

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-FOURTH LEGISLATURE
REGULAR SESSION, 2019
THIRTY-SEVENTH DAY

Charleston, West Virginia, Thursday, February 14, 2019

The Senate met at 11:07 a.m.

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

Prayer was offered by the Reverend Brad Spencer, Canaan Valley Baptist Church, Davis, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Douglas E. Facemire, a senator from the twelfth district.

Pending the reading of the Journal of Wednesday, February 13, 2019,

At the request of Senator Boley, 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 concurrence by that body in the passage, to take effect from passage, of

Eng. Com. Sub. for Senate Bill 18, Relating to crimes committed on State Capitol Complex.

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

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

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 2609—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.

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. House Bill 2647—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-12-38, relating to establishing a limited lines insurance license for self-storage providers; defining terms.

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 2720—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-15-19; to amend said code by adding thereto a new section, designated §8-15-28; and to amend said code by adding thereto a new section, designated §16-4C-24, all relating to authorizing certain first responders to carry firearms; authorizing supervising entities to authorize ambulance crew members, firefighters, rescue squad members and emergency service personnel to carry firearms; specifying the training required for such persons to be eligible to carry a firearm; and allowing for reimbursement for the cost of the training.

Referred to the Committee on Health and Human Resources; 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. House Bill 2878—A Bill to amend and reenact §60A-2-204 of the Code of West Virginia, 1931, as amended, relating to updating the controlled substances listed on schedule one.

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

Executive Communications

The Clerk then presented a communication from His Excellency, the Governor, advising that on February 14, 2019, he had approved **Enr. Senate Bill 177** and **Enr Committee Substitute for Senate Bill 255**.

The Senate proceeded to the fourth order of business.

Senator Azinger, from the Committee on Pensions, submitted the following report, which was received:

Your Committee on Pensions has had under consideration

Senate Bill 11, Relating to retirement and pension benefits of certain PERS and Teachers Retirement System members who serve in Legislature.

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

Respectfully submitted,

Michael T. Azinger,
Chair.

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

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

Your Committee on Finance has had under consideration

Senate Bill 29, Creating five-year tax credits for businesses on post-coal mine sites.

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

Com. Sub. for Senate Bill 29 (originating in the Committee on Finance)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-28-1, §11-28-2, and §11-28-3, all relating to creating ten-year tax credits for businesses locating on post-coal mine sites; defining terms; setting eligibility requirements for tax credit; establishing amount of tax credit allowed; establishing how the credit may be applied; and providing rule-making authority.

With the recommendation that the committee substitute 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 117, Relating to incentives for consolidating local governments.

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

Com. Sub. for Senate Bill 117 (originating in the Committee on Finance)—A Bill to amend and reenact §7-11B-3, §7-11B-4, and §7-11B-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §7A-2-4 of said code; and to amend said code by adding thereto a new section, designated §7A-2-5, all relating to incentives for consolidating local governments; amending the definitions of certain terms to include municipalities that successfully consolidated; granting additional powers to governing bodies of municipalities that successfully consolidated;

authorizing municipalities that successfully consolidate additional powers related to creation of a development or redevelopment district; allowing consolidation of local governments to include public school districts, library districts, and fire districts; creating certain incentives for municipalities that consolidate; creating certain incentives for counties that consolidate; and creating certain incentives for municipalities and counties that form metro governments by consolidation.

With the recommendation that the committee substitute 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 147, Shifting funding from Landfill Closure Assistance Fund to local solid waste authorities.

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

Com. Sub. for Senate Bill 147 (originating in the Committee on Finance)—A Bill to amend and reenact §7-5-22 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-16-4 of said code, all relating to shifting funding from the Landfill Closure Assistance Fund to local solid waste authorities

With the recommendation that the committee substitute 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 333, Exempting automobiles 25 years or older from personal property taxes.

And reports the same back with the recommendation that it 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 512, Regulating pawnbrokers.

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

Com. Sub. for Senate Bill 512 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §47-26-1, §47-26-2, and §47-26-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §47-26-2a, all relating to the regulation of pawnbrokers; removing an exception for certain transactions from the report required of all pawnbrokers; requiring all pawnbrokers to be equipped with certain surveillance equipment and signage effective January 1, 2021; prohibiting pawnbrokers from doing business with certain persons; prohibiting pawnbrokers from purchasing certain items or transacting with certain items from anyone; creating misdemeanor offenses for certain violations; and increasing the penalties for existing criminal offenses related to pawnbrokers.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Azinger, from the Committee on Pensions, submitted the following report, which was received:

Your Committee on Pensions has had under consideration

Senate Bill 539, Relating to accrued benefit of retirees in WV State Police Retirement System Plan B.

