

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

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

Charleston, W. Va., Monday, February 29, 2016

The Senate met at 11 a.m.

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

Prayer was offered by Pastor LaDeana Teets, Brookside Church of the Brethren, Aurora, West Virginia.

Mountaineer Challenge Academy Honor Guard from Kingwood, West Virginia, proceeded in the posting of the Colors. The Honorable Mitch Carmichael, a senator from the fourth district, then led the Senate in the recitation of the Pledge of Allegiance.

Pending the reading of the Journal of Sunday, February 28, 2016,

At the request of Senator Mullins, 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 2110—A Bill to amend and reenact §11-6F-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-13S-3 and §11-13S-4 of said code, all relating generally to the tax treatment of manufacturing entities generally; amending definition of manufacturing for purposes of special method for appraising qualified capital additions to manufacturing facilities for property tax purposes; amending definition of manufacturing for purposes of manufacturing investment tax credit; and amending the formula for calculating credit allowed for

manufacturing investment, to include Small Arms Ammunition Manufacturing and Small Arms, Ordinance, and Ordinance Accessories Manufacturing.

Referred to the Committee on Finance.

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 2205—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-8F-1 and §61-8F-2, all relating to prohibited sexual contact by psychotherapists; creating the crime of prohibited sexual contact by a psychotherapist and the crime of therapeutic deception; providing elements of the crime; providing exceptions; providing definitions; and providing criminal penalties.

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 2801—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-3pp; and to amend said code by adding thereto a new section, designated §8-12-16d, all relating to permitting county commissions and municipalities to designate areas of special interest which will not affect the use of property in those areas; and setting forth their additional powers and responsibilities.

Referred to the Committee on Government Organization.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2016, and requested the concurrence of the Senate in the passage of

Eng. House Bill 2960—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-16b, relating to emergency preparedness drills in schools; requiring a three day notice of drills; permitting parents or guardians to refuse participation; and exempting fire drills from notice requirement.

Referred to the Committee on Education.

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 4237—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §49-8-1, §49-8-2, §49-8-3, §49-8-4, §49-8-5 and §49-8-6, all relating to the temporary delegation of certain custodial powers by a parent or guardian; providing findings, defining terms; permitting the delegation of certain custodial powers; creating a parental rights form; requiring certain background checks; mandating certain disclosures; and providing exemptions.

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 4299—A Bill to amend and reenact §7-1-3d of the Code of West Virginia, 1931, as amended, relating to increasing the amount volunteer fire companies or paid fire departments may

charge for reimbursement for personnel and equipment used in performing fire fighting services, victim rescue or cleanup of debris.

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

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 No. 4315—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-8a, relating to collection of air-ambulance fees for emergency treatment or air transportation rendered to persons covered by Public Employee Insurance Agency plans; allowing providers of air ambulance services not under contract with the Public Employees Insurance Agency to collect an amount up to the equivalent paid for federal reimbursement for services rendered to covered employees or dependents; and requiring providers of air ambulance services that enter into a subscription service agreement with employees or dependents covered by Public Employee Insurance Agency plans to accept the subscription fee as payment in full for services rendered.

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

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect January 1, 2017, and requested the concurrence of the Senate in the passage of

Eng. House Bill 4321—A Bill to amend and reenact §11-13W-1 of the Code of West Virginia, 1931, as amended, relating to tax credits for apprenticeship training in construction trades; and removing requirement that eligibility is limited to programs jointly administered by labor and management trustees.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill 4330—A Bill to amend and reenact §20-2-64 of the Code of West Virginia, 1931, as amended, relating to making it unlawful to take, give or receive, or agree to take, give or receive, any fish, water animal or other aquatic organism from state waters to stock a commercial fishing preserve or other privately owned pond for commercial purposes.

Referred to the Committee on Natural 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 4334—A Bill to repeal §30-15-1, §30-15-2, §30-15-3, §30-15-4, §30-15-5, §30-15-6, §30-15-7, §30-15-7a, §30-15-7b, §30-15-7c and §30-15-8, of the Code of West Virginia, 1931, as amended; to amend and reenact §30-7-1, §30-7-2, §30-7-6, §30-7-7, §30-7-15a, §30-7-15b and §30-7-15c of said code; and to amend said code by adding thereto a new section, designated §30-7-15d, all relating to the licensure and authority of advanced practice registered nurses; repealing separate and redundant provisions relating to nurse-midwives; updating and adding definitions of terms; requiring a license to practice as an advanced practice registered nurse; establishing license requirements for an advanced practice registered nurse; updating the prerequisites and application requirements to apply for authority to prescribe drugs; modifying the types and amounts of controlled substances that may be prescribed by authorized advanced practice registered nurses; permitting the signature of an advanced practice registered nurse to have the same force and effect as that of a physician insofar as patient care documentation is concerned; removing the requirement for

collaborative relationships with physicians as an ongoing requirement for practice for certified nurse-midwives; removing the requirement for collaborative relationships with physicians as an on-going requirement for prescriptive authority for advanced practice registered nurses; removing certain notifications; and permitting certain fees to be set by rule.

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

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 4339—A Bill to amend and reenact §20-2-4 of the Code of West Virginia, 1931, as amended, relating to wildlife resources; requiring the Director of the Division of Natural Resources, in connection with rulemaking concerning electronic registration of wildlife, to provide a procedure for persons who are not required to obtain licenses or permits to register wildlife using identification other than a social security number.

Referred to the Committee on Natural 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. Com. Sub. for House Bill 4380—A Bill to amend and reenact §9-5-9 and §9-5-18 of the Code of West Virginia, 1931, as amended, all relating to liability of spouses or relatives for certain expenses of an indigent person; requiring spouse to be liable for funeral expenses of an indigent person; eliminating liability of certain persons for support of an indigent person; defining terms; limiting liability of certain persons for funeral expenses of an indigent person; reducing the maximum amount the department of health and human resources may pay for funeral expenses for indigent persons; authorizing department to require certain financial information; requiring certain sworn statements regarding ability to pay for funeral services for an indigent person; limiting the total number of indigent funeral services that may be paid for by the department of health and human resources per year; and requiring cremation under certain circumstances.

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

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

Eng. House Bill 4411—A Bill to amend and reenact §20-2-5a of the Code of West Virginia, 1931, as amended, relating to wildlife resources; illegally taking native brook trout; and setting a replacement penalty of \$100 for each native brook trout illegally taken.

Referred to the Committee on Natural 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 4461—A Bill to amend and reenact §18-9D-15 of the Code of West Virginia, 1931, as amended, relating to School Building Authority School Major Improvement Fund eligibility; removing requirement for certain annual amounts to be expended by county board for facility maintenance; and requiring county board to provide facility maintenance expenditure data for review to assist authority in project determinations.

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

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 4554—A Bill to authorize the Commissioner of the Division of Highways to allow an increase of gross weight limitations on certain roads in Greenbrier County.

Referred to the Committee on Transportation and Infrastructure.

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 4587—A Bill to amend and reenact §3-9-19 of the Code of West Virginia, 1931, as amended, relating to violations associated with absent voters' ballots; providing cleanup language by changing reference of circuit clerk to clerk of county commission; changing gender references and making other changes relating to the language in the misdemeanor provisions of this section.

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 4607—A Bill to amend and reenact §5-10A-2 of the Code of West Virginia, 1931, as amended, relating to adding violations of law upon which a public servant's retirement plan may be forfeited; changing the definition of less than honorable service; removing the exception of a misdemeanor from the definition of less than honorable service relating to impeachment and conviction of a participant or former participant under the Constitution; removing the exception for certain lesser included crimes to constitute less than honorable service; and adding additional violations of law which constitute less than honorable service.

Referred to the Committee on Pensions; 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 4658—A Bill to amend and reenact §30-6-4 of the Code of West Virginia, 1931, as amended, relating to the Board of Funeral Service Examiners; changing the qualifications for board members; providing for the continuous service of qualifying board members; and providing for the disqualification of certain members who become licensees.

Referred to the Committee on Government Organization.

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 4725—A Bill to amend and reenact §3-10-3 of the Code of West Virginia, 1931, as amended, all relating to providing the procedures for the filling of vacancies in the offices of justices of the Supreme Court of Appeals, circuit judge, family court judge or magistrate and making certain clarifications.

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 4727—A Bill to amend and reenact §9-2-6 of the Code of West Virginia, 1931, as amended, and to amend and reenact §9-5-23 of said code, all relating to state plan amendments; requiring the filing of state plan amendments to the legislature; requiring state plan amendments to be filed with the legislative rule-making and review committee; requiring a state plan amendment by approved through the rule-making process.

