Com. Sub. for Senate Bill 30** (originating in the Committee on Finance)—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.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Craig Blair,  
*Chair.*

Senator Azinger, 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 74**, Exempting nonpaid volunteers at ski areas from workers' compensation benefits.

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

**Com. Sub. for Senate Bill 74** (originating in the Committee on Banking and Insurance)—A Bill to amend and reenact §23-2-1a of the Code of West Virginia, 1931, as amended, relating to exempting nonpaid volunteers at ski areas from workers' compensation benefits; and updating and correcting state entity designations.

**Senate Bill 340**, Repealing obsolete provisions of WV Medical Professional Liability Insurance Joint Underwriting Association.

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

**Com. Sub. for Senate Bill 340** (originating in the Committee on Banking and Insurance)—A Bill to repeal §33-20F-1, §33-20F-1a, §33-20F-2, §33-20F-3, §33-20F-4, §33-20F-5, §33-20F-7, §33-20F-8, §33-20F-9, §33-20F-10, §33-20F-11, and §33-20F-12 of the Code of West Virginia, 1931, as amended, relating to obsolete provisions for the initial formation and operation of the West Virginia Physicians' Mutual Insurance Company.

And,

**Senate Bill 407**, Relating to abandonment and indication of ownership in property held by financial institution.

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

**Com. Sub. for Senate Bill 407** (originating in the Committee on Banking and Insurance)—A Bill to amend and reenact §36-8-2 of the Code of West Virginia, 1931, as amended, relating to presumptions of abandonment and indication of ownership in demand, savings, and time deposits held by a financial institution

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

Respectfully submitted,

Michael T. Azinger,  
*Chair.*

The bills (Com. Sub. for S. B. 74, 340, and 407), under the original double committee reference, was then referred to the Committee on the Judiciary.

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

Your Committee on Finance has had under consideration

**Com. Sub. for Senate Bill 90** (originating in the Committee on Government Organization), Transferring Safety and Treatment Program from DHHR to DMV.

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

**Com. Sub. for Com. Sub. for Senate Bill 90** (originating in the Committee on Finance)—A Bill to amend and reenact §17C-5A-3 and §17C-5A-3a of the Code of West Virginia, 1931, as amended, all relating to the Safety and Treatment Program; transferring the program from the

Department of Health and Human Resources to the Division of Motor Vehicles; adding grievance and appellate procedures and judicial review for individuals participating in the Safety and Treatment Program; authorizing the Commissioner of the Division of Motor Vehicles to promulgate rules to add such procedures and judicial review for participants; and amending internal code references.

With the recommendation that the committee substitute for committee substitute do pass.

Respectfully submitted,

Craig Blair,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

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

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

**Com. Sub. for Senate Bill 237** (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-3C-1, §15-3C-2, §15-3C-3, §15-3C-4, §15-3C-5, §15-3C-6, §15-3C-7, and §15-3C-8; all relating generally to missing and unidentified person investigations; establishing a short title; declaring legislative findings; defining terms; detailing actions that must be taken by law-enforcement agencies following the receipt of a missing persons complaint and during a missing person investigation; detailing actions that must be taken by medical examiners and law-enforcement agencies related to identification of human remains; requiring the timely notification to family members of identification of human remains; requiring submission of information to certain national and state databases; and creating a misdemeanor offense of knowingly and willfully filing a false missing person report with a law-enforcement agency.

And,

**Senate Bill 356**, Authorizing Division of Corrections and Rehabilitation to release certain information to county prosecutors and US Attorney.

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

**Com. Sub. for Senate Bill 356** (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 §15A-1-7 relating to compliance with judicial discovery requirements in state and federal criminal cases, generally; requiring the Department of Military Affairs and Public Safety and the agencies therewithin to provide to state and federal prosecutors information regarding certain past or present employees called as witnesses for the prosecution who have been previously determined to have engaged in conduct which might reasonably constitute impeachment evidence; requiring disclosure of the employee's name to the prosecuting attorney or United States attorney; limiting the department's or agency's responsibilities to those circumstances wherein the department or agency is on notice that the employee has been

subpoenaed or is to be called as a prosecution witness; clarifying that the responsibilities imposed by this section upon the department or agency are met by transmittal of the name to the prosecuting attorney or attorney for the United States; granting immunity to the department and agencies for good-faith compliance with the requirement to provide information; and clarifying that the immunity granted by the section is in addition to any other immunities granted under law.