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

Com. Sub. for Senate Bill 539 (originating in the Committee on Pensions)—A Bill to amend and reenact §15-2A-6 of the Code of West Virginia, 1931, as amended, relating to the accrued benefit of retirees in the West Virginia State Police Retirement System Plan B.

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

Respectfully submitted,

Michael T. Azinger,
Chair.

The bill (Com. Sub. for S. B. 539), under the original double committee reference, was then referred to the Committee on Finance.

Senator Maroney, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

Senate Bill 546, Relating to health care provider taxes.

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

Com. Sub. for Senate Bill 546 (originating in the Committee on Finance)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-27-39, relating generally to health care provider taxes; imposing a contingent 0.13 percent tax on eligible acute care hospitals; and providing an expiration date for the tax.

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

Respectfully submitted,

Michael J. Maroney,
Chair.

The bill (Com. Sub. for S. B. 546), under the original double committee reference, was then referred to the Committee on Finance.

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 Rucker, Boso, Maroney, Tarr, Baldwin, Cline, and Sypolt:

Senate Bill 605—A Bill to amend and reenact §18-2-25a and §18-2-25b of the Code of West Virginia, 1931, as amended, all relating to providing that schools that do not follow established protocol on concussions and head injuries in interscholastic athletics are subject to disciplinary actions by the Secondary Schools Athletics Commission; and providing that schools that do not follow the requirements of their emergency action plans for athletics are subject to disciplinary actions by the Secondary Schools Athletics Commission.

Referred to the Committee on Education.

By Senators Smith, Sypolt, Boso, Clements, Cline, Roberts, Tarr, Maroney, and Rucker:

Senate Bill 606—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-2P-1, §16-2P-2, §16-2P-3, §16-2P-4, §16-2P-5, §16-2P-6, §16-2P-7, §16-2P-8, §16-2P-9, §16-2P-10, and §16-2P-11, all relating to enacting the Fetal Heartbeat Act; prohibiting abortions when a fetal heartbeat is detected; providing that the article applies only to intrauterine pregnancies; providing exceptions; making findings; providing for severability; establishing standards, requirements, and procedures; requiring documentation; requiring notice and acknowledgments; establishing criminal penalties; permitting civil actions; defining terms; and providing for rulemaking.

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

By Senators Blair, Cline, Tarr, Rucker, and Boso:

Senate Bill 607—A Bill to amend and reenact §18-20-2 of the Code of West Virginia, 1931, as amended, relating to requiring county boards of education to provide a camera system in each classroom designated exclusively for students with exceptional needs; and requiring that the system allow authorized parents or guardians of students with exceptional needs to have remote access to the visual feed captured by cameras in the classroom.

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

By Senators Beach, Romano, Prezioso, and Jeffries:

Senate Bill 608—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-6-4a, relating to requiring the Commissioner of the Division of Highways and the Director of the Division of Personnel to collaborate and develop a special hiring procedure for hourly personnel positions in the Division of Highways; establishing requirements for the special hiring procedure; exempting the Division of Highways and the Division of Personnel from classified service hiring procedures upon implementation of the special hiring process; providing exceptions; establishing reporting requirements; and requiring emergency and legislative rulemaking.

Referred to the Committee on Government Organization.

By Senators Beach, Baldwin, Clements, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Unger, and Woelfel:

Senate Bill 609—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §9-11-1, §9-11-2, §9-11-3, §9-11-4, §9-11-5, §9-11-6, and §9-11-7, all relating to improving the quality of West Virginia's Medicaid program; establishing a pilot program to implement smart health cards for the transmission of health care related information for certain Medicaid beneficiaries between the Department of Health and Human Resources and public and private health care providers; defining terms; establishing the Smart Health Card Medicaid Pilot Program; providing implementation date for pilot program; outlining goals of the pilot program; setting forth the requirements for establishing the pilot program; setting forth cybersecurity procurement requirements for vendors who provide technology and services relating to the pilot program; setting forth the requirements of the smart health card; restricting disclosure of health information to the same extent as federal HIPAA requirements; establishing annual reporting requirement to the Legislative Committee on Health and Human Resources Accountability; and providing for a sunset clause of June 30, 2024.

