

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-THIRD LEGISLATURE  
REGULAR SESSION, 2018  
TWENTY-SEVENTH DAY

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Charleston, West Virginia, Monday, February 5, 2018

The Senate met at 11:41 a.m.

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

Prayer was offered by Pastor Betsy Kelly, daughter of the Honorable John R. Kelly, a delegate from the tenth district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Roman W. Prezioso, Jr., a senator from the thirteenth district.

Pending the reading of the Journal of Friday, February 2, 2018,

At the request of Senator Baldwin, 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. House Bill 2612**—A Bill to repeal §17C-14-1 of the Code of West Virginia, 1931, as amended, relating to unattended motor vehicles; and penalty.

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 4138**—A Bill to amend and reenact §29-3-16a of the Code of West Virginia, 1931, as amended, relating to requiring each public or private school and daycare center that uses a fuel-burning heating system or other fuel-burning heating device that emits combustion gases to install carbon monoxide detectors in certain locations.

Referred to the Committee on the Judiciary.

The Senate proceeded to the fourth order of business.

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

Your Committee on the Judiciary has had under consideration

**Senate Joint Resolution 3**, Judicial Budget Oversight Amendment.

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

**Com. Sub. for Senate Joint Resolution 3** (originating in the Committee on the Judiciary)—Proposing an amendment to the Constitution of the State of West Virginia amending section 51, article VI thereof, relating to the authority of the Legislature with regard to the state budget; giving the Legislature the authority to reduce items in the budget relating to the judiciary; providing that the Legislature may not condition the increase or decrease of an item relating to the judiciary upon a particular ruling, order or decision of a court of this state; amending obsolete language regarding when the Governor shall submit the budget to the Legislature to accurately reflect current constitutional requirements; making numerous technical corrections; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

The resolution (Com. Sub. for S. J. R. 3), under the original double committee reference, was then referred to the Committee on Finance.

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 Stollings, Palumbo, Jeffries, and Plymale:**

**Senate Bill 478**—A Bill to amend and reenact §5-16-7 and §5-16-9 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5-16B-6f; to amend said code by adding thereto a new section, designated §9-5-27; to amend said code by adding thereto a new section, designated §33-15-4p; to amend said code by adding thereto a new section, designated §33-16-3bb; to amend said code by adding thereto a new section, designated §33-24-7q; to amend said code by adding thereto a new section, designated §33-25-8n; and to amend said code by adding thereto a new section, designated §33-25A-8p, all relating to mandatory insurance coverage for treatment of mitochondrial disease and other similar metabolism or genetic conditions, including, but not limited to, the use of certain vitamin and nutritional supplements; and requiring coverage even if supplements must be compounded.

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

**By Senator Gaunch:**

**Senate Bill 479**—A Bill to amend and reenact §6-9-1a, §6-9-7, §6-9-8, and §6-9-9a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §6-9-9b, all relating to audits, reviews, and monitoring of local government offices; defining terms; clarifying applicable audit requirements; establishing a small government monitoring program; authorizing the Auditor, acting in the capacity as chief inspector, to oversee and maintain the monitoring program; directing the Auditor to prescribe policies and procedures for the monitoring program; authorizing cooperative agreements with higher education institutions to perform and participate in the monitoring program; changing the expenditure threshold for performance of annual audits; clarifying the notification and publication requirements when misfeasance, malfeasance, or nonfeasance is discovered as part of an audit, examination, or investigation; lowering the time frame in which a legal authority has to take action upon recommendations from an audit; raising the cost limits for certain municipalities for performance of services by the chief inspector; removing Class III municipalities from the cost limits; adding cost limits for municipalities policemen and firemen pension and relief funds; authorizing chief inspector to designate certain reports as confidential; and declaring that audit work papers created by the chief inspector division are confidential and not deemed public records.

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

**By Senators Beach, Romano, Jeffries, Baldwin, Stollings, Ojeda, Unger, Facemire, Woelfel, and Plymale:**

**Senate Bill 480**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §10-6-1 and §10-6-2, all relating to the creation of a West Virginia Sports Hall of Fame Commission; designating membership and terms of the commission; filling commission vacancies; establishing the commission's duties; establishing a foundation; and requiring the foundation to draft bylaws for adoption and to manage property acquired by the West Virginia Sports Hall of Fame.