With the recommendation that the two committee substitutes do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on Finance has had under consideration

**Senate Bill 263**, Limiting number of days legislators may be compensated during extended and extraordinary sessions if budget bill not enacted.

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

**Com. Sub. for Senate Bill 263** (originating in the Committee on Finance)—A Bill to amend and reenact §4-2A-3 of the Code of West Virginia, 1931, as amended, relating to limiting the number of days members of the Legislature may receive compensation during an extended and extraordinary session if the budget bill has not been enacted.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Craig Blair,  
*Chair.*

Senator Azinger, 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 453**, Relating to background checks of certain financial institutions.

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

Respectfully submitted,

Michael T. Azinger,  
*Chair.*

The Senate proceeded to the sixth order of business.

At the request of Senator Takubo, unanimous consent being granted, the following bills were considered introduced, read by their titles, and referred to the appropriate committees as shown on the Chamber Automation System:

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

**Senate Bill 521**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-8g, relating to agricultural education in high schools; requiring that a West Virginia Department of Education approved agricultural education program be offered in every West Virginia high school.

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

**By Senators Smith, Maynard, Sypolt, Tarr, Plymale, Cline, Rucker, and Maroney:**

**Senate Bill 522**—A Bill to amend and reenact §11-13A-3 and §11-13A-3a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §17-3-11; and to amend said code by adding thereto a new article, designated §17-30-1, §17-30-2, §17-30-3, §17-30-4, and §17-30-5, all relating to creating the Special Road Repair Fund for the maintenance and repair of the state's roads and highways; providing for two percent on the severance of natural gas and oil, and coal and other mining activities be transferred to the Special Road Repair Fund; requiring a one-time transfer of \$200 million from the Rainy Day Fund; requiring a think tank be formed; requiring rulemaking; and creating a procedure for contracting road maintenance projects.

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

**By Senator Smith:**

**Senate Bill 523**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-8F-1, §61-8F-2, §61-8F-3, §61-8F-4, §61-8F-5, §61-8F-6, §61-8F-7, §61-8F-8, and §61-8F-9, all relating to prohibiting retailers from selling or leasing products that make content accessible on the Internet, unless the product contains an active and operating digital blocking capability that renders websites displaying obscene material or website that facilitates human trafficking inaccessible by default; defining terms; establishing a fee; creating a special fund; designating how moneys from the fund may be spent; providing for injunctive relief and civil actions; creating a duty for organization to report; establishing an affirmative defense; establishing criminal penalties; providing exemptions; and establishing conditions upon which law would become effective.

Referred to the Committee on the Judiciary.

**By Senator Azinger:**

**Senate Bill 524**—A Bill to amend and reenact §33-17A-3 of the Code of West Virginia, 1931, as amended, relating to definition of terms.

Referred to the Committee on Banking and Insurance.

**By Senators Boso and Woelfel:**

**Senate Bill 525**—A Bill to amend and reenact §62-7-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §62-7-10a, all relating to requiring a form for certified commitment order to the Division of Corrections and Rehabilitation; requiring a form for commitments to prisons; requiring a form for commitments

from magistrate or circuit courts to jails; clarifying the costs of incarceration; and clarifying the method of transmittal of commitment orders.

Referred to the Committee on the Judiciary.

**By Senators Boso, Sypolt, Facemire, Jeffries, Woelfel, Tarr, Plymale, Lindsay, Cline, Hardesty, Beach, Roberts, Swope, Prezioso, Maroney, and Hamilton:**

**Senate Bill 526**—A Bill to amend and reenact §29-3-12 of the Code of West Virginia, 1931, as amended, relating to authorizing any West Virginia State Police officer, natural resources police officer, or any county or municipal law-enforcement officer to assist the State Fire Marshal or any of his or her employees in any duties for which the State Fire Marshal has jurisdiction; and authorizing the State Fire Marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal employed by the State Fire Marshal to carry a firearm in the course of official duties.