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

By Senators Sypolt, Hamilton, Stollings, Romano, and Maroney:

Senate Bill 610—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §20-2D-1, §20-2D-2, and §20-2D-3, all relating to creating a Voluntary WVU Rifle Team Check-off Program on the cost of hunting and fishing license; creating a special fund for this purpose; and providing how funds are to be used.

Referred to the Committee on Government Organization.

By Senators Roberts, Sypolt, Rucker, Smith, Trump, Cline, Tarr, and Boso:

Senate Bill 611—A Bill to amend and reenact §5B-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §5F-2-1 of said code; to amend and reenact §6-7-2a of said code; to amend said code by adding thereto a new section, designated §19-1-3b; to amend and reenact §19-1A-5 of said code; to amend and reenact §19-1B-3 of said code; and to amend and reenact §19-12A-5 of said code, all relating generally to transferring the Division of Forestry from the Department of Commerce to the Department of Agriculture effective July 1, 2019; transferring all authorities, powers, funds, duties, and affiliated boards or commissions of the Division of Forestry from the Division of Forestry to the Department of Agriculture; ensuring legislative rules remain in effect and transfer; permitting the Commissioner of Agriculture to hire the Director of the Division of Forestry and set the director's salary; transferring Division of Forestry employees and director with same salary and benefits; making employees and Director of the Division of Forestry will and pleasure employees of the Commissioner of Agriculture; directing the Commissioner of Agriculture and the Secretary of Commerce to work with the Director of the Division of Forestry to ensure smooth transition; and making technical corrections to recognize the transfer elsewhere in the code.

Referred to the Committee on Government Organization.

By Senators Weld, Blair, Hamilton, Hardesty, Jeffries, Lindsay, Rucker, Takubo, and Tarr:

Senate Bill 612—A Bill to amend and reenact §19-23-12a of the Code of West Virginia, 1931, as amended; to amend and reenact §29-22A-12 of said code; and to amend and reenact §29-22C-3 and §29-22C-8 of said code, all relating to allowing for the establishment of a secondary location for simulcast, racetrack video lottery terminals and racetrack table games of licensed racetracks to a secondary location within the current county of the licensed racetrack.

Referred to the Committee on Finance.

By Senators Maroney, Plymale, Takubo, Jeffries, Hamilton, Stollings, Roberts, Baldwin, and Woelfel:

Senate Bill 613—A Bill to amend and reenact §16-19-3, §16-19-5, and §16-19-19 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-2-31 of said code, all relating to permitting individuals to make an anatomical gift on a hunting license; adding definition; permitting the Division of Natural Resources to participate in the Donor Registry; requiring the Division of Natural Resources to conduct education on the election of organ donation on hunting licenses; and requiring the Division or Natural Resources to include the election of organ donation on hunting licenses.

Referred to the Committee on Natural Resources.

By Senator Blair:

Senate Bill 614—A Bill to amend and reenact §11-8-6e of the Code of West Virginia, 1931, as amended, relating generally to the effect on regular levy rate when appraisal results in tax increase; allowing an increase of not more than 10 percent in the total projected property tax revenues realized when current levy rates are imposed by the county commission and the municipalities, before requiring a reduction in the levy rate, or holding a public hearing.

Referred to the Committee on Finance.

By Senators Trump, Plymale, and Boso:

Senate Bill 615—A Bill to amend and reenact §7-7-4 of the Code of West Virginia, 1931, as amended, relating to providing county commissioners an ongoing mechanism to consider compensation increases for elected officials every two years.

Referred to the Committee on Government Organization.

By Senators Lindsay, Baldwin, Beach, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Mann, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger, and Woelfel:

