

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-FOURTH LEGISLATURE  
REGULAR SESSION, 2020  
TWENTY-EIGHTH DAY

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Charleston, West Virginia, Tuesday, February 4, 2020

The Senate met at 11:07 a.m.

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

Prayer was offered by the Reverend Rick Swearingin, Madison United Methodist Church, Madison, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Glenn D. Jeffries, a senator from the eighth district.

Pending the reading of the Journal of Monday, February 3, 2020,

At the request of Senator Facemire, 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 passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 3049**—A Bill to amend and reenact §16-1-9a of the Code of West Virginia, 1931, as amended, relating to public health; improving dissemination of boiled water advisories to affected communities through local health departments and local emergency management 911 answering points; requiring boiled water advisories to be communicated through alert mass notification systems.

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 4484**—A Bill to amend and reenact §22-18-22 of the Code of West Virginia, 1931, as amended, relating to the Hazardous Waste Management Fund; extending the termination date from June 30, 2020, to June 30, 2025, thereby allowing the

continuance of the annual certification fees for facilities that manage hazardous waste and allowing the continuance of the fund into which the fees are deposited.

Referred to the Committee on Energy, Industry, and Mining.

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 4600**—A Bill amend and reenact §8-22-26 of the Code of West Virginia, 1931, as amended, relating to the use of beneficiaries of a death benefit from a municipal policemen's or firemen's pension and relief fund in the calculation of the distribution of premium tax proceeds.

Referred to the Committee on Pensions.

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 4601**—A Bill to amend and reenact §8-22-25a of the Code of West Virginia, 1931, as amended, relating to the distribution of premium tax proceeds to municipal policemen's and firemen's pension and relief funds which have members participating in a deferred retirement option plan.

Referred to the Committee on Pensions.

### Executive Communications

The Clerk then presented a communication from His Excellency, the Governor, advising that on February 3, 2020, he had approved **Enr. Committee Substitute for Senate Bill 94**.

The Senate proceeded to the fourth order of business.

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 136**, Prohibiting certain misleading lawsuit advertising practices.

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

**Com. Sub. for Senate Bill 136** (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 §47-28-1, §47-28-2, §47-28-3, and §47-28-4, all relating to prohibiting certain misleading lawsuit advertising practices; providing civil and criminal penalties for violations of this article; providing for certain disclosures and warnings in lawsuit advertising for the protection of patients; and imposing criminal penalties.

With the recommendation that the committee substitute 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

**Com. Sub. for Senate Bill 138**, Incentives for consolidating local governments.

**Com. Sub. for Senate Bill 142**, Expanding Coyote Control Program through voluntary assessment on breeding cows.

And,

**Com. Sub. for Senate Bill 522**, Relating to compensation awards to crime victims.

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 203**, Allowing certain deductions from personal income tax refunds.

And reports the same back with the recommendation that it 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 279**, Requiring dental insurance plans honor assignment made in writing by person covered.

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 the Judiciary.

Respectfully submitted,

Michael T. Azinger,  
*Chair.*

The bill, 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

**Senate Bill 615**, Declaring certain claims against state as moral obligations of state.

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

**Com. Sub. for Senate Bill 615** (originating in the Committee on Finance)—A Bill finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Craig Blair,  
*Chair.*

Senator Rucker, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Senate Bill 623**, Allowing noncitizen of US be eligible for teaching certificate.

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

**Com. Sub. for Senate Bill 623** (originating in the Committee on Education)—A Bill to amend and reenact §18A-3-1 and §18A-3-1f of the Code of West Virginia, 1931, as amended, all relating to making a noncitizen of the United States eligible for a certificate to teach or an alternative program teacher certificate if he or she holds a valid Permanent Resident Card, Employment Authorization Document, or work permit, issued by the United States Citizenship and Immigration Services.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Patricia Puertas Rucker,  
*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:

**By Senators Maroney, Takubo, Palumbo, Roberts, Rucker, Stollings, and Weld:**

**Senate Bill 689**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-53-1, §33-53-2, §33-53-3, §33-53-4, and §33-53-5, all relating to enacting the Requiring Accountable Pharmaceutical Transparency, Oversight, and

Reporting Act; providing a short title; providing for definitions; outlining reporting requirements drug manufacturers and health benefit plan issuers to the Auditor; outlining the required pharmaceutical data required by the Auditor; directing the Auditor to create a searchable pharmaceutical transparency website; protecting confidentiality of patient information; providing registration requirements to drug manufacturers and health benefit plan issuers; and outlining penalties when a health benefit plan or drug manufacturer submits inaccurate, or fails to submit, information to the Auditor.