Referred to the Committee on the Judiciary.

**By Senators Smith and Beach:**

**Senate Bill 527**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §36-4-9b, relating to the termination, expiration, or cancellation of oil or natural gas leases; providing a requirement for a lessee to execute and deliver to the lessor, within a specified time and without cost, a recordable release for terminated, expired, or canceled oil or natural gas leases; providing for a procedure by which a lessor may serve notice to a lessee, if a lessee fails to timely provide the release; providing requirements for the content of the notice; requiring a lessee to timely notify the lessor in writing of a dispute regarding the termination, expiration, or cancellation of the oil and natural gas lease; providing for an affidavit of termination, expiration, or cancellation with specified contents; providing a requirement that county clerks accept and record said affidavit; and providing that with proper notification by the lessor and in the absence of a dispute by the lessee, an affidavit of termination, expiration, or cancellation, upon recordation by a county clerk, creates a rebuttable presumption of termination and cancellation of the oil or natural gas lease for certain interests and renders the recorded oil or natural gas lease as insufficient notice of the recorded lease under the notice statute.

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

**By Senators Stollings, Jeffries, Plymale, Lindsay, Hardesty, and Prezioso:**

**Senate Bill 528**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4r, relating to accident and sickness insurance; and pre-existing condition coverage.

Referred to the Committee on Banking and Insurance; and then to the Committee on the Judiciary.

**By Senators Trump, Tarr, and Rucker:**

**Senate Bill 529**—A Bill to amend and reenact §11-16-3, §11-16-5, §11-16-6a, §11-16-6b, §11-16-8, §11-16-9, §11-16-10, §11-16-12, and §11-16-17a of the Code of West Virginia, 1931, as amended, all relating to clarifying certain provisions of the Nonintoxicating Beer Act by creating a temporary license for nonintoxicating beer floorplan extensions of existing licensee floorplans; implementing a fee for the license; removing the two growler limit per patron per day for licensees who sell growlers for off premises consumption; providing a 30-day requirement to issue or deny a license application once the application is completed; implementing a reactivation fee for



licensees that fail to timely file their renewal applications and pay their license fees; creating a transportation permit for nonintoxicating beer; implementing a fee for the permit; licensing brewers, resident brewers, and distributor representatives; implementing a fee for the license; removing the bond requirements for brewers, resident brewers, distributors, and Class S licenses; requiring nonintoxicating beer label registration; and implementing a fee for the registration and subsequent renewals every three years.

Referred to the Committee on the Judiciary.

**By Senator Trump:**

**Senate Bill 530**—A Bill to repeal §29-6-7a, §29-6-9, §29-6-10a, §29-6-14, and §29-6-25 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-6-1, §29-6-2, §29-6-3, §29-6-4, §29-6-6, §29-6-7, §29-6-8, §29-6-10, §29-6-12, §29-6-16, §29-6-17, §29-6-19, §29-6-20, §29-6-21, §29-6-22, §29-6-23, §29-6-24, and §29-6-27 of said code, all relating to the state employee merit system; defining terms; allowing additions to classified service; providing exemptions to classified service; providing makeup and duties of the State Personnel Board; defining a quorum; providing authority of Director of Personnel; providing rulemaking for the Division of Personnel; exempting cause of action changes to classification and pay grade; authorizing the director to adjust pay grades; providing process for appointment, promotion, or reinstatement from lists of candidates; allowing for pilot projects; providing process for dismissal; confidentiality of records; allowing local political subdivisions to participate in the classified service system; providing penalties; providing time frames for job postings and appointments; and allowing for a leave donation program.

Referred to the Committee on the Judiciary.

**By Senator Trump:**

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

Referred to the Committee on Banking and Insurance.