Senate Bill 616—A Bill to amend and reenact §5-10A-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-10D-1 of said code; and to amend said code by adding thereto a new article, designated §16-5VV-1, §16-5VV-2, §16-5VV-3, §16-5VV-4, §16-5VV-5, §16-5VV-6, §16-5VV-7, §16-5VV-8, §16-5VV-9, §16-5VV-10, §16-5VV-11, §16-5VV-12, §16-5VV-13, §16-5VV-14, §16-5VV-15, §16-5VV-16, §16-5VV-17, §16-5VV-18, §16-5VV-19, §16-5VV-20, §16-5VV-21, §16-5VV-22, §16-5VV-23, §16-5VV-24, §16-5VV-25, §16-5VV-26, §16-5VV-27, §16-5VV-28, §16-5VV-29, §16-5VV-30, §16-5VV-31, §16-5VV-32, §16-5VV-33, §16-5VV-34, and §16-5VV-35, all relating to the Consolidated Public Retirement Board; providing that the board administer the Emergency Medical Services Retirement System; establishing the Emergency Medical Services Retirement System; setting forth definitions; including application of honorable service condition to plan participants; providing effective dates and voting requirement; establishing federal qualification requirements; providing for liberal construction; providing that plan is not a substitute for Social Security; providing for and setting membership standards; setting forth required contributions from members and employers; creating fund and providing for investments; providing for transfer from Public Employees Retirement System; setting time limits; setting forth notice requirements; providing for the commencement of benefits, federal law maximum benefit limitations, minimum required distributions, and direct rollovers; providing for retirement credited through member's use of accrued annual or sick leave; providing for retirement benefits; setting forth annuity options; providing for refunds in certain circumstances; providing for deferred retirement; providing for forfeitures of benefits; providing awards and benefits for duty-related disability and for other causes; requiring physical examinations; establishing criteria for termination of disability; providing for prior disability; providing awards and benefits to surviving spouse and additional death benefits and scholarships for dependent children; providing for burial benefit; prohibiting double death benefits; establishing exemption from taxation, garnishment, and other process; authorizing certain deductions; establishing the effect of qualified domestic relation orders; prohibiting fraud; establishing criminal penalties; requiring repayment in certain circumstances; providing for treatment of prior military service; establishing effective date of the system; providing voluntary employer participation; establishing starting date for benefits; limiting county liability; and providing for no forfeiture of benefits if system terminates.

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

Senators Maroney, Stollings, Baldwin, Beach, Plymale, and Boso offered the following resolution:

Senate Concurrent Resolution 34—Requesting the Division of Highways name bridge number 26-2/26-0.13 (26A095), locally known as the Sixth Street Bridge, carrying Sixth Street over West Virginia Route 2 and US Route 250 in Marshall County, the "U. S. Army SPC Julian Lee Berisford Memorial Bridge".

Whereas, Julian Lee Guthrie Berisford was born in Wheeling on June 13, 1984, to Shelley Guthrie and Julie Berisford, of Moundsville, West Virginia; and

Whereas, Julian Lee Berisford graduated from John Marshall High School in 2002, and studied Parks and Recreation at West Liberty State College; and

Whereas, Julian Lee Berisford was known to his friends and family as someone who was good to be around, ready with a joke or a friendly gesture, and was a fan of fishing and the West Virginia Mountaineers; and

Whereas, Julian Lee Berisford enlisted in the United States Army in 2007 and, after successfully completing paratrooper school, was assigned to the 4th Brigade Combat Team, 25th Infantry Division (Airborne), stationed in Fort Richardson, Alaska, with the rank of Specialist; and

Whereas, During that time, Julian Lee Berisford had also fallen in love with, and became engaged to, Gina Marie Yankovich, whom he married on December 31, 2007, and in November of the following year they had a daughter, Mya; and

Whereas, SPC Julian Lee Berisford was subsequently deployed to Afghanistan as part of Operation Enduring Freedom; and

Whereas, After serving many months in country, SPC Julian Lee Berisford was granted leave and scheduled to come home for a visit to celebrate his daughter's first birthday. But, before the scheduled date of his leave, his team went out on another mission where they came under hostile fire during their patrol. SPC Julian Lee Berisford was killed in the line of duty on November 9, 2009; and

Whereas, It is fitting that an enduring memorial be established to commemorate SPC Julian Lee Berisford and his contributions to our state and country; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 26-2/26-0.13 (26A095), locally known as the Sixth Street Bridge, carrying Sixth Street over West Virginia Route 2 and US Route 250 in Marshall County, the "U. S. Army SPC Julian Lee Berisford 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 SPC Julian Lee Berisford Memorial Bridge"; and, be it

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

Which, under the rules, lies over one day.

Senators Takubo, Stollings, Jeffries, Baldwin, Beach, Palumbo, Hardesty, Unger, Plymale, Cline, Romano, Prezioso, and Boso offered the following resolution:

Senate Resolution 43—Designating February 14, 2019, as Tiny Hearts Day at the Capitol.