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. House Bill 4730—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated section §18-2-12, relating to computer science courses of instruction; making legislative findings; requiring submission by state board of plan for implementation of computer science instruction and learning standards in public schools to legislative oversight commission prior to 2017 legislative session; and specifying areas of recommendations to be included in plan.

Referred to the Committee on Education.

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 4731—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated section §18-2-7b, relating to requiring comprehensive drug awareness and prevention program in all public schools; requiring county boards to implement no later than 2016-2017 school year; specifying purposes of program; requiring county boards to coordinate delivery of instruction to meet program purposes with educators, drug rehabilitation specialists and law enforcement agencies; and requiring instruction relating to interactions with law enforcement officers.

Referred to the Committee on Education.

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 4732—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-2A-24, relating to performance metrics for the West Virginia Division of Highways; requiring the division to develop performance standards and criteria to measure agency performance in all essential operations; requiring the division to employ a management information system that will track the division's past and current progress toward meeting performance standards; and requiring the division to report to the Joint Committee on Infrastructure.

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

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 4733—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-4-55, relating to requiring the Commissioner of Highways to develop a statewide communications plan known as the Comprehensive Public Involvement Plan; requiring that the plan utilize multimedia outlets to inform the public of known or anticipated disruptions in traffic patterns; requiring that the plan include a mechanism to receive and respond to communications from the public in a timely manner; requiring that the plan include a mechanism for

collecting feedback from the public on the division's response to public communications; requiring the division to designate a communications specialist in each maintenance district; and requiring the division to submit the plan to the Legislature for approval as a legislative rule.

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

Executive Communications

The Clerk then presented a communication from His Excellency, the Governor, advising that on February 29, 2016, he had approved **Enr. Senate Bill 419**.

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 29th day of February, 2016, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

(Com. Sub. for H. B. 3019), Requiring official business and records of the state and its political subdivisions be conducted in English.

Respectfully submitted,

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

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

Your Committee on Finance has had under consideration

Senate Bill 555, Providing for 5-cent tax increase on sale of fuel when cost is less than \$2 per gallon.

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

Com. Sub. for Senate Bill 555 (originating in the Committee on Finance)—A Bill to amend and reenact §11-14C-5 of the Code of West Virginia, 1931, as amended, relating to providing the flat tax motor fuel, other than alternative fuels, is increased by 3 cents, unless the actual average wholesale price of motor fuel rises above \$2.00 per invoiced gallon; setting the minimum level for the average wholesale price of motor fuel; and providing effective dates.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Hall, unanimous consent being granted, the bill (Com. Sub. for S. B. 555) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

The Senate proceeded to the sixth order of business.

Senators Sypolt, Williams, Unger, Kessler, Prezioso and Stollings offered the following resolution:

Senate Resolution 54—Designating February 29, 2016, as Preston County Day.

Whereas, Preston County is home to over 1,200 small businesses and 1,000 working farms; and

Whereas, Preston County small businesses and local farms contribute to the economic success in Preston County; and

Whereas, Over 300,000 or 96% of West Virginians work for small businesses; and

Whereas, Preston County businesses, farms and organizations want to remind people to buy and shop local; and

Whereas, By shopping local you help create jobs in your community, your tax dollars stay local, you help small businesses support community groups, you encourage local prosperity, you keep your community unique, you get better service, you invest in your community and you know where your food comes from; and

Whereas, The citizens of Preston County are proud to be business and agricultural leaders in the state; and

Whereas, The citizens of Preston County travel to the state capitol on an annual basis during the legislative session to share this heritage and participate in the democratic process, in which they share their accomplishments, aspirations and concerns with lawmakers; and

Whereas, It is fitting to recognize Preston County for its history, culture, economy, natural beauty and future development in the State of West Virginia; therefore, be it

Resolved by the Senate:

That the Senate hereby designates February 29, 2016, as Preston County Day; and, be it

Further Resolved, That the Senate acknowledges the many important contributions the citizens and businesses of Preston County make in the State of West Virginia and encourages those citizens to participate in the democratic process; and, be it

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

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

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

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

Petitions

Senator Kessler presented a petition from Dustin Teel and numerous West Virginia residents, opposing Engrossed Committee Substitute for House Bill 4012 (*West Virginia Religious Freedom Restoration Act*).

Referred to the Committee on the Judiciary.

The Senate proceeded to the seventh order of business.

Eng. Senate Bill 435, Allowing farm winery enter alternating wine proprietorship agreements with farm owners.

On unfinished business, was reported by the Clerk.

The pending question being on the adoption of Senator Snyder's motion that the Senate reconsider the vote by which on Saturday, February 27, 2016, it adopted the amendment offered by Senator Walters to the bill (*shown in the Senate Journal of that day, page 21*).

Following discussion,

The question being on the adoption of Senator Snyder's aforesaid motion, the same was put and prevailed.

The question now being on the adoption of the amendment offered by Senator Walters to the bill.

Senator Williams arose to a point of order that the amendment offered by Senator Walters to the bill was not germane.

Which point of order, the President ruled not well taken.

Thereafter, at the request of Senator Walters, and by unanimous consent, the amendment offered by Senator Walters to the bill was withdrawn.

The bill (Eng. S. B. 435) was again ordered to engrossment.

Senate Concurrent Resolution 51, Requesting interim study of structure of Regional Educational Service Agencies.

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

Senate Concurrent Resolution 52, Requesting study of feasibility of home modification tax credit to make homes more accessible for older adults and disabled.

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

Senate Concurrent Resolution 53, Harry C. "Buck" Markley, Jr. Memorial Bridge.

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

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for Com. Sub. for Senate Bill 47, Rewriting licensing requirements for practice of medicine and surgery and podiatry.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller,

Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 47) 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 287, Creating West Virginia Safer Workplaces Act.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 287) 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 Com. Sub. for Senate Bill 303, Providing for 5-day resident fishing license.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 303) 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 344, Clarifying composition and chairmanship of Commission on Special Investigations.

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 344 pass?"

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—28.

The nays were: Facemire, Laird, Miller, Romano, Snyder and Unger—6.

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. 344) passed with its title.

Senator Carmichael moved that the bill take effect from passage

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—28.

The nays were: Facemire, Laird, Miller, Romano, Snyder and Unger—6.

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. 344) takes effect from passage.

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

Eng. Senate Bill 384, Requiring Bureau for Medical Services seek federal waiver for 30-day waiting period for tubal ligation.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 384) 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 399, Establishing personal and corporate income tax credits for farmers donating edible agricultural products.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 399) 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 435, Allowing farm winery enter alternating wine proprietorship agreements with farm owners.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 435) 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 594, Requiring State Auditor consider for payment claim submitted by electronically generated invoice.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 594) 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 596, Permitting natural gas companies enter upon real property in certain instances.

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

Pending extended discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill 596 pass?"

Senator Sypolt requested a ruling from the Chair as to whether he should be excused from voting under Senate Rule 43.

The Chair replied that any impact on Senator Sypolt would be as a member of a class of persons and that he would be required to vote.

On this question, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, Maynard, Trump, Walters and Cole (Mr. President)—11.

The nays were: Beach, Cline, Facemire, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Unger, Williams, Woelfel and Yost—23.

Absent: None.

So, a majority of all the members present and voting not having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 596) rejected.

Eng. Senate Bill 618, Allowing Economic Development Authority to make loans to certain whitewater outfitters.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 618) 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 626, Requiring DHHR secretary seek waiver within Supplemental Nutrition Assistance Program limiting purchases under WIC program.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—29.

The nays were: Facemire, Kessler, Laird, Miller and Romano—5.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 626) 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 637, Creating WV Uniform Fiduciary Access to Digital Assets Act of 2016.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 637) 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 700, Authorizing Berkeley County Council own or operate a drug treatment or drug rehabilitation facility.

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

Pending extended discussion,

The question being “Shall Engrossed Senate Bill 700 pass?”

On this question, the yeas were: Ashley, Blair, Boley, Boso, Cline, Ferns, Leonhardt, Maynard, Mullins, Trump and Walters—11.

The nays were: Beach, Carmichael, Facemire, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Unger, Williams, Woelfel, Yost and Cole (Mr. President)—23.

Absent: None.

So, a majority of all the members present and voting not having voted in the affirmative, the President declared the bill (Eng. S. B. 700) rejected.

On motion of Senator Carmichael, the Senate recessed until 2:30 p.m. today.

Upon expiration of the recess, the Senate reconvened and resumed consideration of its third reading calendar, the next bill coming up in numerical sequence being

Eng. Com. Sub. for House Bill 2852, Relating to legalizing and regulating the sale and use of fireworks.

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

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

The nays were: None.

Absent: Boley and Williams—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2852) passed.