**By Senator Maynard:**

**Senate Bill 532**—A Bill to amend and reenact §24-6-12 of the Code of West Virginia, 1931, as amended, relating to requiring emergency service organizations to create districts whereby towing services within a district may be dispatched or implement a policy whereby all available towing services within an area currently served by an organization are dispatched on a rotating basis; requiring the West Virginia State Police to create districts whereby towing services within a district may be dispatched or implement a policy whereby all available towing services are dispatched on a rotating basis; requiring a municipality, when handling towing services, to create districts whereby towing services within a district may be dispatched or implement a policy whereby all available towing services are dispatched on a rotating basis; continuing the Public Service Commission's jurisdiction over the towing service providers themselves; prohibiting the State Police and municipalities from imposing their own rules, policies, or ordinances; and defining a term.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on Government Organization.

Senators Beach, Jeffries, Stollings, Baldwin, Palumbo, and Swope offered the following resolution:

**Senate Concurrent Resolution 25**—Requesting the Division of Highways name bridge number 31-857-3.30 (31A322), locally known as Deckers Creek Box Beam Bridge, carrying County Route 857 over Deckers Creek in Monongalia County, the “U. S. Army PFC Andrew ‘Bo’ Martin Harper Memorial Bridge”.

Whereas, Andrew “Bo” Martin Harper was born August 17, 1951, in Charleston, South Carolina, the son of Steven M. Harper of Madsville, West Virginia, and Deanna Jeannette Anderson Harper Wells of Middleburg, Florida; and

Whereas, Andrew “Bo” Martin Harper was a 2009 graduate of University High School in Monongalia County where he participated in football, wrestling, and track. He was a member of Young Life of Morgantown and attended Chestnut Ridge Church; and

Whereas, Andrew “Bo” Martin Harper enlisted in the United States Army and obtained the rank of PFC/E3. He was assigned to Iron Troop, 3rd Squadron, 2nd Stryker Cavalry Regiment, Vilseck, Germany; and

Whereas, On March 11, 2011, PFC Andrew “Bo” Martin Harper tragically lost his life conducting combat operations near Kandahar, Afghanistan; and

Whereas, It is fitting that an enduring memorial be established to commemorate U. S. Army PFC Andrew “Bo” Martin Harper and his sacrifice to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways name bridge number 31-857-3.30 (31A322), locally known as Deckers Creek Box Beam Bridge, carrying County Route 857 over Deckers Creek in Monongalia County, the “U. S. Army PFC Andrew ‘Bo’ Martin Harper Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “U. S. Army PFC Andrew ‘Bo’ Martin Harper 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 Takubo, Jeffries, Stollings, Baldwin, Plymale, Rucker, Palumbo, Cline, Maynard, Beach, and Swope offered the following resolution:

**Senate Resolution 27**—Designating February 5, 2019, as West Virginia Alzheimer’s Association Day at the Capitol.

Whereas, Nearly one in three senior citizens who dies each year has Alzheimer’s or another dementia; and

Whereas, Over 5 million Americans are living with Alzheimer's and as many as 16 million Americans will have the disease by 2050; and

Whereas, In West Virginia in 2017, 40,000 West Virginians ages 65 and older had an Alzheimer's or dementia-related diagnosis. That number is expected to increase to 39,000 by 2020, and will continue to rise to 44,000 by 2025; and

Whereas, The cost of caring for those with Alzheimer's and other dementias was estimated to total \$259 billion in 2017 in the United States, increasing to \$1.1 trillion by midcentury; and

Whereas, Every 67 seconds someone develops Alzheimer's in the United States, where it is the 6th leading cause of death; and

Whereas, There are more than 300,000 caregivers in West Virginia and 108,000 of those are caring for someone with Alzheimer's or another dementia. These caregivers provide almost \$2 billion in unpaid care each year; therefore, be it

*Resolved by the Senate:*

That the Senate hereby designates February 5, 2019, as West Virginia Alzheimer's Association Day at the Capitol; and be it

*Further Resolved,* That the Senate hereby acknowledges the West Virginia Alzheimer's Association and the work they do to care for West Virginia residents living with Alzheimer's; and be it

*Further Resolved,* That the Senate extends its sincere gratitude and appreciation to the West Virginia Alzheimer's Association for its dedication and commitment to helping those affected by Alzheimer's in West Virginia; and be it

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

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

Thereafter, at the request of Senator Jeffries, and by unanimous consent, the remarks by Senators Takubo and Stollings regarding the adoption of Senate Resolution 27 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 11:34 a.m., the Senate recessed to present Senate Resolution 27.