Referred to the Committee on Health and Human Resources.

**By Senator Maynard:**

**Senate Bill 690**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2-17; to amend said code by adding thereto a new article, designated §5B-2J-1, §5B-2J-2, §5B-2J-3, §5B-2J-4, and §5B-2J-5; to amend and reenact §17-2A-11 of said code; to amend said code by adding thereto a new section, designated §17-2A-11a; to amend said code by adding thereto a new article, designated §17A-13-1; and to amend and reenact §20-5-2 of said code, all relating to overland recreation; creating an Overland Recreation Fund for development and maintenance of public roads suitable for overland recreation; revising digital road map requirements; requiring an inventory and mapping of state forest roads; describing allowable uses of the Overland Recreation Fund; defining terms; requiring the development of a comprehensive recreation plan and plans for the construction and maintenance of suitable roads; establishing a program of grants and cooperative agreements to develop and maintain suitable roads and access thereto; mandating review of expenditures; providing for appeals of grant or agreement decisions; requiring rulemaking; permitting the operation of street-legal special purpose vehicles on highways; providing for registration of street-legal special purpose vehicles; establishing licensing and equipment requirements for street-legal special purpose vehicles; granting the Recreational Trails Advisory Board authority to use those funds from the Overland Recreation Fund for the sole purpose of building an overland trail system in West Virginia; setting forth the responsibilities of the Division of Motor Vehicles, the Division of Natural Resources, and the Division of Tourism; and allowing primitive overland camping on state land.

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

**By Senator Rucker:**

**Senate Bill 691**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-3-1j, relating to additional alternative preparation programs for teachers; providing that certain programs adopted by the State Board of Education are separate from specified programs; providing that programs are subject to state board rules; and providing that programs may be an alternative to college and university programs for teacher education.

Referred to the Committee on Education.

**By Senator Trump:**

**Senate Bill 692**—A Bill to amend and reenact §62-3-8 of the Code of West Virginia, 1931, as amended, relating to clarifying that persons charged with a felony offense or offenses are entitled to a separate trial as to their guilt or innocence upon moving therefor; and further clarifying that the statutory right to a separate trial preempts any provisions of law or judicial rule to the contrary.

Referred to the Committee on the Judiciary.

**By Senator Lindsay:**

**Senate Bill 693**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13FF-1, §11-13FF-2, §11-13FF-3, §11-13FF-4, §11-13FF-5, §11-13FF-6, and §11-13FF-7, all relating generally to creating a personal income tax credit for volunteer firefighters in West Virginia; providing for definitions; providing for a tax credit for a volunteer firefighter for personal income tax in a taxable year; providing for a tax credit limitation of \$5,000 for a single person; providing for a tax credit limitation of \$10,000 of persons filing tax returns jointly under certain conditions; providing that the tax credit for volunteer firefighters must be used in the taxable year and cannot be carried forward; providing for documentation of eligibility for the tax credit; providing for required contents of the documentation evidencing eligibility for the tax credit; providing that the form must be sent to the Tax Commissioner to receive the tax credit; providing for rule-making authority; providing for reporting at certain time; and providing for an effective date.

Referred to the Committee on Finance.

**By Senators Rucker, Azinger, Clements, Maroney, and Maynard:**

**Senate Bill 694**—A Bill to amend and reenact §61-2-29 and §61-2-29a of the Code of West Virginia, 1931, as amended, all relating to penalties for neglect, emotional abuse, or death caused by a caregiver; setting penalty for emotional abuse of an incapacitated adult; setting penalty for abuse, neglect, or emotional abuse of nonverbal special needs child; and setting penalty for causing death or allowing another to cause death of a nonverbal special needs child.