Referred to the Committee on Government Organization.

**By Senator Beach:**

**Senate Bill 481**—A Bill to amend and reenact §21-11-10 of the Code of West Virginia, 1931, as amended, relating to requiring persons building residential structures to inform the county board of education of the number of units to be constructed and the estimated number of occupants of those structures; and requiring this information be provided before a building permit may be issued.

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

**By Senators Beach and Cline:**

**Senate Bill 482**—A Bill to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating to allowing magistrates to carry firearms in a county courthouse or on the premises of a court of law, including family courts.

Referred to the Committee on the Judiciary.

**By Senators Weld, Cline, Ferns, and Baldwin:**

**Senate Bill 483**—A Bill expiring funds to the Department of Veterans Assistance – Veterans Facilities Support Fund, fund 6703, fiscal year 2018, organization 0613, in the amount of \$7,000,000 from the Department of Revenue, Insurance Commissioner – Insurance Commission Fund, fund 7152, fiscal year 2018, organization 0704, and making a supplementary appropriation out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2018, to the Department of Veterans Assistance – Veterans Facilities Support Fund, fund 6703, fiscal year 2018, organization 0613, by supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

Referred to the Committee on Finance.

**By Senators Sypolt, Karnes, and Ferns:**

**Senate Bill 484**—A Bill to amend and reenact §61-7-14 of the Code of West Virginia, 1931, as amended, relating to creating the Business Liability Protection Act; the right to limit possession of firearms on certain premises; providing definitions; misdemeanor criminal offense and penalty; prohibiting employers from certain specific actions against a person when that person possesses a firearm legally, including a condition of employment; providing a duty of care of public and private employers and immunity from liability; authorizing the Attorney General to enforce this statute, including the right to sue or seek injunctive relief; and providing for civil fines.

Referred to the Committee on the Judiciary.

**By Senator Blair:**

**Senate Bill 485**—A Bill to amend and reenact §23-2C-3 of the Code of West Virginia, 1931, as amended, relating to the termination of the Workers' Compensation Debt Reduction Fund assessment on self-insured employers.

Referred to the Committee on Finance.

**By Senators Ojeda, Baldwin, Beach, Facemire, Jeffries, Plymale, Prezioso, Romano, Stollings, and Unger:**

**Senate Bill 486**—A Bill to amend and reenact §11-13A-3a and §11-13A-5a of the Code of West Virginia, 1931, as amended, all relating to stabilizing Public Employees Insurance Agency (PEIA) benefits; dedicating a portion of the severance tax on natural gas to the benefit of public employee and retiree health care; creating a special fund account entitled the PEIA Fund; and requiring the increase in the severance tax on natural gas to be deposited into the PEIA Fund.

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

**By Senators Ojeda, Romano, Baldwin, Beach, Facemire, Jeffries, Palumbo, Plymale, Prezioso, Stollings, and Unger:**

**Senate Bill 487**—A Bill to repeal §16A-4-1 of the Code of West Virginia, 1931, as amended; to repeal §16A-6-4 of said code; to amend and reenact §16A-2-1 of said code; to amend and reenact §16A-3-1, §16A-3-2, §16A-3-3, and §16A-3-4 of said code; to amend and reenact §16A-4-2, §16A-4-3, and §16A-4-5 of said code; to amend and reenact §16A-6-3, §16A-6-6, §16A-6-12, and §16A-6-13 of said code; to amend and reenact §16A-7-5 of said code; to amend and reenact §16A-8-1 and §16A-8-2 of said code; to amend and reenact §16A-9-1 of said code; to amend said code by adding thereto two new sections, designated §16A-9-3 and §16A-9-4; to amend and reenact §16A-11-1 of said code; and to amend and reenact §16A-12-8 of said code, all relating to the West Virginia Medical Cannabis Act; amending and removing definitions;