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

Senators Prezioso, Jeffries, Stollings, Baldwin, Plymale, Palumbo, Hardesty, Beach, Swope, and Hamilton offered the following resolution:

**Senate Resolution 28**—Commemorating the life and career of Coach Joe Retton, husband, father, coach, veteran, and dedicated public servant.

Whereas, Joe Retton was a proud Grant Town native in Marion County, where he was a three-sport standout at Fairview High School; and

Whereas, Joe Retton served his country honorably in the U.S. Army in Korea, after which, he began his teaching and legendary coaching career; and

Whereas, Joe Retton was a dedicated public school teacher and head basketball coach at Barrackville High School. His outstanding coaching record at Barrackville was 147-19, and included winning a state championship; and

Whereas, Joe Retton moved on to become a college professor and head men's basketball coach at Fairmont State College, where he guided the Falcons from 1963-82; and

Whereas, During his tenure, Coach Retton compiled a record of 478-95 in his 19 seasons on the Fairmont State bench, ending his coaching career with a winning percentage of 83.6, the highest winning percentage of any coach in the nation at any level; and

Whereas, Coach Retton's unparalleled coaching career led the Falcons to 12 West Virginia Conference regular season titles and eight tournament championships; and

Whereas, Coach Retton was recognized nationally for his excellence in coaching, including twice as NAIA National Coach of the Year (1969, 1976). He also earned Associated Press Small College Coach of the Year in 1976 and was a six-time WVIAC Coach of the Year. He was a six-time NAIA District 28 Coach of the Year; and

Whereas, Coach Retton was a 1987 inductee into the NAIA Hall of Fame, and was also selected to the West Virginia Sports Writers Hall of Fame in 1988. He was inducted into Fairmont State's inaugural Athletics Hall of Fame class in 1993; and

Whereas, Coach Retton was married to his beloved Nancy, with whom he shared the joy of having two sons, John and David (wife Angie and children Maggie, Lucas, and Trent); and

Whereas, Sadly, Coach Joe Retton passed away at the age of 87 on October 10, 2018, bringing an end to a productive life of public service and leaving behind a grateful state and nation; and

Whereas, It is fitting, that we pay tribute to the life and legacy of Coach Joe Retton, a man whose contributions to Fairmont State and the state of West Virginia will be felt by many generations to come, and whose spirit will resound throughout the hills of West Virginia forever; therefore, be it

*Resolved by the Senate:*

That the Senate hereby commemorates the life and career of Coach Joe Retton, husband, father, coach, veteran, and dedicated public servant; and

*Further Resolved,* That the Clerk is hereby directed to forward of a copy of this resolution to the family of Coach Joe Retton.

At the request of Senator Prezioso, 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 Plymale, and by unanimous consent, the remarks by Senator Prezioso regarding the adoption of Senate Resolution 28 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 11:45 a.m., the Senate recessed to present Senate Resolution 28.

The Senate reconvened at 11:49 a.m. and resumed business under the sixth order.

Senators Prezioso, Jeffries, Stollings, Baldwin, Plymale, Beach, Swope, and Hamilton offered the following resolution:

**Senate Resolution 29**—Congratulating Doug Nuzum for winning the Earle S. Dillard Insurance Agent of the Year Award.

Whereas, The Earle S. Dillard Award is presented annually by the Independent Insurance Agents of West Virginia to those association member-agents who, throughout their career, have personified the qualities most admired by the profession; and

Whereas, Doug Nuzum attended and graduated from West Virginia University where he met and married his wife, Donna. He is part of the Hood Agency in Fairmont, West Virginia; and

Whereas, Doug Nuzum was given the Outstanding Young Man of America Award in 1982, in recognition of outstanding professional achievement, superior leadership ability, and exceptional service to the community. In 1989, he received his first designation of Life Underwriter Training Council Fellow and, in 1992, completed his second designation of Accredited Adviser in Insurance; and