Referred to the Committee on the Judiciary.

**By Senators Smith and Sypolt:**

**Senate Bill 695**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-2A-6b; 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 generally to enhancing maintenance and repair of the state's roads and highways; establishing roads accountability and transparency; directing the State Auditor to develop and maintain a searchable website of funding actions and expenditures relating to state and public roads; setting forth the minimum content to be contained in the website; directing the Commissioner of Highways to provide information and data to the State Auditor; requiring an annual update to the Joint Committee on Government and Finance; creating the Special Road Repair Fund as a subaccount of the State Road Fund; authorizing the commissioner to transfer certain funds into the subaccount for certain purposes; creating the Enhanced Road Repair and Maintenance Program; stating legislative finding and purpose of program; requiring Division of Highways county supervisors consult with county commissions and legislators to submit project requests to the Division of Highways; setting forth a funding formula; setting forth requirements concerning bidding, vendors, and contracts with private vendors; specifying uses of Special Road Repair Fund; defining terms; providing requirements for Commissioner of Highways and districts; requiring for rulemaking; and requiring reporting by Division of Highways and Legislative Auditor.

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

**By Senator Hamilton:**

**Senate Bill 696**—A Bill to amend and reenact §5-11-9 of the Code of West Virginia, 1931, as amended, relating to the Pay Transparency Act of 2020; making it unlawful for an employer to require, as a condition of employment, that an employee refrain from disclosing information about his or her wages, benefits, or other compensation or sharing information about another employee's wages, benefits, or other compensation; and making it unlawful for an employer to prohibit employees from disclosing information about his or her wages, benefits, or other compensation or sharing information about another employee's wages, benefits, or other compensation.

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

**By Senators Pitsenbarger, Baldwin, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Palumbo, Prezioso, Smith, Swope, Sypolt, Takubo, and Trump:**

**Senate Bill 697**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2-5a, relating to requiring compensation be made to certain members of the State Police for off-duty time when they are required to be on standby to be called back to work; requiring off-duty State Police officers who are called back to work or appear in court be compensated a minimum amount; and providing a housing cost stipend for those officers who reside in, and are assigned to, one of the top five counties in median monthly housing costs.

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

**By Senator Lindsay:**

**Senate Bill 698**—A Bill to amend and reenact §18A-4-15 of the Code of West Virginia, 1931, as amended, relating to the employment of retirees as substitute bus operators.

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

Senators Hamilton and Pitsenbarger offered the following resolution:

**Senate Concurrent Resolution 19**—Requesting the Division of Highways name bridge number 42-219/00-038.13 (42A139), locally known as Isner Creek Bridge, carrying US 219 over Isner Creek in Randolph County, the "U. S. M.C. LCPL Fred Michael Kerns Memorial Bridge".

Whereas, Fred Michael Kerns was born on October 15, 1948, in Weston, West Virginia, the son of Fred G. and Thelma Marie Glover Kerns; and

Whereas, LCP Fred Michael Kerns was sworn into the United States Marine Corps after graduating from Buckhannon - Upshur High School in 1966, and commenced active duty in 1967; and

Whereas, On October 3, 1968, LCP Fred Michael Kerns arrived in Vietnam, where he served as an air crewman aboard helicopters with Marine Light Attack Helicopter Squadron 167 (HML-167), Marine Air Group 16 (MAG-16), First Marine Air Wing, Third Marine Amphibious Force; and

Whereas, LCP Fred Michael Kerns was killed on July 29, 1969, as a result of a nonhostile helicopter crash in Quam Nam Providence, South Vietnam; and

Whereas, LCP Fred Michael Kerns was awarded the Air Medal, Combat Action Ribbon, Republic of Vietnam Campaign Medal, Vietnam Service Medal, National Defense Medal, Presidential Unit Citation, Vietnam Gallantry Cross Unit Citation, and Combat Aircrew Badge; and

