

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-THIRD LEGISLATURE  
REGULAR SESSION, 2018  
TWENTIETH DAY

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Charleston, West Virginia, Monday, January 29, 2018

The Senate met at 11:15 a.m.

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

Prayer was offered by the Reverend Father Matthew Moore, St. John Greek Orthodox Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Patricia Puertas Rucker, a senator from the sixteenth district.

Pending the reading of the Journal of Friday, January 26, 2018,

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

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

The Senate then proceeded to the third order of business.

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

**Eng. Senate Bill 263**, Eliminating film tax credits.

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 2483**—A Bill to amend and reenact §49-4-720 and §49-4-722 of the Code of West Virginia, 1931, as amended, all relating to requiring the Division of Juvenile Services to transfer to a correctional facility or regional jail any juvenile in its custody that has been transferred to adult jurisdiction of the circuit court and who turns eighteen years of age; requiring transfer of juvenile in adult jurisdiction upon reaching eighteen years of age if he or she has either been convicted or is in a pretrial status; directing the Division of Juvenile Services to notify the circuit court one hundred eighty days or as soon as practical of a juvenile reaching eighteen years of age; requiring the circuit court to set and conduct a hearing prior to the transfer

to an adult correctional facility; providing for transfer to an adult facility in the event a hearing is not held; mandating that the position of victim be taken under consideration by the court in considering disposition or alternative placement; prohibiting juveniles that commit an adult offense while under the custody of the Division of Juvenile Services from returning back to the placement in a juvenile facility if the juvenile has attained the age of eighteen years; requiring the court to conduct a hearing prior to the completion of the adult sentence; and prohibiting a court from remanding a child who has reached eighteen years of age and completed serving an adult sentence to a juvenile facility.

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 4035**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-54-1, §16-54-2, §16-54-3, §16-54-4, §16-54-5, §16-54-6 and §16-54-7, creating a state advisory coalition to improve palliative care in West Virginia, providing definitions, designating members of the coalition, providing for the powers and duties of the coalition, establishing that certain and other state agencies shall cooperate with the coalition, and establishing a termination date for the coalition, all relating to medical, end of life, serious illness and palliative care.

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

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

**Eng. Com. Sub. for House Bill 4135**—A Bill to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal taxable income and certain other terms used in the West Virginia Corporation Net Income Tax Act; and specifying effective dates.

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. House Bill 4146**—A Bill to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; providing rule for determining number of personal exemptions; and specifying effective dates.

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 4169**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-9A-4, relating to requiring certain establishments and facilities to post human trafficking assistance notices; establishing where

notices must be posted and contents of notice; directing the Director of the Division of Justice and Community Services to administer the program; authorizing state agents to give notice of violations; providing for criminal penalties for failure to comply with posting of notices once given notice of lawful duty to post; and defining terms.

Referred to the Committee on the Judiciary.

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

**Eng. Com. Sub. for House Bill 4174**—A Bill to amend and reenact §3-5-13 of the Code of West Virginia, 1931, as amended, relating to primary elections and nominating procedures; and designating the placement of nonpartisan offices on the primary election ballot.

Referred to the Committee on the Judiciary.

The Senate proceeded to the fourth order of business.

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

Your Committee on Finance has had under consideration

**Senate Bill 336**, Providing certain DMV applicants ability to contribute to WV Department of Veterans Assistance.

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

**Com. Sub. for Senate Bill 336** (originating in the Committee on Finance)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17A-2-12a, relating generally to application forms prescribed by the Commissioner of the West Virginia Division of Motor Vehicles; providing that the commissioner shall prescribe and provide suitable forms of application which provide certain applicants the ability to make a contribution to the West Virginia Department of Veterans Assistance; providing that the contributions be added, as appropriate, to the regular fee charged; providing that contributions be used exclusively for stated purposes; providing that the department shall determine the total amount collected and report the amount to the State Treasurer; providing that the State Treasurer shall transfer the amount collected to the West Virginia Department of Veterans Assistance; providing that the West Virginia Department of Veterans Assistance shall reimburse the division for the actual costs incurred by the division in administering the requirements of this section.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Craig Blair,  
*Chair.*

The Senate proceeded to the sixth order of business.

On motions for leave, severally made, the following bills were introduced, read by their titles, and referred to the appropriate committees:

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

**Senate Bill 407**—A Bill to amend and reenact §49-1-203 and §49-1-206 of the Code of West Virginia, 1931, as amended, all relating to modifying definitions related to licensing and approval of child care programs; and modifying definitions related to child advocacy, care, residential, and treatment programs.