Whereas, The West Virginia Chapter of the American Academy of Pediatrics is a non-profit organization of more than 290 private practice pediatricians, generalists, specialists, medical school faculty, pediatric trainees, nurse practitioners, physician assistants, public health practitioners, and administrators across the state of West Virginia; and

Whereas, The mission of the West Virginia Chapter of the American Academy of Pediatrics is to attain the optimal health and well-being of all infants, children, adolescents, and young adults by uniting and educating pediatricians and facilitating an effective partnership between pediatricians and other child experts and advocates; and

Whereas, Pediatricians play a critical role in improving the health of our citizens; and

Whereas, The prevention of major threats to children's health and the control and management of chronic diseases, obesity, injury, communicable diseases, and other problems cannot be managed solely in the pediatric office; and

Whereas, The 2019 legislative priorities of the West Virginia Chapter of the American Academy of Pediatrics are: Improving access to care, including care for vulnerable populations such as those in foster care and kinship care; maintaining strong immunization laws; obesity prevention and treatment; raising the legal age to purchase tobacco to 21 and promoting tobacco cessation; addressing the opioid epidemic and its impact on children; and firearm injury prevention; and

Whereas, The West Virginia Chapter of the American Academy of Pediatrics will continue to put kids' health first and be a voice for vulnerable children and families in West Virginia; therefore, be it

Resolved by the Senate:

That the Senate hereby designates February 14, 2019, as Tiny Hearts Day at the Capitol; and, be it

Further Resolved, That the Senate extends its sincere gratitude and appreciation to the West Virginia Chapter of the American Academy of Pediatrics for the important work they do and for the positive impact they have on the health of West Virginia children and families; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the West Virginia Chapter of the American Academy of Pediatrics.

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 Prezioso, and by unanimous consent, the remarks by Senators Takubo and Stollings regarding the adoption of Senate Resolution 43 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 11:25 a.m., the Senate recessed to present Senate Resolution 43.

The Senate reconvened at 11:29 a.m. and resumed business under the sixth order.

Senators Carmichael (Mr. President), Jeffries, Stollings, Baldwin, Beach, Palumbo, Unger, Plymale, Cline, Prezioso, Rucker, and Boso offered the following resolution:

Senate Resolution 44—Designating February 14, 2019, as West Virginia Arts Day at the Legislature.

Whereas, The West Virginia Department of Arts, Culture, and History, the West Virginia Arts Office, and the West Virginia Commission on the Arts support programs, organizations, and individual artists in all 55 counties; and

Whereas, The arts are the embodiment of all things beautiful and entertaining in the world, the enduring record of human achievement; and

Whereas, The arts enhance every aspect of life in West Virginia: Growing our creative economy, enriching our civic life, enhancing tourism, and exerting a profound, positive influence on the education of our children; and

Whereas, Support for the arts advances, fosters, and promotes the traditional and contemporary creativity of our residents through music, theatre, literature, dance, and fine arts; and

Whereas, Arts education research shows that the arts help to foster discipline, creativity, imagination, self-expression, and problem-solving skills while also helping to develop a heightened appreciation of beauty and cross-cultural understanding; and

Whereas, The arts play a unique and intrinsically valuable role in the lives of our families, our communities, and our state; therefore, be it

Resolved by the Senate:

That the Senate designates February 14, 2019, as West Virginia Arts Day at the Legislature; and, be it

Further Resolved, That the Senate encourages all citizens to celebrate and promote the arts and culture in the Mountain State; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the Curator of the West Virginia Department of Arts, Culture, and History.

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.

On motion of Senator Takubo, at 11:31 a.m., the Senate recessed to present Senate Resolution 44.

The Senate reconvened at 11:34 a.m. and resumed business under the sixth order.

Senators Plymale, Jeffries, Stollings, Baldwin, Beach, Woelfel, Palumbo, Unger, and Boso offered the following resolution:

Senate Resolution 45—Recognizing the Cabell Midland High School Marching Knight Band for its outstanding achievements, and for its dedication and commitment to fine performances of the marching arts.

Whereas, The Cabell Midland Marching Knight Band program has, since its inception in 1994, provided exceptional musical performances; and

Whereas, The band has won 102 Marching Band Grand Championships, six Marshall University Tri-State Marching Band Championships, and three National Band Grand Championships; and

Whereas, The band has excelled in-state as the featured band for 13 years at the Joyful Night Celebration at the State Capitol and is an eight-time winner of the West Virginia Black Walnut Festival Honor Band Award; and

Whereas, The Cabell Midland Marching Knight Band have been named the West Virginia State Marching Band Invitational State Honor Band for seven consecutive years and are the current reigning State Marching Band Champions; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes the Cabell Midland Marching Knight Band for its outstanding achievements, and for its dedication and commitment to fine performances of the marching arts; and, be it

Further Resolved, That the Senate extends its sincere gratitude and appreciation to the Cabell Midland Marching Knight Band for proudly representing their school, county, and the great State of West Virginia; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the Cabell Midland Marching Knight Band.