Whereas, LCP Fred Michael Kerns' name is listed on the Vietnam Memorial Wall in Washington, D. C., Panel 20W, Line 71; and

Whereas, LCP Fred Michael Kerns was one of several hundred West Virginia residents, and one of over 17 Randolph County residents, to make the ultimate sacrifice for his county during the Vietnam War. He is buried at the Masonic Cemetery, Weston, West Virginia; and

Whereas, LCP Fred Michael Kerns, on the date of his death, left his father Fred Kerns, his mother Thelma Kerns and three brothers: Terry Lee, Alan William and Stephen Craig Kerns; and

Whereas, It is fitting that an enduring memorial be established to commemorate LCP Fred Michael Kerns 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 42-219/00-038.13 (42A139), locally known as Isner Creek Bridge, carrying US 219 over Isner Creek in Randolph County, the "U. S. M.C. LCPL Fred Michael Kerns 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.M.C. LCPL Fred Michael Kerns 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 Smith and Sypolt offered the following resolution:

**Senate Resolution 30**—Designating February 5, 2020, as Tucker County Day at the Legislature.

Whereas, The Tucker County Cultural District Authority was established to promote the cultural, artistic, historical, educational, and recreational opportunities available in Tucker County; and

Whereas, Tucker County is home to two downhill ski areas, one cross country ski center, endless winter activities for all ages, and has established itself as a winter destination; and

Whereas, Tucker County is home to three West Virginia state parks, namely: Canaan Valley Resort State Park; Blackwater Falls State Park; and Fairfax Stone State Park, and Monongahela National Forest; and

Whereas, Tucker County enjoys a location within a few hours' drive of one of the most populated cities in the eastern United States; and



Whereas, Tucker County is home to three breweries, the only cultural district authority in West Virginia, the Potomac Stone, the newly installed paragliding site at Canaan Valley Resort, the Splash Park in Parsons, and the soon-to-be Tucker County Boulder Park; and

Whereas, Tucker County is not only a year-round outdoor recreation destination, but is now emerging as an art and cultural destination, with its eccentric small towns that attract outdoor enthusiasts, artists, and beer and music lovers; and

Whereas, On the occasion of Tucker County Day at the Legislature, we hereby recognize Tucker County and its citizens for its contributions to the great state of West Virginia; therefore, be it

*Resolved by the Senate:*

That the Senate hereby designates February 5, 2020, as Tucker County Day at the Legislature; and, be it

*Further Resolved,* That the Senate extends its sincere gratitude and appreciation to the many important contributions the citizens and businesses of Tucker County make to the state of West Virginia; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the appropriate representatives of Tucker County.

Which, under the rules, lies over one day.

Senator Stollings offered the following resolution:

**Senate Resolution 31**—Designating February 5, 2020, as Cancer Survivorship Day at the Capitol.

Whereas, West Virginia will experience 12,440 new cases of cancer this year; and

Whereas, In 2019, 4,820 people will die from cancer in West Virginia; and

Whereas, Cancer will cost the United States economy an estimated \$216 billion in medical costs and lost productivity; and

Whereas, Lawmakers play a key role in preventing cancer by passing policies to reduce tobacco use and exposure to secondhand smoke, and increase healthy eating and active living; and

Whereas, Lawmakers can also advance policies that will increase access to life-saving screenings, improve quality of life with increased access to palliative care, fund research, and expand access to care; and

Whereas, There are 14.5 million cancer survivors alive in the United States and 107,520 cancer survivors in West Virginia because of the efforts of researchers, doctors, volunteers, and lawmakers; and

Whereas, This progress must continue through collaboration between lawmakers and citizens to end cancer as a major health issue; therefore, be it

*Resolved by the Senate:*

That the Senate hereby designates February 5, 2020, as Cancer Survivorship Day at the Capitol; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the American Cancer Society's Cancer Action Network.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 18**, William "Bill" Thurman King 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 Resolution 28**, Designating February 4, 2020, as WV Homeschool Day.

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

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

The question being on the adoption of the resolution, and on this question, Senator Rucker demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 28) adopted.