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

Eng. Com. Sub. for House Bill 2852—A Bill to repeal §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12, §29-3E-13 and §29-3E-14; and to amend and reenact §61-3E-1 and §61-3E-11 of said code, all relating to the regulation of fireworks generally; relocating certain existing provisions relating to sparkling devices, novelties and toy guns, including penalties for certain violations; raising funds for veterans' assistance and volunteer fire departments; authorizing sale of consumer fireworks on and after June 1, 2016; defining "consumer fireworks"; establishing regulatory framework for sale of fireworks; defining terms; requiring certificate; establishing fees; requiring permit; dedicating certain fees to Veterans Facility Support Fund and Fire Protection Fund; establishing rule-making authority; creating criminal violations related to fireworks; penalties; enforcement; defining terms; exemptions; reporting requirements; and establishing internal effective dates for certain provisions.

Senator Carmichael moved that the bill take effect from passage.

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

The nays were: None.

Absent: Boley and Williams—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2852) takes effect from passage.

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

Eng. Com. Sub. for House Bill 4366, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

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

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

The nays were: None.

Absent: Boley and Williams—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4366) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

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

The nays were: None.

Absent: Boley and Williams—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4366) takes effect from passage.

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 Com. Sub. for Senate Bill 12, Relating to County Local Powers 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 545, Relating to asbestos abatement on oil and gas pipelines.

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 641, Transferring revenues from certain greyhound racing funds to State Excess Lottery Revenue Fund.

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

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

Senate Bill 670, Relating to filling vacancies in elected offices.

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

At the request of Senator Trump, as chair of the Committee on the Judiciary, and by unanimous consent, the unreported Judiciary committee amendment to the bill was withdrawn.

On motion of Senator Trump, 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:

That §3-10-1, §3-10-3 and §3-10-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-1. Elections to fill vacancies.

(a) When a vacancy occurs in an elected office of the state or county, it shall be filled according to the processes set forth in this article. As used in this article, unless otherwise indicated by the context:

(1) "General cutoff date" means the eighty-fourth day before the general election that immediately precedes the general election where the office would be on the ballot for election if there were not a vacancy; and

(2) "Primary cutoff date" means the eighty-fourth day before the primary election that immediately precedes the general cutoff date.

(b) When this article requires an appointment to fill a vacancy in an elected office, the appointment shall be made within thirty days of the vacancy, unless this code specifically states a different time period for the specific office. The term that the appointee holds the office shall depend on when the vacancy occurs, as follows:

(1) If the vacancy occurs after the primary cutoff date, then that appointee shall hold the office until the end of the term of office: *Provided*, That if the vacancy for any county office or United States Senate occurs during the window after the primary cutoff date, but before the general cutoff date, the process contained in sections four, six, seven and eight of this article, depending on the specific office vacated, shall be followed; or

(2) If the vacancy occurs on or before the primary cutoff date, then the office shall be filled at the following regular primary and subsequent general election pursuant to this article and the appointee shall hold the office until a qualified replacement is elected and certified at that general election. The elected replacement shall hold the office until the end of the original term of office.

(c) If an election is required to fill the vacancy by subsection (b) of this section and the other provisions of this article, the election shall proceed depending on when the vacancy occurs and in which office it occurs. Elections to fill vacancies shall be held at the same places, and superintended, conducted and returned, and the result ascertained, certified and declared, in the same manner, and by the same officers, as in general elections, unless otherwise stated in this article.

(1) For a vacancy in the Office of Governor, the times for the special elections contained in section two of this article shall control. The proclamation entered pursuant to section two of this article by the person acting as Governor shall include the dates for the special candidate filing period, if necessary, and shall follow the requirements set forth in this section. All aspects of this section, where not in conflict with section two of this article, shall also be followed. If a regularly scheduled primary or general election fits within the times for the special elections contained in section two of this article, the special elections shall be conducted in conjunction with the regularly scheduled election or elections. If a special election is required by section two of this article and it cannot be held in conjunction with the regular election dates, then the compensation of election officers shall be reimbursed pursuant to section nine of this article.

(2) For a vacancy in the offices of United States House of Representatives or United States Senate, the times for the special election, if necessary, contained in section four of this article shall

control. All aspects of this section, where not in conflict with section four of this article, shall also be followed. (A) With regard to ~~United States House of Representatives~~ these offices, the proclamation entered pursuant to section four of this article by the Governor shall include the dates for the special candidate filing period, if necessary, and shall follow the requirements set forth in this section. If a regularly scheduled primary or general election fits within the times for the special elections contained in section four of this article, the special elections shall be conducted in conjunction with the regularly scheduled election or elections. If a special election is required by section two of this article and it cannot be held in conjunction with the regular election dates, then the compensation of election officers shall be reimbursed pursuant to section nine of this article.

~~(B) With regard to United States Senate, if a special general election following the regular general election is required by section four of this article, and it cannot be held in conjunction with the regular election dates, then the compensation of election officers shall be reimbursed pursuant to section nine of this article~~

(3) For all other offices, the Governor, or other person granted authority by this article, shall issue a proclamation stating that the office will appear on the next regular primary election and subsequent general election, in order to fill the vacancy: *Provided*, That if the vacancy for any county office occurs during the window after the primary cutoff date, but before the general cutoff date, the process contained in sections six, seven and eight of this article shall be followed. If the candidate filing period for the next regular primary election has closed or has less than one week remaining, the proclamation shall provide for a special primary candidate filing period. If there are less than eighty-four days between the vacancy and the next regular primary election, then the proclamation shall state that the office will appear on the subsequent regular primary election and corresponding general election following the next regular primary election.

(d) (1) If a special candidate filing period is necessary, it shall begin no sooner than the day after the proclamation and shall close no earlier than close of business on the fourteenth day following the proclamation. A notarized declaration of candidacy and filing fee provided by section seven, article five of this chapter shall be filed either in person, by United States mail, electronic means or any other means authorized by the Secretary of State and received by the appropriate office before the close of the filing period. For petition in lieu of payment of filing fees, a candidate seeking nomination for the vacancy may utilize the process set forth in section eight-a, article five of this chapter: *Provided*, That the minimum number of signatures required is equivalent to one qualified signature per one whole dollar of the filing fee for that office.

(2) If a primary election is required by the provisions of this article:

(A) For all statewide, multicounty and legislative elections, drawing for the primary election ballot position will take place at the Secretary of State's office twenty-four hours after the end of the filing period. For each major political party on the ballot, a single drawing by lot shall determine the candidate ballot position for ballots statewide. This drawing shall be witnessed by four clerks of the county commission chosen by the West Virginia Association of County Clerks, with no more than two clerks representing a single political party.

(B) For county elections, drawing for the primary election ballot position will take place at the county clerk's office twenty-four hours after the end of the filing period. For each major political party on the ballot, a single drawing by lot shall determine the candidate ballot position for ballots statewide. This drawing shall be witnessed by the chairperson of the county democratic and republican executive committees or their designee, and the president of the county commission or his or her designee.

(3) Ballot position for a general election required by this article shall be determined pursuant to subdivision (3), subsection (c), section two, article six of this chapter. If a general election required

by this article occurs in conjunction with a regularly scheduled primary election, the general election shall be listed along with the nonpartisan portion of each ballot in the order of offices provided for regular ballots in this chapter.

(e) When an election is required to fill a vacancy, the date of the election and offices to be elected, as well as any other information required in the proclamation, shall be published prior to such election as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county of the state that is eligible to vote in the election for those offices.

(f) If an election is required by this article, citizens having no party organization or affiliation may nominate candidates as provided by sections twenty-three and twenty-four, article five of this chapter: *Provided*, That when an election is required by the provisions of this article to be held at some time other than with a regularly scheduled election, all certificates nominating candidates shall be filed with the appropriate official no later than ninety days before the election.

(g) The persons elected, having first duly qualified, shall enter upon the duties of their respective offices. The elected replacement shall hold the office until the end of the original term of office.

§3-10-3. Vacancies in offices of state officials, United States Senators and judges.

(a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, or in any office created or made elective to be filled by the voters of the entire state, except for the office of United States Senator, is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, if required by section one of this article.

(b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge of a circuit court or judge of a family court is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, as required by subsection (d) of this section. If an election is required under subsection (d) of this section, the Governor, circuit court or the chief judge thereof in vacation, is responsible for the proper proclamation by order and notice required by section one of this article.

(c) Any vacancy in the office of magistrate is appointed according to the provisions of section six, article one, chapter fifty of this code, and subsequent election to fill the remainder of the term, as required by subsection (d) of this section.

(d) (1) When the vacancy in Justice of the Supreme Court of Appeals, judge of the circuit court, judge of a family court or magistrate occurs after the eighty-fourth day before a general election, and the affected term of office ends on the December 31 following the next election, the person appointed to fill the vacancy shall continue in office until the completion of the term.