defining terms; removing the requirement for practitioners to be registered; allowing data gathering to indicate where a specific form of medical cannabis was not recommended; removing the four-hour training course for physicians; increasing the two-hour training course for principals and employees to eight hours and adding requirements for the training; removing the Freedom of Information Act exemption for practitioner credentials; authorizing the medical cannabis sales in edible and plant-based form; removing the prohibition on smoking medical cannabis; authorizing licensed patients and caregivers to grow medical cannabis under certain restrictions; repealing the section requiring registration of physicians eligible to issue certifications to patients to use medical cannabis; adjusting certification requirements to reflect the removal of the practitioner registry; removing the requirement that other treatments be ineffective before recommending medical cannabis; clarifying the duration of a dosage that may be dispensed; expanding on the requirement that applicants are required to be residents of this state; permitting transfer of permits under certain circumstances; removing the requirement for separate regions associated with medical cannabis dispensaries; repealing the section requiring notice be printed in the State Register; authorizing the commissioner to set a sliding initial fee schedule for growers based on acreage of the farm; setting a maximum fee for growers; allowing a grower or processor to pay its initial fee in two installments; adding additional prior convictions that result in a prohibition of being affiliated with a medical cannabis registrant; adjusting the current waiver process for persons previously convicted to prohibit certain persons from being eligible for a waiver in certain circumstances; removing the cap on the number of growers, processors, and dispensaries; removing the prohibition on a grower or processor being a dispensary; removing the requirement that a dispensary have a physician or pharmacist onsite at all times and clarifying other requirements; authorizing delivery by a dispensary to a caregiver's residence during certain times but prohibiting delivery to a commercial business and certain temporary housing locations; clarifying that Tax Division of Department of Revenue, along with Bureau for Public Health within the West Virginia Department of Health and Human Resources, will monitor price of medical cannabis; clarifying that Tax Division will administer, collect, and enforce medical cannabis tax; clarifying imposition of tax; detailing imposition of tax with respect to growers or processors that sell to a dispensary in which they have an economic interest; removing the exemption on medical cannabis from the sales tax; permitting exchange of information; providing that information exchanged is not subject to disclosure under Freedom of Information Act; requiring payment of tax by electronic funds transfer; requiring electronic filing of tax returns; authorizing legislative, interpretive, and procedural rules, as necessary to implement tax provisions; making tax subject to provisions of West Virginia Tax Crimes and Penalties Act; making tax subject to provisions of the West Virginia Tax Procedure and Administration Act; adding a doctor of osteopathic medicine to the advisory board; removing the ability of the bureau to sanction the registration of a practitioner due to the removal of the requirement to register; and removing the ability of the bureau to order restitution against a registrant.

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

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

**Senate Resolution 26**—Congratulating the Wyoming East High School golf team for winning the 2017 Class AA state championship.

Whereas, The Wyoming East High School golf team had an outstanding year on the links, compiling a record of 98-17-1; and

Whereas, The Wyoming East High School golf team displayed a strong will and determination throughout the entire season, and for their efforts, won the 2017 Class AA state championship; and

Whereas, The Wyoming East High School golf team is coached by Robert “Doc” Warner, and consists of players: Patrick Smith, Michael Grawe, Evan Preece, Noah Quesenberry, Gavin Roberts, Ethan Bradford, Matthew Caldwell, Jacob Pinter, Conner Hall, Logan Miller, and Josh Seaton; and

Whereas, The 2017 Wyoming East High School golf team will be remembered as one of the best high school golf teams to ever be assembled in history of the State of West Virginia; therefore, be it

*Resolved by the Senate:*

That the Senate hereby congratulates the Wyoming East High School golf team for winning the 2017 Class AA state championship; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the Wyoming East High School golf team.

At the request of Senator Cline, 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 Cline regarding the adoption of Senate Resolution 26 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, at 12:02 p.m., the Senate recessed to present Senate Resolution 26.

The Senate reconvened at 12:05 p.m. today and resumed business under the sixth order.

Senators Beach, Prezioso, Plymale, Unger, and Stollings offered the following resolution:

**Senate Resolution 27**—Celebrating the achievements and contributions of athletes from Marion County to the great State of West Virginia.