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senators Rucker and Tarr regarding the adoption of Senate Resolution 28 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 11:30 a.m., the Senate recessed to present Senate Resolution 28.

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

**Senate Resolution 29**, Designating February 4, 2020, as WV Alzheimer's Association Day.

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

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

Thereafter, at the request of Senator Palumbo, and by unanimous consent, the remarks by Senators Stollings and Takubo regarding the adoption of Senate Resolution 29 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 11:41 a.m., the Senate recessed to present Senate Resolution 29.

The Senate reconvened at 11:46 a.m. and proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 240**, Requiring hotels and restaurants secure manhole covers of certain grease traps.

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill 240 pass?"

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

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. 240) 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 267**, Creating offenses of conversion of leased or rented personal property.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

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. 267) passed with its title.

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

**Eng. Senate Bill 510**, Making permanent land reuse agency or municipal land bank's right of first refusal on certain tax sale properties.

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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 510) 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 511**, Regulating pawnbrokers.

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

At the request of Senator Takubo, unanimous consent being granted, the bill was referred to the Committee on Rules.

**Eng. Com. Sub. for Senate Joint Resolution 7**, Preserving the Separation of Powers Amendment.

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

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

**Eng. House Bill 4496**, Removing the specific mandate of the Board of Risk and Insurance Management to purchase liability insurance for the Division of Corrections.

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

Pending discussion,

The question being "Shall Engrossed House Bill 4496 pass?"

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4496) passed with its title.

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

The Senate proceeded to the ninth order of business.

**Com. Sub. for Senate Bill 190**, Modifying requirement that racetrack participate in WV Thoroughbred Development Fund by certain date.

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

**Senate Bill 300**, Updating certain terms in WV Corporation Net Income Tax Act.

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 308**, Creating criminal penalties for violation of orders issued for protection of victims of financial exploitation.

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

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

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

#### **CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE**

#### **ARTICLE 7J. FINANCIAL EXPLOITATION OF AN ELDERLY PERSON, PROTECTED PERSON OR INCAPACITATED ADULT.**

##### **§55-7J-5. Action to freeze assets; burden of proof; options the court may exercise.**

(a) An elderly person, protected person or incapacitated adult may bring an action to enjoin the alleged commission of financial exploitation and may petition the court to freeze the assets of the person allegedly committing the financial exploitation in an amount equal to, but not greater than, the alleged value of lost property or assets for purposes of restoring to the victim the value of the lost property or assets. The burden of proof required to freeze the assets of a person allegedly committing financial exploitation shall be a preponderance of the evidence. Upon a finding that the elderly person, protected person or incapacitated adult has been formally exploited, the court may:

(1) Grant injunctive relief;

(2) Order the violator to, in escrow an amount of money equivalent to the value of the misappropriated assets for distribution to the aggrieved elderly person, protected person or incapacitated adult;

(3) Order the violator to return to the elderly person, protected person or incapacitated person any real or personal property which was misappropriated; or

(4) Provide for the appointment of a receiver;

(b) In an action under section one of this article, the court may void or limit the application of contracts or clauses resulting from the financial exploitation.

(c) In an action brought under this article, upon the filing of the complaint or on the appearance of any defendant, claimant or other party, or at any later time, the court may require the plaintiff, defendant, claimant or other party or parties to post security, or additional security, in a sum the court directs to pay all costs, expenses and disbursements that are awarded against that party or that the party may be directed to pay by any interlocutory order, by the final judgment or after appeal.

(d) An order entered under this section shall state that a violation of the order may result in criminal prosecution under §61-2-29b of this code and state the penalties therefor.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT**

### **ARTICLE 2. CRIMES AGAINST THE PERSON**

#### **§61-2-29b. Financial exploitation of an elderly person, protected person or incapacitated adult; penalties; definitions.**

(a) Any person who financially exploits an elderly person, protected person or an incapacitated adult in the amount of less than \$1,000 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail for not more than one year, or both fined and confined.