(2) When the vacancy occurs before the close of the candidate filing period for the primary election, the vacancy shall be filled by election in the nonpartisan judicial election held concurrently with the primary election, and the appointment shall continue until a successor is elected and certified.

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than eighty-four days before the general election, the vacancy shall be filled by election in a nonpartisan judicial election held concurrently with the general election, and the appointment shall continue until a successor is elected and certified.

(e) When an election to fill a vacancy is required to be held at the general election according to the provisions of subsection (d) of this section, a special candidate filing period shall be established.

Candidates seeking election to any unexpired term for Justice of the Supreme Court of Appeals, judge of a circuit court, judge of the family court or magistrate shall file a certificate of announcement and pay the filing fee no earlier than the first Monday in August and no later than seventy-seven days before the general election.

§3-10-4. Vacancies in representation in United States Congress.

(a) (1) If there is a vacancy in the representation from this state in the House of Representatives in the Congress of the United States, the Governor shall, within five days after the fact comes to his or her knowledge, issue a proclamation setting dates for a special general election that is not less than eighty-four nor more than one hundred twenty days from the date of the vacancy and requiring nomination of candidates as provided in subdivision (2) of this subsection: *Provided*, That no such proclamation may be made nor may a special election be held if the vacancy occurs after the eighty-fourth day prior to the regularly scheduled general election for a new full term of the office. The election shall follow the requirements of section one of this article that are not in conflict with this section.

(2) The party executive committees for the congressional district for which there is a vacancy shall each, within thirty days of the Governor's proclamation, nominate a candidate to stand at the general election required by subdivision (1) of this subsection.

(b) (1) If there is a vacancy in the representation from this state in the Senate of the United States Congress, the vacancy shall be filled by the Governor of the state by appointment and the Governor shall, within five days after the fact comes to his or her knowledge, issue a proclamation-setting dates for a special general election that is not less than eighty-four nor more than one hundred twenty days from the date of the vacancy, and requiring nomination of candidates as provided in subdivision (2) of this subsection: *Provided*, That if a regularly scheduled primary or general election is set to occur within sixty days after the permissible time frame for a special general election, then the Governor may, in his or her discretion, call for the special election to be held in conjunction with the upcoming primary or general election: *Provided, however*, That no such proclamation may be made nor may a special election be held if the vacancy occurs after the eighty-fourth day prior to the regularly scheduled primary election for a new full term of the office. The election shall follow the requirements of section one of this article that are not in conflict with this section.

~~(1) If the vacancy occurs on or before the primary cutoff date, then an election shall be held pursuant to section one of this article; or~~

~~(2) If the vacancy occurs after the primary cutoff date, but on or before the general cutoff date, then the Governor shall issue a proclamation providing for: (A) A special filing period; (B) a special primary election to be held in conjunction with the upcoming general election; and (C) a special general election to be held not less than ninety nor more than one hundred twenty days following the date of the special primary election. Each election shall follow the requirements of section one of this article that are not in conflict with this section.~~

(2) The state party executive committees shall, within thirty days of the Governor's proclamation, nominate a candidate to stand at the general election required by subdivision (1) of this subsection.

(3) Notwithstanding the foregoing, the Governor of the state shall, by appointment, fill any vacancy occurring in the office of United States Senator. Such appointee shall hold the office until, at the special election held pursuant to subdivision (1) of this subsection, a successor is elected and certified to fill the unexpired term.

On motion of Senator Palumbo, the following amendments to Senator Trump's amendment to the bill (S. B. 670) were next reported by the Clerk and considered simultaneously:

On page eight, after section four, by adding four new sections, designated sections five, six, seven and eight, to read as follows:

§3-10-5. Vacancies in State Legislature.

(a) Any vacancy in the office of State Senator or member of the House of Delegates shall be filled by appointment by the Governor, from a list of three legally qualified persons submitted by the party executive committee of the party with which the person ~~holding~~ vacating the office ~~immediately preceding the vacancy~~ was affiliated at the time of his or her election to the vacated office: *Provided*, That if he or she was not elected to the office, then the list shall be submitted by the same executive committee authorized to submit the list resulting in his or her appointment. The list of qualified persons to fill the vacancy shall be submitted to the Governor within fifteen days after the vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the fifteen-day period, the Governor shall appoint within five days thereafter a legally qualified person of the same political party as the person vacating the office was affiliated at the time of his or her last election to the vacated office: *Provided*, That if he or she was not elected to the office, then the Governor shall appoint a person from the same political party as the executive committee authorized to submit the list resulting in his or her appointment.

(b) In the case of a member of the House of Delegates, the list shall be submitted by the party executive committee of the delegate district in which the vacating member resided at the time of his or her election or appointment. The appointment to fill a vacancy in the House of Delegates is for the unexpired term.

(c) In the case of a State Senator, the list shall be submitted by the party executive committee of the state senatorial district in which the vacating senator resided at the time of his or her election or appointment. The appointment to fill a vacancy in the state Senate is for the unexpired term, unless section one of this article requires a subsequent election to fill the remainder of the term, which shall follow the procedure set forth in section one of this article.

§3-10-6. Vacancy in office of circuit court clerk.

(a) When a vacancy occurs in the office of clerk of the circuit court, the circuit court by a majority vote of the judges shall fill the same within thirty days of the vacancy by appointment of a person of the same political party as the officeholder vacating the office was affiliated with at the time of his or her last election to the vacated office for the period required by section one of this article: *Provided*, That if he or she was not elected to the office, then circuit court shall fill the position with a person of the same political party as the officeholder vacating the office was affiliated with at the time of his or her appointment.

(b) Notwithstanding any code provision to the contrary, the chief judge may appoint a temporary successor to the office of clerk of the circuit court until the requirements of this section have been met. The temporary successor may serve no more than thirty days from the date of the vacancy.

(c) If an election is necessary, the circuit court, or the chief judge thereof in vacation, is responsible for the proper proclamation, by order and notice required by section one of this article.

(d) Section one of this article shall be followed with respect to any election needed to fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the general cutoff date, candidates to fill the vacancy shall be nominated by the county executive committee in the manner provided in section nineteen, article five of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next general election.

§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.

(a) Any vacancy in the office of county commissioner or clerk of county commission shall be filled by the county commission of the county, unless the number of vacancies in a county commission deprive that body of a quorum, in which case the Governor of the state shall fill any vacancy in the county commission necessary to create a quorum thereof. Persons appointed shall be of the same political party as the officeholder vacating the office was affiliated with at the time of his or her last election to the vacated office for the period stated by section one of this article: Provided, That if he or she was not elected to the office, then the person appointed shall be of the same political party as the officeholder vacating the office was affiliated with at the time of his or her appointment. If a quorum of the county commission cannot agree upon a person to fill a vacancy in the office of county commissioner within thirty days of the date the vacancy first occurred, the county executive committee of the vacating county commissioner's political party at the time of his or her last election to the vacated office shall select and name a person to fill the vacancy from the membership of the vacating county commissioner's political party at the time of his or her last election to the vacated office: Provided, That if he or she was not elected to the office, then the list shall be submitted by the same executive committee authorized to submit the list resulting in his or her appointment. The clerk shall be appointed within thirty days of the vacancy.

(b) Notwithstanding any code provision to the contrary, a county commission may appoint a temporary successor to the office of clerk of the county commission until the requirements of this section have been met. The temporary successor may serve no more than thirty days from the date of the vacancy.

(c) If an election is necessary under section one of this article, the county commission, or the president thereof in vacation, shall be responsible for the proper proclamation, by order, and notice required by section one of this article.

(d) Section one of this article shall be followed with respect to any election needed to fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the general cutoff date, candidates to fill the vacancy shall be nominated by the county executive committee in the manner provided in section nineteen, article five of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next general election.

(e) If the election for an unexpired term is held at the same time as the election for a full term for county commissioner, the full term shall be counted first and the unexpired term shall be counted second. If the candidate with the highest number of votes for the unexpired term resides in the same magisterial district as the candidate with the highest number of votes for the full term, the candidate for the full term shall be seated. The candidate with the next highest number of votes for the unexpired term residing in a different magisterial district shall be seated for the unexpired term.

§3-10-8. Vacancies in offices of prosecuting attorney, sheriff, assessor and surveyor.

(a) Any vacancy occurring in the office of prosecuting attorney, sheriff, assessor or county surveyor shall be filled by the county commission within thirty days of the vacancy by appointment of a person of the same political party as the officeholder vacating the office was affiliated with at the time his or her last election to the vacated office: Provided, That if he or she was not elected to the office, then county commission shall fill the office by appointment of a person of the same political party as the officeholder vacating the office was affiliated with at the time of his or her appointment. The appointed person shall hold the office for the period stated by section one of this article.