At the request of Senator Plymale, 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 Prezioso, and by unanimous consent, the remarks by Senators Plymale and Woelfel regarding the adoption of Senate Resolution 45 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 11:38 a.m., the Senate recessed to present Senate Resolution 45.

The Senate reconvened at 11:46 a.m. and, at the request of Senator Takubo, unanimous consent being granted, returned to the fourth order of business,

Senator Azinger, from the Committee on Pensions, submitted the following report, which was received:

Your Committee on Pensions has had under consideration

Senate Bill 617 (originating in the Committee on Pensions)—A Bill to amend and reenact §8-22-19 of the Code of West Virginia, 1931, as amended, relating to method of payment of municipal contributions to the Municipal Pensions Security Fund.

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

Respectfully submitted,

Michael T. Azinger,
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 618 (originating in the Committee on Finance)—A Bill to amend and reenact §11-8-6e of the Code of West Virginia, 1931, as amended relating to the effect on regular levy rate when appraisal results in tax increase; allowing an increase of not more than 10 percent in the total projected property tax revenues realized when current levy rates are imposed by the county commission and the municipalities before requiring a reduction in levy rate or holding public hearing

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

Respectfully submitted,

Craig Blair,
Chair.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution 5, Home of Coach Bob Bolen Mountain State University 2004 NAIA Champions sign.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

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

Com. Sub. for Senate Concurrent Resolution 7, Urging Congress provide exceptions to weight limits on interstate.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

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

Senate Concurrent Resolution 29, Hershell Lee Thomas Memorial Bridge.

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

Senate Concurrent Resolution 30, Urging Congress call convention for Constitutional amendment limiting terms for persons elected to House of Representatives and Senate.

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

Senate Concurrent Resolution 31, SGT James E. Mattingly Bridge.

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

Senate Concurrent Resolution 32, US Army SSG Henry Kilgore Bridge.

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

Senate Concurrent Resolution 33, Requesting study of foster care system and compliance with federal law.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Health and Human Resources; and then to the Committee on Rules.

Senate Resolution 42, Recognizing importance of Atlantic Coast Pipeline.

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

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for Senate Bill 74, Exempting nonpaid volunteers at ski areas from workers' compensation benefits.

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, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 74) passed with its title.

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

Eng. Com. Sub. for Senate Bill 339, Allowing certain persons carry pepper spray in State Capitol Complex.

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, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 339) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com, Sub. for S. B. 339) 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 60, Licensing practice of athletic training.

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

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

On page two, section one, line eighteen, by striking out “.T.”;

On page seven, section four, line fourteen, by striking out all of subdivision (4) and inserting in lieu thereof a new subdivision, designated subdivision (4), to read as follows:

“(4) An athletic trainer registration issued by the board prior to January 1, 2020, is considered a license issued under this article: *Provided*, That a person holding a license issued prior to January 1, 2020, must renew the license pursuant to a registration and renewal schedule adopted by the board and the provisions of this article;”

On page eight, section four, line sixteen, by striking out the words “July 1, 2015, submit a current certification, and be in good standing with the BOC and” and inserting in lieu thereof the words “January 1, 2020”;

On page ten, section five, line thirty-three, after the word “trainer” by inserting the words “subject to the “General Supervision” within this article”;

On page ten, section five, line thirty-four, by striking out the word “medical” and inserting in lieu thereof the words “health care”;

And,

On page thirteen, section eight, line one, by striking out the words “biannually before July 1” and inserting in lieu thereof the words “biennially by June 30”.

The bill (Com. Sub. for S. B. 60), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 66, Prohibiting certain misleading lawsuit advertising practices.

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 266, Creating Intermediate Court of Appeals and WV Appellate Review Organization Act of 2019.

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.

At the request of Senator Takubo, and by unanimous consent, the Senate returned to the consideration of

Eng. Com. Sub. for Senate Bill 66, Prohibiting certain misleading lawsuit advertising practices.