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

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

**Senate Bill 408**—A Bill to repeal §16-5D-16 and §16-5D-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5C-3 of said code; and to amend and reenact §16-5D-2, §16-5D-3, §16-5D-4, §16-5D-5, §16-5D-6, §16-5D-7, §16-5D-8, §16-5D-9, §16-5D-10, §16-5D-11, §16-5D-12, §16-5D-13, and §16-5D-15 of said code, all relating to the licensure of nursing homes and assisted living residences; repealing duplicative sections of code; defining terms; requiring real-time online public information in lieu of annual report; clarifying rule requirements; allowing physical and electronic delivery methods for reports; and clarifying enforcement action and due process procedures.

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

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

**Senate Bill 409**—A Bill to amend and reenact §24-6-5 of the Code of West Virginia, 1931, as amended, relating to requiring persons employed to dispatch emergency calls in county emergency dispatch centers to complete a training course in emergency cardiovascular care for telephonic cardiopulmonary resuscitation.

Referred to the Committee on Health and Human Resources.

**By Senators Smith, Azinger, Clements, and Sypolt:**

**Senate Bill 410**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-32-1, relating to creating and appointing an industry advocate within the Department of Environmental Protection; establishing powers and duties of the industry advocate; providing for salary of the industry advocate; providing for staff; and requiring rulemaking.

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

**By Senators Takubo and Maroney:**

**Senate Bill 411**—A Bill to amend and reenact §16-1-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-17-4 of said code, all relating to removing the Commissioner of the Bureau for Public Health from the membership of the State Board of Sanitarians.

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

**By Senator Trump:**

**Senate Bill 412**—A Bill to amend and reenact §7-1-3ff of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-29-1 of said code, all relating to county litter control officers who are trained and certified as law-enforcement officers to have the same authority as other law-enforcement officers to enforce litter laws.

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

**By Senators Sypolt and Smith:**

**Senate Bill 413**—A Bill to amend and reenact §11-13A-3a of the Code of West Virginia, 1931, as amended, relating to levying a 0.5 percent annual severance tax on Marcellus, Utica and all other deep sand gas; and a levying a 0.5 percent privilege tax on all future cracker plants which will be dedicated to retired public employees.

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

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

**Senate Bill 414**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designed §19-1B-12; and to amend and reenact §19-1B-12a of said code, all relating to requiring purchasers of roundwood to collect and maintain certain information; providing criminal penalties; and clarifying that the employees of the Division of Forestry are authorized to issue citations for violations of the Logging Sediment Control Act.

Referred to the Committee on Natural Resources.

**By Senators Ferns, Blair, Maroney, Trump, Weld, Woelfel, Stollings, and Takubo:**

**Senate Bill 415**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §29-22D-1, §29-22D-2, §29-22D-3, §29-22D-4, §29-22D-5, §29-22D-6, §29-22D-7, §29-22D-8, §29-22D-9, §29-22D-10, §29-22D-11, §29-22D-12, §29-22D-13, §29-22D-14, §29-22D-15, §29-22D-16, §29-22D-17, §29-22D-18, §29-22D-19, §29-22D-20, §29-22D-21, §29-22D-22, §29-22D-23, §29-22D-24, and §29-22D-25, all relating to permitting wagering on the results of certain professional or collegiate sports or athletic events and other events authorized as West Virginia Lottery Sports Wagering activities; providing legislative findings; defining terms; detailing duties and powers of the West Virginia Lottery Commission; providing rule-making authority and emergency rule-making authority; limiting sports wagering to existing racetrack casinos and the casino in a historic resort hotel; establishing license requirements and prohibitions; adopting house rules and the posting of the same; defining duties of an operator conducting sports wagering; requiring the posting of betting limits; adopting sports wagering agreements with other governments; prohibiting unauthorized sports wagering in this state; creating the West Virginia Lottery Sports Wagering Fund; authorizing the collection of license fees; authorizing the West Virginia Lottery to collect an administrative allowance from gross sports wagering receipts; authorizing the West Virginia Lottery to levy and collect a tax in the amount of 10 percent of adjusted gross sports wagering receipts; defining how moneys deposited in the West Virginia Lottery Sports Wagering Fund shall be distributed; establishing the role of law enforcement; imposing civil and criminal penalties; establishing crimes; providing for the forfeiture of property for certain violations; preempting this article from state and local law; establishing exemption from federal law; and allowing for the shipment of gambling devices used for sports wagering.