(b) Notwithstanding any code provision to the contrary, a county commission may appoint a temporary successor to the office of prosecuting attorney, sheriff, assessor or county surveyor until

the requirements of this section have been met. The temporary successor may serve no more than thirty days from the date of the vacancy.

(c) If an election is necessary under section one of this article, the county commission, or the president thereof in vacation, shall be responsible for the proper proclamation, by order, and notice required by section one of this article.

(d) Section one of this article shall be followed with respect to any election needed to fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the general cutoff date, candidates to fill the vacancy shall be nominated by the county executive committee in the manner provided in section nineteen, article five of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next general election.;

And,

By striking out the enacting section and inserting in lieu thereof the following:

That §3-10-1, §3-10-3, §3-10-4, §3-10-5, §3-10-6, §3-10-7 and §3-10-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

The question being on the adoption of Senator Palumbo's amendment to Senator Trump's amendment to the bill (S. B. No. 670), the same was put.

The result of the voice vote being inconclusive, Senator Palumbo demanded a division of the vote.

A standing vote being taken, there were sixteen "yeas" and seventeen "nays".

Whereupon, Senator Cole (Mr. President) declared Senator Palumbo's amendment to Senator Trump's amendment to the bill rejected.

The question now being on the adoption of Senator Trump's amendment to the bill, the same was put and prevailed.

The bill (S. B. 670), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 691, Modifying certain air pollution standards.

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

Com. Sub. for Senate Joint Resolution 1, County Economic Development Amendment.

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 4228, Relating to transportation network companies.

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

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §17-29-1, §17-29-2, §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-29-8, §17-29-9, §17-29-10, §17-29-11, §17-29-12, §17-29-13, §17-29-14, §17-29-15, §17-29-16, §17-29-17, §17-29-18 and §17-29-19, all to read as follows:

ARTICLE 29. TRANSPORTATION NETWORK COMPANIES.

§17-29-1. Definitions.

As used in this article:

(1) "Personal vehicle" means a vehicle that is:

(a) Used by a transportation network company driver to provide a prearranged ride;

(b) Owned, leased or otherwise authorized for use by the transportation network company driver;
and

(c) Not a taxicab or for-hire vehicle.

(2) "Digital network" means any online-enabled application, software, website or system offered or utilized by a transportation network company that enables the prearrangement of rides with transportation network company drivers.

(3) "Transportation network company" means a corporation, partnership, sole proprietorship, or other entity that is licensed pursuant to this article and operating in West Virginia that uses a digital network to connect transportation network company riders to transportation network company drivers who provide prearranged rides. A transportation network company does not control, direct or manage the personal vehicles or transportation network company drivers that connect to its digital network, except where agreed to by written contract.

(4) "Transportation network company driver" or "driver" means an individual who:

(A) Receives connections to potential passengers and related services from a transportation network company in exchange for payment of a fee to the transportation network company; and

(B) Uses a personal vehicle to offer or provide a prearranged ride to transportation network company riders upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.

(5) "Transportation network company rider" or "rider" means an individual or persons who use a transportation network company's digital network to connect with a transportation network company driver who provides prearranged rides to the rider in the driver's personal vehicle between points chosen by the rider.

(6) "Prearranged ride" means the provision of transportation by a driver to a transportation network company rider, beginning when a driver accepts a transportation network company rider's request for a ride through a digital network controlled by a transportation network company, continuing while the driver transports the requesting rider, and ending when the last requesting rider departs from the personal vehicle. A prearranged ride does not include:

(A) Transportation provided using a taxi, limousine or other for-hire vehicle; or

(B) Transportation provided under a ridesharing arrangement, as defined in section one, article twenty-two, chapter seventeen-c of this code or any other type of arrangement or service in which the driver receives a fee that does not exceed the driver's costs associated with providing the ride.

§17-29-2. Not other carriers.

Transportation network companies or transportation network company drivers are not common carriers by motor vehicle or contract carriers by motor vehicle, or motor carriers, as defined in section two, article one, chapter twenty-four-a of this code, nor do they provide taxicab or for-hire vehicle services.

§17-29-3. Transportation network company permit required.

(a) A person may not operate a transportation network company in West Virginia without first having obtained a permit from the Division of Motor Vehicles.

(b) The Division of Motor Vehicles shall issue a permit to each applicant that:

(1) Provides proof of an agent for service of process in the State of West Virginia to the Division of Motor Vehicles in accordance with section four of this article;

(2) Provides a copy of a certificate of insurance maintained by the transportation network company in accordance with section eight of this article;

(3) Provides a copy of the transportation network company's zero tolerance for drug or alcohol use policy to the Division of Motor Vehicles in accordance with section twelve of this article;

(4) Provides a copy of the transportation network company's policy prohibiting solicitation or acceptance of street hails to the Division of Motor Vehicles in accordance with section fifteen of this article;

(5) Provides a copy of the transportation network company's policy prohibiting solicitation or acceptance of cash payments from riders to the Division of Motor Vehicles in accordance with section sixteen of this article;

(6) Provides a copy of the transportation network company's policy of nondiscrimination with respect to riders and potential riders to the Division of Motor Vehicles in accordance with section seventeen of this article; and

(7) Has paid an annual permit fee of \$1,000 to the Division of Motor Vehicles.

(c) Any fees collected under the provisions of this article shall be deposited into the Motor Vehicle Fees Fund established in accordance with section twenty-one, article two, chapter seventeen-a of this code. The Division of Motor Vehicles shall use the fees collected for the payment of the costs and expenses necessary for the administration of this article.

§17-29-4. Agent.

A transportation network company shall maintain an agent for service of process in this state.

§17-29-5. Fare collected for services.

On behalf of a transportation network company driver, a transportation network company may charge a fare for the services provided to riders: *Provided*, That if a fare is collected from a rider, the transportation network company shall disclose to the rider the fare calculation method on its website

or within the software application service. The transportation network company shall also provide riders with the applicable rates being charged and the option to receive an estimated fare before the rider enters the transportation network company driver's vehicle.

§17-29-6. Identification of transportation network company vehicles and drivers.

The transportation network company's software application or website shall display a picture of the transportation network company driver and the license plate number of the motor vehicle utilized for providing the prearranged ride before the rider enters the transportation network company driver's vehicle.

§17-29-7. Electronic receipt.

Within a reasonable period of time following the completion of a prearranged ride, a transportation network company shall transmit an electronic receipt to the rider on behalf of the transportation network company driver that lists:

- (a) The origin and destination of the prearranged ride;
- (b) The total time and distance of the prearranged ride; and
- (c) An itemization of the total fare paid, if any.

§17-29-8. Financial responsibility of transportation network companies.

(a) On or before July 1, 2016, and thereafter, a transportation network company driver or transportation network company on the driver's behalf shall maintain primary automobile insurance that recognizes that the driver is a transportation network company driver or otherwise uses a vehicle to transport passengers for compensation and covers the driver:

(1) While the transportation network company driver is logged on to the transportation network company's digital network; or

(2) While the driver is engaged in a prearranged ride.

(b) The following automobile insurance requirements apply while a participating transportation network company driver is logged on to the transportation network company's digital network and is available to receive transportation requests, but is not engaged in a prearranged ride:

(1) Primary automobile liability insurance in the amount of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident and \$25,000 for property damage; and

(2) Uninsured and underinsured motorists' coverage as required in section thirty-one, article six, chapter thirty-three of this code.

(3) The coverage requirements of this subsection may be satisfied by any of the following:

(A) Automobile insurance maintained by the transportation network company driver; or

(B) Automobile insurance maintained by the transportation network company; or

(C) Any combination of paragraphs (A) and (B) of this subdivision.

(c) The following automobile insurance requirements apply while a transportation network company driver is engaged in a prearranged ride:

(1) Primary automobile liability insurance that provides at least \$1,000,000 for death, bodily injury and property damage; and

(2) Uninsured and underinsured motorists' coverage as required in section thirty-one, article six, chapter thirty-three of this code.

(3) The coverage requirements of this subsection may be satisfied by any of the following:

(A) Automobile insurance maintained by the transportation network company driver; or

(B) Automobile insurance maintained by the transportation network company; or

(C) Any combination of paragraphs (A) and (B) of this subdivision.

(d) If insurance maintained by a driver in subsection (b) or (c) has lapsed or does not provide the required coverage, insurance maintained by a transportation network company shall provide the coverage required under this section beginning with the first dollar of a claim and have the duty to defend such claim.

(e) Coverage under an automobile insurance policy maintained by the transportation network company shall not be dependent on a personal automobile insurer first denying a claim nor shall a personal automobile insurance policy be required to first deny a claim.