(b) Any person who financially exploits an elderly person, protected person or an incapacitated adult in the amount of \$1,000 or more is guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000 and imprisoned in a state correctional facility not less than two nor more than 20 years.

(c) Any person convicted of a violation of this section shall, in addition to any other penalties at law, be subject to an order of restitution.

(d) In determining the value of the money, goods, property or services referred to in subsection (a) of this section, it shall be permissible to cumulate amounts or values where such money, goods, property or services were fraudulently obtained as part of a common scheme or plan.

(e) Financial institutions and their employees, as defined by §31A-2A-1 of this code and as permitted by subsection thirteen, section four of said article, others engaged in financially related activities, as defined by §31A-8C-1 of this code, caregivers, relatives and other concerned persons are permitted to report suspected cases of financial exploitation to state or federal law-enforcement authorities, the county prosecuting attorney and to the Department of Health and

Human Resources, Adult Protective Services Division or Medicaid Fraud Division, as appropriate. Public officers and employees are required to report suspected cases of financial exploitation to the appropriate entities as stated above. The requisite agencies shall investigate or cause the investigation of the allegations.

(f) When financial exploitation is suspected and to the extent permitted by federal law, financial institutions and their employees or other business entities required by federal law or regulation to file suspicious activity reports and currency transaction reports shall also be permitted to disclose suspicious activity reports or currency transaction reports to the prosecuting attorney of any county in which the transactions underlying the suspicious activity reports or currency transaction reports occurred.

(g) Any person or entity that in good faith reports a suspected case of financial exploitation pursuant to this section is immune from civil liability founded upon making that report.

(h) For the purposes of this section:

(1) "Incapacitated adult" means a person as defined by section twenty-nine of this article;

(2) "Elderly person" means a person who is 65 years or older;

(3) "Financial exploitation" or "financially exploit" means the intentional misappropriation or misuse of funds or assets of an elderly person, protected person or incapacitated adult, but shall not apply to a transaction or disposition of funds or assets where the accused made a good-faith effort to assist the elderly person, protected person or incapacitated adult with the management of his or her money or other things of value; and

(4) "Protected person" means any person who is defined as a "protected person" in §44A-1-4 of this code and who is subject to the protections of chapter forty-four-a or forty-four-c of this code.

(i) Notwithstanding any provision of this code to the contrary, acting as guardian, conservator, trustee or attorney for or holding power of attorney for an elderly person, protected person or incapacitated adult shall not, standing alone, constitute a defense to a violation of subsection (a) of this section.

(5) Any person who willfully violates a material term of an order entered pursuant to §55-7J-5 of this code is guilty of a misdemeanor and, upon conviction thereof, shall;

(1) For the first offense, be fined not more than \$1,000 or confined in jail not more than 90 days, or both fined and confined; and

(2) For a second or subsequent offense, be fined not more than \$2,500 or confined in jail not more than one year, or both fined and confined.

The bill (Com. Sub. for S. B. 308), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 316**, Relating to oil and gas conservation commission membership.

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 544**, Authorizing pharmacists and pharmacy interns administer vaccines.

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 551**, Relating to Water and Wastewater Investment and Infrastructure Improvement Act.

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 560**, Permitting nursing home use trained individuals administer medication.

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 4042**, Requiring agencies exempt from some or all of state purchasing requirements to adopt procedural rules.

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.

**Eng. Com. Sub. for House Bill 4091**, Allowing for expedited oil and gas well permitting upon payment of applicable expedited fees.

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

**Eng. House Bill 4393**, Relating to making suffocation and asphyxiation crimes.

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:

**Senate Bill 482**, Eliminating permit requirement for storing concealed handgun in vehicle on school property for persons over 21.

**Senate Bill 620**, Authorizing Division of Corrections and Rehabilitation approve home plans for inmates.



**Com. Sub. for Senate Bill 625**, Creating one-day annual license to permit charitable auction of sealed rare, antique, or vintage liquor bottles.

And,

**Com. Sub. for Senate Bill 629**, Clarifying alcohol by volume percentage for certain wines.

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

The Senate then proceeded to the twelfth order of business.