Whereas, Marion County was founded on January 14, 1842, and named for Francis Marion, also known as the Swamp Fox. It was formed from parts of Monongalia and Harrison Counties and was part of Virginia until 1863 when the State of West Virginia was formed; and

Whereas, Marion County is home to Fairmont State University, founded in 1865 as a private institution and became a state institution in 1867, and Prickett’s Fort State Park, established in 1975 to commemorate life on the Virginia frontier during the late 18th century; and

Whereas, Marion County has a heritage of frontier spirit, hardiness, and perseverance. There is also an appreciation for a competitive attitude and athletic success at all levels, including in the secondary, collegiate, and professional arenas; and

Whereas, Mary Lou Retton, a native of Fairmont, competed in the 1984 Olympics in gymnastics and was awarded one gold, two silvers, and two bronze medals; and

Whereas, Fielding H. Yost, born and raised in Fairview, played college football and served as head football coach at six different colleges and universities, including 25 years at the University of Michigan where they won six national championships and beat Stanford in the 1902 Rose Bowl, the first college bowl game; and

Whereas, Cam Henderson, born in Joetown, was both the head football coach and head basketball coach at Muskingum College, Marshall University, and, most notably, Davis and Elkins College where his combined record was 800 wins, 336 losses and 13 ties. He is credited with creating the 2-3 zone defense and the fast break in basketball; and

Whereas, Mary Hervatin Boswell attended Fairmont State from 1949-1953, played two seasons on the men's tennis team, and was the first female to letter in a varsity sport at Fairmont State in 1952 and 1953. In 2007, she won the ITF Super-Seniors World Championship; and

Whereas, Marion County has six high schools that have either closed or been consolidated into other schools. These schools include: Monongah, Fairview, Fairmont-Dunbar, Mannington, Farmington and Barrackville. These schools brought home a total of 23 state championship trophies in football, boys basketball, baseball, and wrestling; and

Whereas, Dave Tork, of Fairmont, is a retired pole vaulter who set his personal best (5.08 meters) in June of 1964. He was the Men's Pole Vault World Record Holder in 1962 and won a gold medal in the Pan American games in Sao Paulo in 1963; and

Whereas, Frank "Gunner" Gatski, born and raised in Farmington, was a center for the Cleveland Browns in the 1940s and 1950s. He played football for Marshall University, joined the Army and fought in World War II, and then finished his studies at Auburn University. As a linebacker and center for the Cleveland Browns and Detroit Lions he was a four-time AAFC Champion, four-time NFL Champion, and played in one Pro-Bowl game; and

Whereas, Rick Harris attended Fairmont State from 1955-1958 and participated in baseball, football, and swimming. He was a member of WVIAC Championship teams in all three sports. He lettered three years for football and baseball and two years for swimming; and

Whereas, Marion County currently has three high schools: Fairmont Senior, East Fairmont, and North Marion. These three schools have earned a total of 67 state championships beginning in 1903 when Fairmont Senior won the first state football championship, including North Marion's girls basketball team that won three state championships in a row, and East Fairmont who brought home the state championship in boys cross country in 2017; and

Whereas, Sally Simpson Lambert attended Fairmont State from 1984-1987 excelling on the swim team. She was part of two relay teams that set NAIA national records in 400m medley and 800m freestyle, set school records for 100m butterfly, 200m butterfly, 400m medley relay and 800m freestyle, and was named the team's Outstanding Swimmer in 1987.

Whereas, Sam Huff, born in Edna Gas and raised in Farmington, played as a linebacker for Farmington High School, West Virginia University, the New York Giants, and the Washington Redskins. He played in five Pro-Bowl games, one NFL Championship game, and was named to the 1950s All-Decade Team; and

Whereas, Denver Smith played football, baseball, and basketball and ran track for Fairmont State from 1948-1952. He made the 9th longest kickoff return in football history (81 yards) in 1951 and was named to the WVIAC All-Time Team in track. He holds the Over 65 World Record in 60m hurdles, the Over 65 US Record in 100m hurdles, and eight-time national pentathlon and nine-time national decathlon champion for USA Masters; and

Whereas, Dr. Sam Church was Athletic Director and Wrestling Coach from 1972-1980. He coached six NAIA All-Americans, won four WVIAC Championships and led Fairmont State to four top 25 finishes at the NAIA National Tournament; and

Whereas, Lisa Monteleone Barone played women's basketball for Fairmont State from 1987-1991 where she was two-time NAIA Academic All-American. She scored 1,490 career points and grabbed 826 rebounds. She set the school record for career free throws, free-throw percentage, and single-season free throws; and