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

Senators Rucker, Unger, and Plymale offered the following resolution:

**Senate Resolution 19**—Designating January 29, 2018, as Jefferson County Day at the Capitol.

Whereas, Jefferson County was formed from Berkeley County in 1801 and named for Thomas Jefferson, author of the Declaration of Independence and third president of the United States; and

Whereas, Jefferson County's municipalities include Charles Town, the county seat (established in 1789 by George Washington's brother, Charles); Ranson (1910); Harpers Ferry (1851); Bolivar (1825); and Shepherdstown (1762); and

Whereas, From John Brown's raid in Harpers Ferry to Johnstown, believed to be the first free black community in West Virginia, and from Civil War battle sites to the courthouse in Charles Town being the only courthouse in America to have held two trials for treason, Jefferson County is rich in history. In 1906, Storer College in Harpers Ferry was the site of the Niagra Movement's (later merged with the National Association for the Advancement of Colored People) first meeting on United States soil. The meeting was later described by W.E.B. Du Bois as "one of the greatest meetings that American Negroes ever held."; and

Whereas, Today, Jefferson County is an economic engine for the State of West Virginia, with a booming population that has grown from 21,280 in 1970 to 53,498 after the 2010 census; and

Whereas, Jefferson County has a vibrant tourism industry, drawing hundreds of thousands of visitors from around the world each year to enjoy whitewater rafting, zip lining, camping, and hiking along the Appalachian Trail, shopping at farmers markets, or taking in the many national historical sites around the county; and

Whereas, Jefferson County has been home to Shepherd University for 145 years, which has evolved into a thriving school of 4,000 students, 60 percent of which are West Virginia natives; and

Whereas, It is fitting to recognize Jefferson 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 January 29, 2018, as Jefferson County Day at the Capitol; and, be it

*Further Resolved,* That the Senate acknowledges the many important contributions the citizens and businesses of Jefferson County make in the State of West Virginia; and, be it

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

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senator Rucker regarding the adoption of Senate Resolution 19 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, at 11:26 a.m., the Senate recessed to present Senate Resolution 19.

The Senate reconvened at 11:29 a.m. today and proceeded to the seventh order of business.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 9**, Urging Congress call convention of states under Article V limited to proposing amendments to Constitution of United States.

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

**Senate Concurrent Resolution 10**, Proposing amendment to US Constitution restoring free and fair elections.

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

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 7**, Relating to claims under Wage Payment and Collection 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: Arvon, Azinger, Baldwin, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 7) 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 51**, Relating to domestic relations.

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: Arvon, Azinger, Baldwin, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard,

Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 51) 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 163**, Authorizing DEP promulgate legislative rules.

Having been read a third time on Friday, January 26, 2018, and now coming up in regular order, was reported by the Clerk.

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

**Eng. Senate Bill 280**, Allowing airports' emergency management and operations vehicles to use red flashing warning lights.

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: Arvon, Azinger, Baldwin, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 280) passed with its title.

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

The Senate proceeded to the ninth order of business.

**Com. Sub. for Senate Bill 165**, Authorizing DHHR promulgate legislative rules.

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

**Com. Sub. for Com. Sub. for Senate Bill 284**, Increasing access to career education and workforce training.

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 285**, Establishing regional recreation authorities and areas.

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

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

On page four, section one, line sixty-seven, after the word “respectively.” by striking out the remainder of the section;

On page twelve, section six, line sixty-two, by striking out the words “or the county sheriffs”;

On page thirteen, section seven, line six, by striking out the words “or nonintoxicating beer”;

On page thirteen, section seven, line fifteen, after the word “emergency.” by adding the following: Each participant shall at all times remain within and on a designated and marked trail within the regional recreational area.;

And,

On page nineteen, section two, line sixteen, after the word “operator”, by inserting the following: “Off-highway vehicle”, “off-highway recreational vehicle” or “OHV” means a vehicle intended for off-highway use and includes all-terrain vehicles, utility-terrain vehicles, motorcycles and off-road vehicles. All permissible off-highway vehicles, including off-road vehicles, are incorporated by reference in this article.