Remarks were made by Senator Romano.

The Senate next proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following bills:

**Senate Bill 660** (*Regulating electric bicycles*): Senator Roberts;

**Senate Bill 687** (*Increasing compensation of elected county officials*): Senator Stollings;

And,

**Senate Bill 688** (*Relating to telemedicine practice*): Senators Baldwin, Cline, and Stollings.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following resolutions:

**Senate Concurrent Resolution 18** (*William "Bill" Thurman King Memorial Bridge*): Senators Beach, Lindsay, and Stollings;

**Senate Resolution 28** (*Designating February 4, 2020, as WV Homeschool Day*): Senators Cline, Roberts, Rucker, and Smith;

And,

**Senate Resolution 29** (*Designating February 4, 2020, as WV Alzheimer's Association Day*): Senators Baldwin, Beach, Cline, Hamilton, Lindsay, Rucker, and Smith.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 12:06 p.m., the Senate adjourned until tomorrow, Wednesday, February 5, 2020, at 11 a.m.

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## SENATE CALENDAR

Wednesday, February 05, 2020  
11:00 AM

### UNFINISHED BUSINESS

- S. C. R. 19 - USMC LCpl Fred Michael Kerns Memorial Bridge
- S. R. 30 - Designating February 5, 2020, as Tucker County Day **[ADOPT]**
- S. R. 31 - Designating February 5, 2020, as Cancer Survivorship Day **[ADOPT]**

### THIRD READING

- Eng. Com. Sub. for S. B. 190 - Modifying requirement that racetrack participate in WV Thoroughbred Development Fund by certain date
- Eng. S. B. 300 - Updating certain terms in WV Corporation Net Income Tax Act
- Eng. Com. Sub. for S. B. 308 - Creating criminal penalties for violation of orders issued for protection of victims of financial exploitation
- Eng. Com. Sub. for S. B. 316 - Relating to oil and gas conservation commission membership
- Eng. Com. Sub. for S. B. 544 - Authorizing pharmacists and pharmacy interns administer vaccines
- Eng. Com. Sub. for S. B. 551 - Relating to Water and Wastewater Investment and Infrastructure Improvement Act
- Eng. Com. Sub. for S. B. 560 - Permitting nursing home use trained individuals administer medication
- Eng. Com. Sub. for S. J. R. 7 - Preserving the Separation of Powers Amendment
- Eng. Com. Sub. for H. B. 4091 - Allowing for expedited oil and gas well permitting upon payment of applicable expedited fees
- Eng. H. B. 4393 - Relating to making suffocation and asphyxiation crimes - (Com. title amend. pending)

### SECOND READING

- S. B. 482 - Eliminating permit requirement for storing concealed handgun in vehicle on school property for persons over 21
- S. B. 620 - Authorizing Division of Corrections and Rehabilitation approve home plans for inmates
- Com. Sub. for S. B. 625 - Creating one-day annual license to permit charitable auction of sealed rare, antique, or vintage liquor bottles
- Com. Sub. for S. B. 629 - Clarifying alcohol by volume percentage for certain wines
- Eng. Com. Sub. for H. B. 4042 - Requiring agencies exempt from some or all of state purchasing requirements to adopt procedural rules

## **FIRST READING**

Com. Sub. for S. B. 136 - Prohibiting certain misleading lawsuit advertising practices

Com. Sub. for S. B. 138 - Incentives for consolidating local governments

Com. Sub. for S. B. 142 - Expanding Coyote Control Program through voluntary assessment on breeding cows

S. B. 203 - Allowing certain deductions from personal income tax refunds

Com. Sub. for S. B. 522 - Relating to compensation awards to crime victims

Com. Sub. for S. B. 615 - Declaring certain claims against state as moral obligations of state

Com. Sub. for S. B. 623 - Allowing noncitizen of US be eligible for teaching certificate

**ANNOUNCED SENATE COMMITTEE MEETINGS**

**Regular Session 2020**

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**Wednesday, February 5, 2020**

9:30 a.m.

Workforce

(Room 208W)