Whereas, Nick Saban, born and raised in Fairmont, attended Monongah High School. As a football coach, he has coached at numerous colleges and universities including WVU and most recently Alabama. He has led teams to seven SEC championships and six National championships. He has been designated Coach of the Year 13 times by five organizations including the SEC and Associated Press; and

Whereas, Bill Stewart, from Grafton, attended Fairmont State where he was a three-year letter winner and team captain. He was an assistant coach at several colleges and universities and head coach at VMI and West Virginia. He led the Mountaineers to victory in the 2008 Fiesta Bowl and won the BIG EAST Conference title in 2010; therefore, be it

*Resolved by the Senate:*

That the Senate hereby celebrates the achievements and contributions of athletes from Marion County to the great State of West Virginia; and, be it

*Further Resolved,* That the Senate commends the competitive spirit and the willingness to strive for perfection as exemplified by the many athletes who were born and raised in Marion County or attended Fairmont State University; and be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the Marion County Commission, the City of Fairmont, and the Marion County Board of Education.

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

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 244**, Specifying conditions for unlawful possession of firearm at school-sponsored activities.

On third reading, 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 322**, Relating to employees of Department of Agriculture.

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, Beach, Blair, Boley, Boso, 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: Clements—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 322) 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 343**, Limiting expenses in preparing list for notice to redeem.

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, Baldwin, Beach, Blair, Boley, Boso, 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)—32.

The nays were: Azinger—1.

Absent: Clements—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 343) 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 364**, Allowing parent or legal guardian of homeschooled child provide signed statement for obtaining permit or license to operate motor vehicle.

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, Beach, Blair, Boley, Boso, 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: Clements—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 364) 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 393**, Relating to compensation and composition of WV Racing Commission.

On third reading, 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 400**, Prohibiting state licensing boards from hiring lobbyists.

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 Senate Bill 400 pass?”

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, 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: Clements—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 400) passed.

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

**Eng. Senate Bill 400**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-22, all relating to lobbying by state boards and commissions.

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

**Eng. Senate Bill 430**, Encouraging collaborative agreements between community and technical colleges and federally registered apprenticeship programs.

On third reading, 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. Com. Sub. for House Bill 4020**, Making technical corrections in the code when referencing chapter 49.

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, Beach, Blair, Boley, Boso, 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: Clements—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 H. B. 4020) 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 4020**—A Bill to amend and reenact §7-4-4 and 7-4-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-7-2 of said code; to amend and reenact §7-10-2 of said code; to amend and reenact §15-11-2 of said code; to amend and reenact §15-2-15 of said code; to amend and reenact §15-2C-1 of said code; to amend and reenact 15-9-3 of said code; to amend and reenact §15-11-2 of said code; to amend and reenact §16-2F-2 of said code; to amend and reenact §16-3C-1 of said code; to amend and reenact §16-9A-3 of said code; to amend and reenact §16-30-3 of said code; to amend and reenact §16-47-5 of said code; to amend and reenact §17C-5-6a of said code; to amend and reenact §18-5-15c of said code; to amend and reenact §18-8-6a of said code; to amend and reenact §18A-5-1d of said code; to amend and reenact §28-1-2 of said code; to amend and reenact §29-21-16 of said code; to amend and reenact §31-20-2 of said code; to amend and reenact §33-4-20 of said code; to amend and reenact §48-9-205 and §48-9-301 of said code; to amend and reenact §48-22-301 of said code; to amend and reenact §48-26-701 and §48-26-1002 of said code; to amend and reenact §48-27-403 of said code; to amend and reenact §49-1-201 of said code; to amend and reenact §51-2A-2 of said code; to amend and reenact §51-7-8 of said code; to amend and reenact §61-2-14h of said code; to amend and reenact §61-5-12b of said code; to amend and reenact §61-6-25 of said code; to amend and reenact §61-7-8 of said code; to amend and reenact §61-8-12 of said code; to amend and reenact §61-8B-11a of said code; to amend and reenact §61-8C-3b of said code; to amend and reenact §61-8D-9 of said code; to amend and reenact §61-11-23 of said code; to amend and reenact §61-12-10 of said code; and to amend and reenact §62-6B-5, all relating to clarifying and making technical corrections in the code when referencing chapter 49 of this code due to 2015 revisions to chapter 49 of said code; and defining terms.