Whereas, Doug Nuzum has served as the president of the Professional Independent Insurance Agents of West Virginia. His community service includes work with the Boy Scouts of America, Marion County Chamber of Commerce, Kiwanis, and the Marion County United Way; and

Whereas, Upon Doug's retirement in December 2017, his son, Chad Nuzum, took over leadership of the agency, which is now the Hood Insurance Group, LLC; and

Whereas, Doug Nuzum has demonstrated his excellence in the insurance industry and in his community, and for his efforts was presented the Earle S. Dillard Agent of the Year Award at the association's annual convention; therefore, be it

*Resolved by the Senate:*

That the Senate hereby congratulates Doug Nuzum for winning the Earle S. Dillard Insurance Agent of the Year Award; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to Doug Nuzum.

At the request of Senator Prezioso, 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 Jeffries, and by unanimous consent, the remarks by Senator Prezioso regarding the adoption of Senate Resolution 29 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 11:54 a.m., the Senate recessed to present Senate Resolution 29.

The Senate reconvened at 11:56 a.m. and proceeded to the seventh order of business.

**Senate Concurrent Resolution 22**, Urging Congress call convention for purpose of proposing amendment restoring free and fair elections.

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

**Senate Concurrent Resolution 24**, Hazel Dickens 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 ninth order of business.

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

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 157**, Authorizing Department of Administration promulgate legislative rules.

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

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

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

**Senate Bill 267**, Requiring State Board of Education adopt policy detailing level of computer science instruction.

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

**Senate Bill 343**, Relating to review and approval of state property leases.

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

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

**Com. Sub. for Senate Bill 387**, Relating generally to extradition.

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 392**, Relating to payment of invoices received by Division of Corrections and Rehabilitation for contract work.

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

**Eng. House Bill 2462**, Issuing a certificate to correctional employees to carry firearms.

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:

### **ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.**

#### **§15A-3-10. Law-enforcement powers of employees; authority to carry firearms.**

(a) Other than as outlined in this section, a correctional officer employed by the division is not a law-enforcement officer as that term is defined in §30-29-1 of this code.

(b) The commissioner is a law-enforcement official, and has the authority to use, and permit and allow or disallow his or her designated employees to use, publicly provided carriage to travel from their residences to their workplace and return: *Provided*, That the usage is subject to the supervision of the commissioner and is directly connected with and required by the nature and in the performance of the official's or designated employee's duties and responsibilities.

(c) All employees of the division are responsible for enforcing rules and laws necessary for the control and management of correctional units and the maintenance of public safety that is within the scope of responsibilities of the division.

(d) Persons employed by the Division of Corrections and Rehabilitation as correctional officers are hereby authorized and empowered to make arrests of persons already charged with a violation of law who surrender themselves to the correctional officer, to arrest persons already in the custody of the division for violations of law occurring in the officer's presence, to detain persons for violations of state law committed on the property of any facility under the jurisdiction of the commissioner, and to conduct investigations, pursue, and apprehend escapees from the custody of a facility of the division.

(e) The commissioner may designate correctional employees as correctional peace officers who have the authority:

(1) To detain persons for violations of state law committed on the property of any state correctional institution;

(2) To conduct investigations regarding criminal activity occurring within a correctional facility;

(3) To execute criminal process or other process in furtherance of these duties; and

(4) To apply for, obtain, and execute search warrants necessary for the completion of his or her duties and responsibilities.

(f) The Corrections Special Operations Team is ~~hereby established~~ continued and ~~shall consist~~ consists of the Corrections Emergency Response Team, the K9 unit, and the Crisis Negotiations team created under the former Division of Corrections. The Corrections Special Operations Team serves as the first responder necessary for the protection of life, liberty, and property. It ~~shall have~~ has limited law-enforcement authority regarding matters occurring at jails, correctional centers, and juvenile centers, and arrest powers to apprehend escapees, absconders, and in all matters arising on the grounds of a facility under the care and control of the commissioner: *Provided*, That at any time the Corrections Special Operations Team is apprehending an escapee or an absconder outside the confinement of the facility grounds, it does so with the assistance and cooperation of local law enforcement or the West Virginia State Police.