(f) Insurance required under this section may be placed with an insurer authorized to do business in this state or with a surplus lines insurer eligible under section five, article twelve-c, chapter thirty-three of this code that has a credit rating of no less than "A-" from A.M. Best or "A" from Demotech or similar rating from another rating agency recognized by the Insurance Commissioner.

(g) Insurance satisfying the requirements of this section shall be deemed to satisfy the financial responsibility requirement for a motor vehicle under article four, chapter seventeen-d of this code.

(h) A transportation network company driver shall carry proof of coverage satisfying subsections (b) and (c), section eight of this article with him or her at all times during his or her use of a personal vehicle in connection with a transportation network company's digital network. In the event of an accident, a transportation network company driver shall provide this insurance coverage information to the directly interested parties, automobile insurers and investigating police officers, upon request pursuant to section four, article two-a, chapter seventeen-d of this code. Upon such request, a transportation network company driver shall also disclose to directly interested parties, automobile insurers, and investigating police officers, whether he or she was logged on to the transportation network company's digital network or on a prearranged ride at the time of an accident.

§17-29-9. Disclosures.

The transportation network company shall disclose in writing to transportation network company drivers the following before they are allowed to accept a request for a Prearranged Ride on the transportation network company's digital network:

(1) The insurance coverage, including the types of coverage and the limits for each coverage that the transportation network company provides while the transportation network company driver uses a personal vehicle in connection with a transportation network company's digital network; and

(2) That the transportation network company driver's own automobile insurance policy might not provide any coverage while the driver is logged on to the transportation network company's digital network and is available to receive transportation requests or is engaged in a prearranged ride, depending on its terms.

§17-29-10. Automobile insurance provisions.

(a) Insurers that write automobile insurance in this state may exclude any and all coverage afforded under the policy issued to an owner or operator of a personal vehicle for any loss or injury that occurs while a driver is logged on to a transportation network company's digital network or while a driver provides a prearranged ride. This right to exclude all coverage may apply to any coverage included in an automobile insurance policy including, but not limited to:

- (1) Liability coverage for bodily injury and property damage;
- (2) Uninsured and underinsured motorist coverage;
- (3) Medical payments coverage;
- (4) Comprehensive physical damage coverage; and
- (5) Collision physical damage coverage.

Such exclusions apply notwithstanding any requirement under article four, chapter seventeen-d of this code. Nothing in this section implies or requires that a personal automobile insurance policy provide coverage while the driver is logged on to the transportation network company's digital network, while the driver is engaged in a prearranged ride or while the driver otherwise uses a vehicle to transport passengers for compensation. Nothing shall be deemed to preclude an insurer from providing coverage for the transportation network company driver's vehicle, if it so chooses to do so by contract or endorsement.

(b) Automobile insurers that exclude the coverage described in section eight of this article have no duty to defend or indemnify any claim expressly excluded thereunder. Nothing in this article invalidates or limits an exclusion contained in a policy, including any policy in use or approved for use in this state prior to the enactment of this article that excludes coverage for vehicles used to carry persons or property for a charge or available for hire by the public. An automobile insurer that defends or indemnifies a claim against a driver that is excluded under the terms of its policy shall have a right of contribution against other insurers that provide automobile insurance to the same driver in satisfaction of the coverage requirements of section eight of this article at the time of loss.

(c) In a claims coverage investigation, transportation network companies shall immediately provide upon request by directly involved parties or any insurer of the transportation network company driver if applicable, the precise times that a transportation network company driver logged on and off of the transportation network company's digital network in the twelve-hour period immediately preceding and in the twelve-hour period immediately following the accident. Insurers providing coverage as set forth in Section C shall disclose upon request by any other such insurer involved in the particular claim, the applicable coverages, exclusions and limits provided under any automobile insurance maintained in order to satisfy the requirements of section eight of this article.

§17-29-11. Limitation on transportation network companies.

(a) Drivers are independent contractors and not employees of the transportation network company if all of the following conditions are met:

(1) The transportation network company does not prescribe specific hours during which a transportation network company driver must be logged into the transportation network company's digital network;

(2) The transportation network company imposes no restrictions on the transportation network company driver's ability to utilize digital networks from other transportation network companies;

(3) The transportation network company does not assign a transportation network company driver a particular territory in which to operate;

(4) The transportation network company does not restrict a transportation network company driver from engaging in any other occupation or business; and

(5) The transportation network company and transportation network company driver agree in writing that the driver is an independent contractor of the transportation network company.

(b) A transportation network company operating under this article is not required to provide workers' compensation coverage to a transportation network company driver that is classified as an independent contractor pursuant to this section.

§17-29-12. Zero tolerance for drug or alcohol use.

(a) The transportation network company shall implement a zero tolerance policy regarding a transportation network company driver's activities while accessing the transportation network company's digital network. The zero tolerance policy shall address the use of drugs or alcohol while a transportation network company driver is providing prearranged rides or is logged into the transportation network company's digital network but is not providing prearranged rides, and the transportation network company shall provide notice of this policy on its website, as well as procedures to report a complaint about a driver with whom a rider was matched and whom the rider reasonably suspects was under the influence of drugs or alcohol during the course of the trip.

(b) Upon receipt of such rider complaint alleging a violation of the zero tolerance policy, the transportation network company shall immediately suspend such transportation network company driver's access to the transportation network company's digital network and shall conduct an investigation into the reported incident. The suspension shall last the duration of the investigation.

(c) The transportation network company shall maintain records relevant to the enforcement of this requirement for a period of at least two years from the date that a rider complaint is received by the transportation network company.

§17-29-13. Transportation network company driver requirements.

(a) Before allowing an individual to accept trip requests through a transportation network company's digital platform:

(1) The individual shall submit an application to the transportation network company, which includes information regarding his or her address, age, driver's license, motor vehicle registration, automobile liability insurance and other information required by the transportation network company;

(2) The transportation network company shall conduct, or have a third party conduct, a local and national criminal background check for each applicant that shall include:

(A) Multistate/multijurisdiction criminal records locator or other similar commercial nationwide database with validation (primary source search); and

(B) National Sex Offender Registry database.

(3) The transportation network company shall review, or have a third party review, a driving history research report for such individual.

(b) The transportation network company shall not permit an individual to act as a transportation network company driver on its digital network who:

(1) Has had more than three moving violations in the prior three-year period, or one major violation in the prior three-year period, including, but not limited to, attempting to evade the police, reckless driving or driving on a suspended or revoked license;

(2) Has been convicted, within the past seven years, of any felony or misdemeanor, driving under the influence, reckless driving, hit and run, or any misdemeanor violent offense or sexual offense, or more than three misdemeanors of any kind;

(3) Is a match in the National Sex Offender Registry database;

(4) Does not possess a valid driver's license;

(5) Does not possess proof of registration for the motor vehicle(s) used to provide prearranged rides;

(6) Does not possess proof of automobile liability insurance for the motor vehicle(s) used to provide prearranged rides; or

(7) Is not at least nineteen years of age.

§17-29-14. Vehicle safety and emissions.

The transportation network company shall require any motor vehicle that a transportation network company driver will use to provide transportation network company services to meet the inspection requirements of section four, article sixteen, chapter seventeen-c of this code or the inspection requirements for a private motor vehicle of the state in which the motor vehicle is registered.

§17-29-15. No street hails.

A transportation network company driver may not solicit or accept street hails.

§17-29-16. No cash trips.

The transportation network company shall adopt a policy prohibiting solicitation or acceptance of cash payments from riders and notify transportation network company drivers of such policy. Transportation network company drivers may not solicit or accept cash payments from riders. Any payment for prearranged rides shall be made only electronically using the transportation network company's digital network or software application.

§17-29-17. No discrimination; accessibility.

(a) The transportation network company shall adopt a policy of nondiscrimination with respect to riders and potential riders and notify transportation network company drivers of such policy: *Provided*, That no provision of this article may be construed to require that the policy of nondiscrimination with respect to riders and potential riders be more stringent than state law governing unlawful discriminatory practices.

(b) Transportation network company drivers shall comply with all applicable laws regarding nondiscrimination against riders or potential riders.

(c) Transportation network company drivers shall comply with all applicable laws relating to accommodation of service animals.

(d) A transportation network company may not impose additional charges for providing services to persons with physical disabilities due to those disabilities.

§17-29-18. Records.

A transportation network company shall maintain the following customer records:

(a) Individual trip records of rider customers for at least two years from the date each trip was provided; and

(b) Individual records of transportation network company driver customers at least until the two year anniversary of the date on which a transportation network company driver's customer relationship with the transportation network company has ended.

§17-29-19. Controlling authority.

(a) Notwithstanding any provision of chapter twenty-four or any other provision of this code to the contrary, the regulation of the business activities of transportation network companies and transportation network company drivers is governed exclusively by this article.