*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 102**, Creating WV Uniform Fiduciary Access to Digital Assets 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 181**, Authorizing MAPS promulgate legislative rules.

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

**Senate Bill 425**, Removing sunset dates which members of policemen's or firemen's pension fund elect to participate in deferred retirement option plan.

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

**Senate Bill 462**, Establishing contribution holiday for public pension plans funded at 130 percent or more.

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

**Senate Bill 463**, Establishing group to examine benefits and need of transferring milk rules and regulations from DHHR to Agriculture.

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 4013**, Clarifying venue in West Virginia state courts as it applies to nonresidents of the state.

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

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

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

## **CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.**

### **ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.**

#### **§6-9A-6. Enforcement by injunctions; actions in violation of article voidable; voidability of bond issues.**

The circuit court in the county where the public agency regularly meets has jurisdiction and is a proper venue to enforce this article upon civil action commenced by any citizen of this state within 120 days after the action complained of was taken or the decision complained of was made. Where the action seeks injunctive relief, no bond may be required unless the petition appears to be without merit or made with the sole intent of harassing or delaying or avoiding return by the governing body.

The court is empowered to compel compliance or enjoin noncompliance with the provisions of this article and to annul a decision made in violation of this article. An injunction may also order that subsequent actions be taken or decisions be made in conformity with the provisions of this article: *Provided*, That no bond issue that has been passed or approved by any governing body in this state may be annulled under this section if notice of the meeting at which the bond issue was finally considered was given at least 10 days prior to the meeting by a Class I legal advertisement published in accordance with the provisions of §59-3-1 *et seq.* of this code in a qualified newspaper having a general circulation in the geographic area represented by that governing body.

In addition to or in conjunction with any other acts or omissions which may be determined to be in violation of this article, it is a violation of this article for a governing body to hold a private meeting with the intention of transacting public business, thwarting public scrutiny and making decisions that eventually become official action.

Any order which compels compliance or enjoins noncompliance with the provisions of this article, or which annuls a decision made in violation of this article shall include findings of fact and conclusions of law and shall be recorded in the minutes of the governing body.

## **CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.**

### **ARTICLE 2. CLAIMS AGAINST THE STATE.**

#### **§14-2-2. Venue for certain suits and actions**

(a) Except as otherwise provided in this section, the following proceedings shall be brought and prosecuted only in the Circuit Court of Kanawha County:

(1) Any suit in which the Governor, any other state officer, or a state agency is made a party defendant, except as garnishee or suggestee.

(2) Any suit attempting to enjoin or otherwise suspend or affect a judgment or decree on behalf of the state obtained in any circuit court.

(b) Any proceeding for injunctive or mandamus relief involving the taking, title, or collection for or prevention of damage to real property may be brought and presented in the circuit court of the county in which the real property affected is situate.

(c) Any suit for which insurance coverage administered by the state Board of Risk and Insurance Management under §29-12-1 *et seq.* of this code exists may be brought and prosecuted in the circuit court of any county where the acts or omissions giving rise to the suit occurred or in the Circuit Court of Kanawha County;

(d) Any suit filed against a state agency, as provided for in §6-9a-1 *et seq.* of this code, may be brought and prosecuted in the Circuit Court of Kanawha County or in the circuit court of any county where the state agency regularly meets.

(e) This section shall apply ~~applies~~ only to such proceedings as are not prohibited by the constitutional immunity of the state from suit under section 35, article VI of the Constitution of the State.

**§14-2-2a. Venue for suits and actions involving ~~West Virginia University and Marshall University~~ state institutions of higher education.**

(a) Notwithstanding the provisions of §14-2-2 of this code, any civil action in which ~~the West Virginia University board of Governors, West Virginia University, the West Virginia University Medical School~~ the governing board of any state institution of higher education, any state institution of higher education, or any department or office of any of those entities, or any officer, employee, agent, intern or resident of any of those entities, acting within the scope of his or her employment, is made a party defendant, shall be brought in the circuit court of any county wherein the cause of action arose, unless otherwise agreed by the parties.