Having been read a second time and ordered to engrossment and third reading in earlier proceedings today,

On motion of Senator Baldwin, the following amendment to the bill was reported by the Clerk:

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

ARTICLE 6N. PREVENTION OF DECEPTIVE ADVERTISING AND SOLICITATION PRACTICES.

§46A-6N-1. Short title.

This article shall be known and cited as the Prevention of Deceptive Advertising and Solicitation Practices Act.

§46A-6N-2. Deceptive advertising practices.

(a) Specifically prohibited advertising practices. — A person engages in a deceptive trade practice if in advertising legal services or pharmaceutical products the person does any of the following:

(1) Fails to disclose at the outset of the advertisement: “This is a paid advertisement for [“legal services” or “a pharmaceutical product”]”;

(2) Presents an advertisement as a “medical alert”, “health alert”, “consumer alert”, “public service announcement”, or similar phrase;

(3) Displays the logo of a federal or state government agency in a manner that suggests affiliation with the sponsorship of that agency;

(4) Uses the word “recall” when referring to a product that has not been recalled by a government agency or through an agreement between a manufacturer and a government agency;

(5) Fails to identify the sponsor of the advertisement; or

(6) Fails to indicate the identity of the attorney, law firm, manufacturer, or, in the case of legal services, how cases will be referred to attorneys or law firms that will represent clients if the sponsor of the advertisement will not represent persons responding to the advertisement.

(b) Disclosures and warnings for protection of patients. —

(1) An advertisement for legal services soliciting clients who may allege an injury from a prescription drug approved, cleared, or the subject of a monograph authorized by the United States Food and Drug Administration shall include the following warning: “Do not stop taking a prescribed medication without first consulting with your doctor. Discontinuing a prescribed medication without your doctor’s advice can result in injury or death”.

(2) An advertisement for a lawsuit soliciting clients who may allege an injury from a prescription drug or medical device approved, cleared, or the subject of a monograph authorized by the United States Food and Drug Administration shall disclose that the drug or medical device remains approved by the United States Food and Drug Administration, unless the product has been recalled or withdrawn.

(3) An advertisement for a pharmaceutical product shall include:

(A) The trade/brand name or proprietary name, if any, including name(s) of the active ingredient(s);

(B) The major indication(s) for use;

(C) The major precautions, contra-indications and warnings; and

(D) The average retail price.

(c) Appearance of required statements, disclosures, and warnings. — Any words or statements required by this section to appear in an advertisement must be presented clearly and conspicuously.

(1) Written disclosures shall be clearly legible and, if televised or displayed electronically, shall be displayed for a sufficient time to enable the viewer to easily see and fully read the disclosure or disclaimer.

(2) Spoken disclosures shall be plainly audible and clearly intelligible.

(d) Definitions. — For purposes of this section:

(1) “Legal advertisement” means a solicitation for legal services through television, radio, internet (including a domain name), newspaper, or other periodical, outdoor display, or other written, electronic, or recorded communications.

(2) “Person” includes any person, entity, attorney, or law firm that advertises legal services or identifies potential clients for attorneys or law firms.

§46A-6N-3. Wrongful use or disclosure of protected health information for solicitation of legal services.

(a) Use or disclosure of protected health information for legal solicitation. — A person shall not use, cause to be used, obtain, sell, transfer, or disclose to another person without written authorization protected health information for the purposes of soliciting an individual for legal services or pharmaceutical products.

(b) Definitions. — For purposes of this section:

(1) “Person” includes an attorney, law firm, manufacturer, or individual entity that solicits individuals for legal services, pharmaceutical products or identifies potential clients for attorneys or law firms.

(2) “Protected health information” has the meaning given to the term in section 160.103 of title 45, Code of Federal Regulations.

(3) “Solicit” means offer to provide legal services or pharmaceutical products by written, recorded, or electronic communication, or by in-person, telephone, or real-time electronic contact.

(c) Enforcement. —

(1) A violation of this section constitutes a violation of West Virginia’s health privacy laws or §46A-6-101 et seq. of this code.

(2) In addition to any other remedy provided by law, a person who willfully and knowingly violates this section shall be guilty of a misdemeanor and, upon conviction thereof, be confined in jail not more than one year, be fined \$1,000, or both.

(d) Construction. — This provision may not be construed to apply to the use or disclosure of protected health information to an individual's legal representative, in the course of any judicial or administrative proceeding, or as otherwise permitted or required by law.

§46A-6N-4. Authority of judiciary or State Bar to regulate practice of law.