(b) Taxation. — No municipality, county or other local governmental entity or special district may impose a special district excise tax, sales tax, use tax, business and occupation tax, or any other tax or fee on, or require a license for, a transportation network company, a transportation network company driver, or a personal vehicle used by a transportation network company driver, where such tax or license relates to, or is imposed upon, the service or privilege of providing prearranged transportation of persons or property. No municipal consumer's sales and service tax and use tax or special district excise tax may be imposed on the customers of a transportation network company or a transportation network company driver for, or with relation to, purchases of transportation network company transportation services.

(c) Licensure, registration and qualification. — No municipality, county or other local governmental entity or special district may require a transportation network company driver to obtain a business license or any other similar authorization to operate within the jurisdiction, or subject a transportation network company or transportation network company driver to any licensure requirement, fee, tax, entry requirement, registration requirement, operating or operational requirement or any other requirement.

(d) Consumers sales and service tax and use tax exemptions. —

(1) The provision of prearranged transportation service by a transportation network company driver is exempt from the consumers sales and service tax and use tax imposed under articles fifteen and fifteen-a, chapter eleven of this code.

(2) Transportation network companies may assert a lawful and timely exemption from the consumer sales and service tax and use tax, in accordance with section nine, article fifteen, chapter eleven of this code, for purchases of tangible personal property and services directly used in transportation.

(e) Limitations and interpretation. —

(1) No provision of this section or this article shall be interpreted to void, abrogate, restrict or affect imposition of the ad valorem property tax on tangible personal property of a transportation network company or of a transportation network company driver by any levying body.

(2) No provision of this section or this article shall be interpreted to void, abrogate, restrict or affect imposition of the state personal income tax or state corporation net income tax on a transportation network company or a transportation network company driver.

(3) No provision of this section or this article shall be interpreted to void, abrogate, restrict or affect imposition of the motor fuel excise tax on any taxable motor fuel or alternative fuel purchased by any transportation network company or transportation network company driver.

(4) No provision of this section or this article shall be interpreted to void, abrogate, restrict or affect the requirements of chapter eleven of this code for issuance of a business registration certificate for transportation network companies and transportation network drivers.

(5) No provision of this section or this article voids, abrogates, restricts or affects any requirement of state law with relation to licensure of drivers or motor vehicles.

(6) Transportation network company drivers may not assert the exemption from the consumer sales and service tax and use tax, for purchases of tangible personal property and services directly used in transportation under section nine, article fifteen, chapter eleven of this code.

The bill (Eng. Com. Sub. for H. B. 4228), as amended, was then ordered to third reading.

Without objection, the Senate returned to the third order of business.

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

Eng. Com. Sub. for Senate Bill 10, Creating Unborn Child Protection from Dismemberment Abortion Act.

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

The following House of Delegates amendment to the title of the bill was reported by the Clerk:

Eng. Com. Sub. for Senate Bill No. 10—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-2O-1, relating to prohibiting certain abortions; defining terms; prohibiting dismemberment abortions; deeming violations by physicians and other licensed medical practitioners to be a breach of the standard of care and outside the scope of practice that is permitted by law; providing an exception; allowing for discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice for violation; constituting violations for nonphysician and nonlicensed medical practitioners as unauthorized practice of medicine and subject to criminal penalties; preserving existing legal remedies for violations; clarifying that no penalty may be assessed against a patient; and providing for certain construction of this section.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the title of the bill.

Engrossed Committee Substitute for Senate Bill 10, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Blair, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Mullins, Plymale, Prezioso, Sypolt, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—24.

The nays were: Beach, Facemire, Laird, Miller, Palumbo, Romano, Snyder, Stollings and Takubo—9.

Absent: Boley—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 10) passed with its House of Delegates amended title.

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

The Senate proceeded to the tenth order of business.

Com. Sub. for Senate Bill 25, Providing selection procedure for state delegates to Article V convention.

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

Com. Sub. for Senate Bill 104, Classifying Marshall University Forensic Science Center as a criminal justice agency.

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

Com. Sub. for Senate Bill 363, Creating exemption for autocycles.

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

Senate Bill 398, Revocation of certificate of authority to conduct business.

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

Com. Sub. for Com. Sub. for Senate Bill 454, Requiring prescriptions for opioid antagonists be logged into Controlled Substances Monitoring Program.

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

Com. Sub. for Com. Sub. for Senate Bill 460, Repealing regulation of opioid treatment programs and creating licenses for all medication-assisted programs.

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

Com. Sub. for Com. Sub. for Senate Bill 484, Relating to reemployment rights of military personnel.

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

Senate Bill 494, Creating Legislative Oversight Commission on Department of Transportation Accountability.

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

Com. Sub. for Senate Bill 528, Altering power of Higher Education Policy Commission.

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

Com. Sub. for Senate Bill 534, Relating to procedures for driver's license suspension and revocation in criminal proceedings.

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

Com. Sub. for Senate Bill 539, Relating to condemnation proceedings.

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

Com. Sub. for Senate Bill 567, Providing protection against property crimes committed against coal mines, railroads, utilities and other industrial facilities.

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

Com. Sub. for Senate Bill 599, Relating generally to Uniform Unclaimed Property Act.

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

Com. Sub. for Senate Bill 601, Legislative findings relating to oil and gas solid waste facility.

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

Com. Sub. for Senate Bill 602, Relating to Patient Injury Compensation Fund.

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

Com. Sub. for Senate Bill 614, Conforming statute with court interpretation by replacing “unconscionable” with “fraudulent” when referring to conduct.

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

Com. Sub. for Senate Bill 622, Composition of PEIA Finance Board.

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

Com. Sub. for Senate Bill 625, Revising exceptions from FOIA provided for in Aboveground Storage Tank Act.

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

Com. Sub. for Senate Bill 628, Permitting treating physician direct palliative or emergent treatment for patients.

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

Com. Sub. for Senate Bill 643, Requiring individuals receiving unemployment compensation seek seasonal employment.

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

Senate Bill 644, Authorizing counties to offer license plates customized to county.

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

Senate Bill 648, Allowing local authorities permit flashing traffic signals during low traffic times.

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

Senate Bill 656, Creating Upper Kanawha Valley Resiliency and Revitalization Program.

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

Senate Bill 657, Relating to damages for medical monitoring.

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

Senate Bill 658, Allowing licensed professionals donate time to care of indigent and needy in clinical setting.

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

Senate Bill 669, Requiring proficiency in civics as condition for high school or GED diploma.

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

Com. Sub. for Senate Bill 677, Allowing Higher Education Policy Commission increase tuition for online courses.

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

Senate Bill 678, Relating to ownership and use of conduit providing telephone service.

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

Com. Sub. for Senate Bill 686, Allowing exception for locally authorized races on county or municipal roads.

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

Senate Bill 701, Relating generally to resort area districts.

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

Senate Bill 702, Allowing title of real estate to pass to individuals entitled to sale proceeds if executor fails to do so within 5 years of closing estate.

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

Senate Bill 703, Relating to deposit of overpayment of certain fees into Children's Trust Fund.

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

Senate Bill 704, Dispatching of towing service for emergency towing of vehicles.

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

Com. Sub. for Senate Joint Resolution 14, Right to Farm and Ranch Amendment.

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

And,

Eng. Com. Sub. for House Bill 4012, West Virginia Religious Freedom Restoration Act.

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

Pending announcement of a meeting of a standing committee of the Senate, including a minority party caucus,

On motion of Senator Carmichael, the Senate recessed until 5 p.m. today.

Upon expiration of the recess, the Senate reconvened and, at the request of Senator Carmichael, and by unanimous consent, returned to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 29th day of February, 2016, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

(S. B. No. 341), Expiring funds from Insurance Commissioner, Examination Revolving Fund and Insurance Commission Fund to State Fund, General Revenue.

(S. B. No. 351), Dedicating severance tax proceeds.

(S. B. No. 449), Supplemental appropriation from State Fund, General Revenue to Department of Administration, Public Defender Services.

(S. B. No. 450), Supplemental appropriation from State Fund, General Revenue to DHHR, Division of Health.

(S. B. No. 451), Supplemental appropriation from State Fund, General Revenue to Department of Military Affairs.

And,

(S. B. No. 462), Reducing deposit of excess lottery proceeds into WV Infrastructure Fund.