~~(b) Notwithstanding the provisions of section two of this article, any civil action in which Marshall University board of Governors, Marshall University, the Marshall University School of Medicine or any department or office of any of those entities, or any officer, employee, agent, intern or resident of any of those entities, acting within the scope of his or her employment, is made a party defendant, shall be brought in the circuit court of any county wherein the cause of action arose, unless otherwise agreed by the parties.~~

~~(c)~~ (b) The exclusive venue provisions of this section are not applicable to:

(1) An action involving an entity or person named in subsections (a) ~~or (b)~~ of this section as garnishee or suggestee; and

(2) A proceeding for injunctive or mandamus relief involving the taking, title, or collection for or prevention of damage to real property, and where general laws or court rules provide that proper venue is in the county in which the real property affected is situate.

~~(d)~~ (c) This section ~~shall apply~~ applies only to such proceedings ~~as are~~ not prohibited by the constitutional immunity of the state from suit under section thirty-five, article VI of the Constitution of the State.

## CHAPTER 56. PLEADING AND PRACTICE.

### ARTICLE 1. VENUE.

#### §56-1-1. Venue generally.

(a) Any civil action or other proceeding, except where it is otherwise specially provided, may hereafter be brought in the circuit court of any county:

(1) Wherein any of the defendants may reside or the cause of action arose, except that an action of ejectment or unlawful detainer must be brought in the county wherein the land sought to be recovered, or some part thereof, is;

(2) If a corporation or other corporate entity ~~be~~ is a defendant, wherein its principal office is or wherein its mayor, president or other chief officer resides; or if its principal office ~~be~~ not in this state, and its mayor, president or other chief officer do not reside therein, wherein it does business; or if it ~~be~~ is a corporation or other corporate entity organized under the laws of this state which has its principal office located outside of this state and which has no office or place of business within the state, the circuit court of the county in which the plaintiff resides or the circuit court of the county in which the seat of state government is located ~~shall have~~ has jurisdiction of all actions at law or suits in equity against the corporation or other corporate entity, where the

cause of action arose in this state or grew out of the rights of stockholders with respect to corporate management;

(3) If it ~~be~~ is to recover land or subject it to a debt, where the land or any part may be;

(4) If it ~~be~~ is against one or more nonresidents of the state, where any one of them may be found and served with process or may have estate or debts due him, her, or them;

(5) If it ~~be~~ is to recover a loss under any policy of insurance upon either property, life or health or against injury to a person, where the property insured was situated either at the date of the policy or at the time when the right of action accrued or the person insured had a legal residence at the date of his or her death or at the time when the right of action accrued;

(6) If it ~~be~~ is on behalf of the state in the name of the Attorney General or otherwise, where the seat of government is; or

(7) If a judge of a circuit ~~be~~ is interested in a case which, but for such interest, would be proper for the jurisdiction of his or her court, the action or suit may be brought in any county in an adjoining circuit.

(b) Whenever a civil action or proceeding is brought in the county where the cause of action arose under the provisions of subsection (a) of this section, if no defendant resides in the county, a defendant to the action or proceeding may move the court before which the action is pending for a change of venue to a county where one or more of the defendants resides and upon a showing by the moving defendant that the county to which the proposed change of venue would be made would better afford convenience to the parties litigant and the witnesses likely to be called, and if the ends of justice would be better served by the change of venue, the court may grant the motion.

(c) For all civil actions filed on or after July 1, 2018, a nonresident of the state may not bring an action in a court of this state unless all or a substantial part of the acts or omissions giving rise to the claim asserted occurred in this state: *Provided*, That unless barred by the statute of limitations or otherwise time barred in the state where the action arose, a nonresident of this state may file an action in state court in this state if the nonresident cannot obtain jurisdiction in either federal or state court against the defendant in the state where the action arose. A nonresident bringing such an action in this state shall be required to establish, by filing an affidavit with the complaint for consideration by the court, that the action cannot be maintained in the state where the action arose due to lack of any legal basis to obtain personal jurisdiction over the defendant: *Provided, however*, That the provisions of this subsection do not apply to civil actions filed against West Virginia citizens, residents, corporations, or other corporate entities.