Nothing in this act shall limit or otherwise affect the authority of the judiciary or the Lawyer Disciplinary Board to regulate the practice of law, enforce the West Virginia Rules of Professional Conduct, or discipline persons admitted to the bar.

Senator Trump arose to a point of order that Senator Baldwin's amendment to the bill (Com. Sub. for S. B. 66) was not germane to the bill.

Which point of order, the President ruled well taken.

Whereupon, the bill (Com. Sub. for S. B. 66) was again ordered to engrossment and third reading.

Com. Sub. for Senate Bill 393, Protecting right to farm.

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 516, Relating to attorney fees in subsidized adoptions.

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 518, Restricting sale and trade of dextromethorphan.

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 563, Prohibiting sexual assault victim be subjected to certain physical examinations.

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

Senate Bill 590, Permitting guided bear hunts by licensed outfitters and guides.

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

Eng. Com. Sub. for House Bill 2521, Relating to permitting fur-bearer parts.

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

The Senate proceeded to the tenth order of business.

At the request of Senator Takubo, unanimous consent being granted, the following bills on first reading were considered read a first time and ordered to second reading:

Com. Sub. for Senate Bill 259, Expanding Coyote Control Program.

Com. Sub. for Senate Bill 295, Relating to crimes against public justice.

Com. Sub. for Senate Bill 489, Relating to Pharmacy Audit Integrity Act.

Com. Sub. for Senate Bill 502, Exempting sales of investment metal bullion and coins.

Senate Bill 545, Relating to HIV testing.

Senate Bill 550, Declaring certain claims to be moral obligations of state.

And,

Eng. Com. Sub. for House Bill 2481, Permitting retail sale of alcoholic beverages on Sundays after 1 p.m.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 12:18 p.m., the Senate adjourned until tomorrow, Friday, February 15, 2019, at 11 a.m.

SENATE CALENDAR

**Friday, February 15, 2019
11:00 AM**

UNFINISHED BUSINESS

S. C. R. 34 - US Army SPC Julian Lee Berisford Memorial Bridge

THIRD READING

Eng. Com. Sub. for S. B. 60 - Licensing practice of athletic training (original similar to HB2401)

Eng. Com. Sub. for S. B. 66 - Prohibiting certain misleading lawsuit advertising practices (original similar to HB2671)

Eng. Com. Sub. for S. B. 393 - Protecting right to farm (original similar to HB2774, HB2900)

Eng. Com. Sub. for S. B. 516 - Relating to attorney fees in subsidized adoptions

Eng. Com. Sub. for S. B. 518 - Restricting sale and trade of dextromethorphan

Eng. Com. Sub. for S. B. 563 - Prohibiting sexual assault victim be subjected to certain physical examinations

Eng. S. B. 590 - Permitting guided bear hunts by licensed outfitters and guides

Eng. Com. Sub. for H. B. 2521 - Relating to permitting fur-bearer parts

SECOND READING

Com. Sub. for S. B. 259 - Expanding Coyote Control Program

Com. Sub. for Com. Sub. for S. B. 266 - Creating Intermediate Court of Appeals and WV Appellate Review Organization Act of 2019 (original similar to HB2366)

Com. Sub. for S. B. 295 - Relating to crimes against public justice (original similar to HB3000)

Com. Sub. for S. B. 489 - Relating to Pharmacy Audit Integrity Act (original similar to HB2806)

Com. Sub. for S. B. 502 - Exempting sales of investment metal bullion and coins

S. B. 545 - Relating to HIV testing

S. B. 550 - Declaring certain claims to be moral obligations of state

Eng. Com. Sub. for H. B. 2481 - Permitting retail sale of alcoholic beverages on Sundays after 1 p.m. - (Com. amend. and title amend. pending)

FIRST READING

Com. Sub. for S. B. 29 - Creating ten-year tax credits for businesses locating on post-coal mine sites

Com. Sub. for S. B. 117 - Relating to incentives for consolidating local governments

Com. Sub. for S. B. 147 - Shifting funding from Landfill Closure Assistance Fund to local solid waste authorities (original similar to HB2496)

S. B. 333 - Exempting automobiles 25 years or older from personal property taxes

Com. Sub. for S. B. 512 - Regulating pawnbrokers

S. B. 617 - Relating to method of payment to Municipal Pensions Security Fund

S. B. 618 - Relating to effect on levy rate when appraisal results in tax increase

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2019

Friday, February 15, 2019

10 a.m.

Transportation & Infrastructure

(Room 451M)