Respectfully submitted,

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

Senator Hall, 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 337, Creating 5-year tax credit for businesses on post-mine sites.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Hall, unanimous consent being granted, the bill (Com. Sub. for S. B. 337) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Senate Bill 563, Increasing retirement benefit multiplier for WV Emergency Medical Services Retirement System members.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Hall, unanimous consent being granted, the bill (S. B. 563) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, 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 631, Authorizing higher education boards of governors develop retirement and incentive packages.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Hall, unanimous consent being granted, the bill (Com. Sub. for S. B. 631) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, 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 647, Exempting certain complimentary hotel rooms from occupancy tax.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Hall, unanimous consent being granted, the bill (Com. Sub. for S. B. 647) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Senate Bill 705 (originating in the Committee on Finance)—A Bill to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended, relating to reducing the severance tax on coal to three percent over two years; and specifying effective dates.

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

Respectfully submitted,

Mike Hall,
Chair.

Senator Hall requested unanimous consent that the bill (S. B. 705) contained in the preceding report from the Committee on Finance be taken up for immediate consideration.

Which consent was not granted, Senator Kessler objecting.

Senator Hall then moved that the bill be taken up for immediate consideration.

Following discussion,

The question being on the adoption of Senator Hall's aforesaid motion, and on this question, Senator Hall demanded the yeas and nays.

The roll being taken, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Leonhardt, Maynard, Mullins, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—18.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost—16.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Kessler's motion had prevailed.

Thereafter, the bill (S. B. 705) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

The Senate proceeded to the thirteenth order of business.

At the request of Senator Yost, unanimous consent being granted, it was ordered that the Journal show had Senator Yost been present in the chamber on Tuesday, February 23, 2016, he would have voted "yea" on the passage of Engrossed Committee Substitute for Senate Bill 420, Engrossed Committee Substitute for Senate Bill 485, Engrossed Committee Substitute for Senate Bill 565 and Engrossed Committee Substitute for Senate Bill 591 and "nay" on the passage of Engrossed Committee Substitute for Senate Bill 508; on Wednesday, February 24, 2016, he would have voted "yea" on the passage of Engrossed Committee Substitute for Senate Bill 252, Engrossed Committee Substitute for Senate Bill 274, Engrossed Committee Substitute for Senate Bill 291, Engrossed Committee Substitute for Senate Bill 376, Engrossed Senate Bill 416, Engrossed Senate Bill 438, Engrossed Committee Substitute for Senate Bill 474, Engrossed Committee Substitute for Senate Bill 575, Engrossed Committee Substitute for Senate Bill 592 and Engrossed Committee Substitute for Senate Bill 621; on Thursday, February 25, 2016, he would have voted "yea" on the passage of Engrossed Senate Bill 94, Engrossed Senate Bill 476 and Engrossed Committee Substitute for House Bill 3019; and on Friday, February, 26, 2016, he would have voted "yea" on the passage of Engrossed Committee Substitute for Senate Bill 106, Engrossed Committee Substitute for Senate Bill 525, Engrossed Committee Substitute for Senate Bill 593, Engrossed Senate Bill 613 and "nay" on the passage of Engrossed Senate Bill 538.

At the request of Senator Plymale, the name of Senator Plymale was removed as a sponsor of **Committee Substitute for Senate Bill 677** (*Relating to tuition rates set by higher education institutional governing boards*).

Pending announcement of meetings of standing committees of the Senate, including majority and minority party caucuses,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Tuesday, March 1, 2016, at 11 a.m.

SENATE CALENDAR

Tuesday, March 01, 2016
11:00 AM

THIRD READING

- Eng. Com. Sub. for Com. Sub. for S. B. 12 - Relating to County Local Powers Act (original similar to HB4009, SB135).
- Eng. Com. Sub. for S. B. 545 - Relating to asbestos abatement on oil and gas pipelines.
- Com. Sub. for S. B. 641 - Transferring revenues from certain greyhound racing funds to State Excess Lottery Revenue Fund - (With right to amend).
- Eng. S. B. 670 - Relating to filling vacancies in elected offices - (Com. title amend. pending).
- Eng. Com. Sub. for S. B. 691 - Modifying certain air pollution standards.
- Eng. Com. Sub. for S. J. R. 1 - County Economic Development Amendment.
- Eng. Com. Sub. for H. B. 4228 - Relating to transportation network companies - (Com. title amend. pending) (original similar to SB324).

SECOND READING

- Com. Sub. for S. B. 25 - Providing selection procedure for state delegates to Article V convention.
- Com. Sub. for S. B. 104 - Classifying Marshall University Forensic Science Center as a criminal justice agency (original similar to HB4443).
- Com. Sub. for S. B. 337 - Creating 5-year tax credit for businesses on post-mine sites (original similar to HB4596).
- Com. Sub. for S. B. 363 - Creating exemption for autocycles (original similar to SB19).
- S. B. 398 - Revocation of certificate of authority to conduct business (original similar to HB4354).
- Com. Sub. for Com. Sub. for S. B. 454 - Licensing and regulating medication-assisted treatment programs for substance use disorders (original similar to HB4293).
- Com. Sub. for Com. Sub. for S. B. 460 - Repealing regulation of opioid treatment programs and creating licenses for all medication-assisted programs (original similar to HB4395).
- Com. Sub. for Com. Sub. for S. B. 484 - Relating to reemployment rights of military personnel.
- S. B. 494 - Creating Legislative Oversight Commission on Department of Transportation Accountability.
- Com. Sub. for S. B. 528 - Altering power of Higher Education Policy Commission.

Com. Sub. for S. B. 534 -	Relating to procedures for driver's license suspension and revocation in criminal proceedings.
Com. Sub. for S. B. 539 -	Relating to condemnation proceedings.
Com. Sub. for S. B. 555 -	Providing for 3-cent tax increase on sale of fuel when cost is less than \$2 per gallon.
S. B. 563 -	Increasing retirement benefit multiplier for WV Emergency Medical Services Retirement System members (original similar to HB4425).
Com. Sub. for S. B. 567 -	Providing protection against property crimes committed against coal mines, railroads, utilities and other industrial facilities.
Com. Sub. for S. B. 599 -	Relating generally to Uniform Unclaimed Property Act.
Com. Sub. for S. B. 601 -	Relating to exception from jurisdiction of PSC for materials recovery facilities or mixed waste processing facilities.
Com. Sub. for S. B. 602 -	Relating to Patient Injury Compensation Fund.
Com. Sub. for S. B. 614 -	Conforming statute with court interpretation by replacing "unconscionable" with "fraudulent" when referring to conduct (original similar to HB4603).
Com. Sub. for S. B. 622 -	Composition of PEIA Finance Board.
Com. Sub. for S. B. 625 -	Revising exceptions from FOIA provided for in Aboveground Storage Tank Act.
Com. Sub. for S. B. 628 -	Permitting treating physician direct palliative or emergent treatment for patients.
Com. Sub. for S. B. 631 -	Authorizing higher education boards of governors develop retirement and incentive packages.
Com. Sub. for S. B. 643 -	Requiring individuals receiving unemployment compensation seek seasonal employment.
S. B. 644 -	Authorizing counties to offer license plates customized to county.
Com. Sub. for S. B. 647 -	Exempting certain complimentary hotel rooms from occupancy tax.
S. B. 648 -	Allowing local authorities permit flashing traffic signals during low traffic times.
S. B. 656 -	Creating Upper Kanawha Valley Resiliency and Revitalization Program.
S. B. 657 -	Relating to damages for medical monitoring - (Com. amend. and title amend. pending).
S. B. 658 -	Allowing licensed professionals donate time to care of indigent and needy in clinical setting.

S. B. 669 -	Requiring proficiency in civics as condition for high school or GED diploma - (Com. amend. pending).
Com. Sub. for S. B. 677 -	Relating to tuition rates set by higher education institutional governing boards.
S. B. 678 -	Relating to ownership and use of conduit providing telephone service - (Com. amend. pending).
Com. Sub. for S. B. 686 -	Authorizing local governing authorities hold sanctioned motor vehicle races on roads, streets or airports under their jurisdiction.
S. B. 701 -	Relating generally to resort area districts.
S. B. 702 -	Allowing title of real estate to pass to individuals entitled to sale proceeds if executor fails to do so within 5 years of closing estate.
S. B. 703 -	Relating to deposit of overpayment of certain fees into Children's Trust Fund.
S. B. 704 -	Dispatching of towing service for emergency towing of vehicles.
S. B. 705 -	Reducing coal severance tax to 3 percent over two years (original similar to HB4010, HB4486, HB4536, SB421, SB654, SB655).
Com. Sub. for S. J. R. 14 -	Right to Farm and Ranch Amendment.
Eng. Com. Sub. for H. B. 4012 -	West Virginia Religious Freedom Restoration Act - (Com. amend. and title amend. pending) (original similar to SB11).

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2016

Tuesday, March 1, 2016

10 a.m.	Transportation & Infrastructure	(Room 451M)
2 p.m.	Government Organization	(Room 208W)