In a civil action where more than one plaintiff is joined, each plaintiff must independently establish proper venue. A person may not intervene or join in a pending civil action as a plaintiff unless the person independently establishes proper venue. If venue is not proper as to any such nonresident plaintiff in any court of this state, the court shall dismiss the claims of such plaintiff without prejudice to refile in a court in any other state or jurisdiction. When venue is proper as to one defendant, it is also proper as to any other defendant with respect to all actions arising out of the same transaction or occurrence.

For purposes of this subsection, "nonresident" means any person, whether a citizen of this state or another state, who was domiciled outside the State of West Virginia at the time of the acts or omissions giving rise to the claim asserted: *Provided*, That a member of the armed forces of the United States who is stationed beyond the territorial limits of this state, but who was a

resident of this state at the time of his or her entry into such service, and any full-time student of any college or university of this state, even though he or she is paying nonresident tuition, is considered a resident under this subsection.

The bill (Eng. Com. Sub. for H. B. 4013), as amended, was then ordered to 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 94**, Prohibiting counties from regulating fireworks.

**Com. Sub. for Com. Sub. for Senate Bill 141**, Expanding county assessment and collection of head tax on breeding cows.

**Com. Sub. for Senate Bill 230**, Authorizing Department of Commerce promulgate legislative rules.

**Com. Sub. for Senate Bill 361**, Relating to treatment supervision under Drug Offender Accountability and Treatment Act.

And,

**Senate Bill 371**, Relating to proceedings for voluntary custody for examination.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Ojeda, Beach, Trump, Plymale, Gaunch, Romano, and Karnes.

Thereafter, at the request of Senator Woelfel, and by unanimous consent, the remarks by Senators Gaunch and Romano were ordered printed in the Appendix to the Journal.

At the request of Senator Maynard, unanimous consent being granted, the remarks by Senator Karnes were ordered printed in the Appendix to the Journal.

The Senate proceeded to the thirteenth order of business.

At the request of Senator Cline, the name of Senator Cline was removed as a sponsor of **Senate Bill 471** (*Relating to unlawful discriminatory practices in categories covered by Human Rights Act and Fair Housing Act*).

At the request of Senator Ferns, and by unanimous consent, a leave of absence for the day was granted Senator Clements.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, at 12:37 p.m., the Senate adjourned until tomorrow, Tuesday, February 6, 2018, at 11 a.m.

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## SENATE CALENDAR

Tuesday, February 06, 2018  
11:00 AM

### THIRD READING

- Eng. Com. Sub. for S. B. 102 - Creating WV Uniform Fiduciary Access to Digital Assets Act (original similar to HB4209)
- Eng. Com. Sub. for S. B. 181 - Authorizing MAPS promulgate legislative rules (original similar to HB4097)
- Eng. Com. Sub. for S. B. 244 - Specifying conditions for unlawful possession of firearm at school-sponsored activities (original similar to HB4139)
- Eng. S. B. 393 - Relating to compensation and composition of WV Racing Commission
- Eng. S. B. 425 - Removing sunset dates which members of policemen's or firemen's pension fund elect to participate in deferred retirement option plan
- Eng. S. B. 430 - Encouraging collaborative agreements between community and technical colleges and federally registered apprenticeship programs
- Eng. S. B. 462 - Establishing contribution holiday for public pension plans funded at 130 percent or more
- Eng. S. B. 463 - Establishing group to examine benefits and need of transferring milk rules and regulations from DHHR to Agriculture
- Eng. Com. Sub. for H. B. 4013 - Clarifying venue in West Virginia state courts as it applies to nonresidents of the state - (Com. title amend. pending)

### SECOND READING

- Com. Sub. for S. B. 94 - Prohibiting counties from regulating fireworks
- Com. Sub. for Com. Sub. for S. B. 141 - Expanding county assessment and collection of head tax on breeding cows
- Com. Sub. for S. B. 230 - Authorizing Department of Commerce promulgate legislative rules (original similar to HB4108)
- Com. Sub. for S. B. 361 - Relating to treatment supervision under Drug Offender Accountability and Treatment Act
- S. B. 371 - Relating to proceedings for voluntary custody for examination



**ANNOUNCED SENATE COMMITTEE MEETINGS**

**Regular Session 2018**

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**Tuesday, February 6, 2018**

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