“Off-road vehicle” or “ORV” means a vehicle that is suitable for off-road use. It includes a four-wheel drive vehicle such as a Jeep, pickup or sport utility vehicle. It also includes a specially designed, modified or customized off-road vehicle that is of a similar size to a vehicle manufactured for highway use.

The bill (Com. Sub. for S. B. 285), as amended, was then ordered to engrossment and third reading.

**Senate Bill 338**, Changing date for employers to file annual reconciliation and withholding statements.

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

**Senate Bill 393**, Relating to compensation and composition of WV Racing Commission.

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

The Senate proceeded to the tenth order of business.

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

**Com. Sub. for Senate Bill 10**, Relating generally to PSC jurisdiction.

**Com. Sub. for Senate Bill 46**, Permitting pharmacists to inform customers of lower-cost alternative drugs.

**Com. Sub. for Senate Bill 71**, Defining “veteran” as it pertains to veteran-owned business.

**Com. Sub. for Senate Bill 184**, Authorizing DOT promulgate legislative rules.

**Com. Sub. for Senate Bill 237**, Authorizing Department of Revenue promulgate legislative rules.

**Senate Bill 242**, Requiring health insurance providers provide coverage for certain Lyme disease treatment.

**Com. Sub. for Senate Bill 267**, Increasing salaries of certain state employees.

**Com. Sub. for Senate Bill 327**, Providing extortion of anything of value, including sexual contact, subjects person to criminal penalty.

**Senate Bill 384**, Decreasing and increasing appropriations from State Fund, General Revenue to DHHR.

**Senate Bill 385**, Decreasing and adding appropriations out of Treasury to DHHR and MAPS.

And,

**Senate Bill 388**, Decreasing, increasing and adding appropriations out of Treasury to DHHR and Department of Administration.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Jeffries.

Thereafter, at the request of Senator Prezioso, and by unanimous consent, the remarks by Senator Jeffries were ordered printed in the Appendix to the Journal.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate adjourned until tomorrow, Tuesday, January 30, 2018, at 11 a.m.

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## SENATE CALENDAR

Tuesday, January 30, 2018  
11:00 AM

### THIRD READING

- Eng. Com. Sub. for S. B. 163 - Authorizing DEP promulgate legislative rules (original similar to HB 4093)
- Eng. Com. Sub. for S. B. 165 - Authorizing DHHR promulgate legislative rules (original similar to HB 4129)
- Eng. Com. Sub. for Com. Sub. for S. B. 284 - Increasing access to career education and workforce training (original similar to HB 4267)
- Eng. Com. Sub. for S. B. 285 - Establishing regional recreation authorities and areas (original similar to SB 67)
- Eng. S. B. 338 - Changing date for employers to file annual reconciliation and withholding statements (original similar to HB 4265)
- Eng. S. B. 393 - Relating to compensation and composition of WV Racing Commission

### SECOND READING

- Com. Sub. for S. B. 10 - Relating generally to PSC jurisdiction (original similar to HB 4355)
- Com. Sub. for S. B. 46 - Permitting pharmacists to inform customers of lower-cost alternative drugs
- Com. Sub. for S. B. 71 - Defining "veteran" as it pertains to veteran-owned business
- Com. Sub. for S. B. 184 - Authorizing DOT promulgate legislative rules (original similar to HB 4099)
- Com. Sub. for S. B. 237 - Authorizing Department of Revenue promulgate legislative rules (original similar to HB 4102)
- S. B. 242 - Requiring health insurance providers provide coverage for certain Lyme disease treatment (original similar to HB 4328)
- Com. Sub. for S. B. 267 - Increasing salaries of certain state employees (original similar to HB 4145)
- Com. Sub. for S. B. 327 - Providing extortion of anything of value, including sexual contact, subjects person to criminal penalty
- S. B. 384 - Decreasing and increasing appropriations from State Fund, General Revenue to DHHR

S. B. 385 - Decreasing and adding appropriations out of Treasury to DHHR and MAPS

S. B. 388 - Decreasing, increasing and adding appropriations out of Treasury to DHHR and Department of Administration

**FIRST READING**

Com. Sub. for S. B. 336 - Providing certain DMV applicants ability to contribute to WV Department of Veterans Assistance

**ANNOUNCED SENATE COMMITTEE MEETINGS**

**Regular Session 2018**

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**Tuesday, January 30, 2018**

10 a.m.	Transportation & Infrastructure	(Room 451M)
2 p.m.	Education	(Room 451M)