(g) Notwithstanding any provision of this code to the contrary, the commissioner may issue a certificate authorizing any correctional employee who has successfully completed the division's training program for firearms certification to carry a firearm in the performance of his or her official duties. The training program shall be approved by the commissioner and be equivalent to the training requirements applicable to deputy sheriffs for the use and handling of firearms. Any correctional employee authorized to do so by the commissioner may carry division-issued firearms while in the performance of his or her official duties, which shall include travel to and from work sites. To maintain certification, a correctional employee must successfully complete an annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by the law enforcement professional standards program. The certificate shall be on a form prescribed by the commissioner and shall bear his or her official signature.

The bill (Eng. H. B. 2462), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

**Com. Sub. for Senate Bill 127**, Relating to parole officers' duties to perform alcohol and drug testing of litigants.

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

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

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

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

The Senate then proceeded to the thirteenth order of business.

At the request of Senator Cline, the name of Senator Cline was removed as a sponsor of **Senate Bill 261** (*Relating to number of magistrates serving each county*).



At the request of Senator Takubo, unanimous consent being granted, a leave of absence for the day was granted Senator Mann.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 12:05 p.m., the Senate adjourned until tomorrow, Wednesday, February 6, 2019, at 11 a.m.

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## **SENATE CALENDAR**

**Wednesday, February 06, 2019  
11:00 AM**

### **UNFINISHED BUSINESS**

S. C. R. 25 - US Army PFC Andrew "Bo" Martin Harper Memorial Bridge

### **THIRD READING**

Eng. Com. Sub. for S. B. 154 - Using school facilities for funeral and memorial services for certain community members

Eng. Com. Sub. for S. B. 157 - Authorizing Department of Administration promulgate legislative rules (original similar to HB2231)

Eng. Com. Sub. for S. B. 175 - Authorizing DHHR promulgate legislative rules (original similar to HB2243)

Eng. S. B. 267 - Requiring State Board of Education adopt policy detailing level of computer science instruction (original similar to HB2415)

Eng. Com. Sub. for S. B. 387 - Relating generally to extradition (original similar to HB2757)

Eng. Com. Sub. for S. B. 392 - Relating to payment of invoices received by Division of Corrections and Rehabilitation for contract work

Eng. H. B. 2462 - Issuing a certificate to correctional employees to carry firearms - (Com. title amend. pending)

### **SECOND READING**

Com. Sub. for S. B. 127 - Relating to parole officers' duties to perform alcohol and drug testing of litigants

Com. Sub. for S. B. 163 - Authorizing DEP promulgate legislative rules (original similar to HB2236)

S. B. 343 - Relating to review and approval of state property leases (original similar to HB2601)

### **FIRST READING**

S. B. 16 - Authorizing expenditure of surplus funds by Wyoming County Commission

Com. Sub. for S. B. 30 - Eliminating tax on annuity considerations collected by life insurer (original similar to HB2400)

Com. Sub. for Com. Sub. for S. B. 90 - Transferring Safety and Treatment Program from DHHR to DMV

Com. Sub. for S. B. 237 - Improving ability of law enforcement to locate and return missing persons

Com. Sub. for S. B. 263 - Limiting number of days legislators may be compensated during extended and extraordinary sessions if budget bill not enacted

Com. Sub. for S. B. 323 - Establishing revenue fund and source to support Department of Agriculture's improvement to facilities (original similar to HB2468, SB385)

S. B. 346 - Changing rate which certain judges are paid for mileage when traveling within state (original similar to HB2566)

Com. Sub. for S. B. 356 - Requiring MAPS provide state and federal prosecutors information (original similar to HB2698)

S. B. 453 - Relating to background checks of certain financial institutions

**ANNOUNCED SENATE COMMITTEE MEETINGS**

**Regular Session 2019**

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**Wednesday, February 6, 2019**

2 p.m.

Agriculture & Rural Development

(Room 208W)