

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-SIXTH LEGISLATURE
REGULAR SESSION, 2023
SEVENTH DAY

Charleston, West Virginia, Tuesday, January 17, 2023

The Senate met at 11 a.m.

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

Prayer was offered by Pastor Tony Clay, Salem United Baptist Church, Wayne, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Robert H. Plymale, a senator from the fifth district.

Pending the reading of the Journal of Monday, January 16, 2023,

At the request of Senator Martin, 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 fourth order of business.

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

Senate Bill 7, Returning refundable exemption for road construction contractors to State Road Fund.

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

Com. Sub. for Senate Bill 7 (originating in the Committee on Transportation and Infrastructure)—A Bill to amend and reenact §11-15-9 of the Code of West Virginia, 1931, as amended, relating to the consumers sales and service tax and returning the refundable exemption for sales of construction and maintenance materials acquired by a second party for use in Division of Highways projects; specifying duties of Tax Commissioner and Division of Highways; specifying procedure of the exemption; and setting forth calculation of reimbursement.

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

Respectfully submitted,

Charles H. Clements,
Chair.

The bill (Com. Sub. for S. B. 7), under the original double committee reference, was then referred to the Committee on Finance.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 53, Relating to DNA data maintained for law enforcement purposes.

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

Com. Sub. for Senate Bill 53 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §15-2B-2, §15-2B-3, §15-2B-5, §15-2B-6, §15-2B-9, and §15-2B-11 of the Code of West Virginia, 1931, as amended, all relating to DNA that is maintained for law-enforcement purposes in West Virginia; providing updates for the policy of maintaining DNA; requiring DNA testing of all persons convicted of felonies and certain misdemeanors; updating definitions; adding language to further define and include qualified arrestees in the state DNA database; requiring testing of qualified arrestees on intake; specifying testing methods; authorizing emergency and requiring legislative rules; specifying expungement for qualified arrestees in certain circumstances; and providing failure to expunge or reasonable delay in expungement will not invalidate an identification, warrant, probable cause to arrest or arrest based upon a database match.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

The bill (Com. Sub. for S. B. 53), under the original double committee reference, was then referred to the Committee on Finance.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 115, Providing procedure for WV to select delegates to Article V Convention.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on Education has had under consideration

Senate Bill 124, Authorizing child sexual abuse and sexual violence prevention program and in-service training in child sexual abuse prevention.

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

Com. Sub. for Senate Bill 124 (originating in the Committee on Education)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-7g, relating to requiring the West Virginia Board of Education to establish a program in dating violence prevention and sexual violence prevention that includes instruction in grades seven through 12; providing for the provision by the state board of links on its website to free curricula that covers the required instruction; providing in-service training for certain professional school personnel in the prevention dating violence and sexual violence; and providing for the promotion of positive youth development.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Amy N. Grady,
Chair.

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

Your Committee on Education has had under consideration

Senate Bill 187, Creating new criminal offenses of sexual contact, intrusion, or abuse of students by school employee.

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

Com. Sub. for Senate Bill 187 (originating in the Committee on Education)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8B-11b, relating to making it a felony offense for any school employee to engage in sexual intercourse, sexual intrusion, or sexual contact with any enrolled student regardless of age; and specifying the penalties for this offense.

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

Respectfully submitted,

Amy N. Grady,
Chair.

The bill (Com. Sub. for S. B. 187), under the original double committee reference, was then referred to the Committee on the Judiciary.

Senator Hamilton, from the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration

Senate Bill 200, Allowing leashed dogs to track wounded elk, turkey, bear, and wild boar when hunting.

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

Com. Sub. for Senate Bill 200 (originating in the Committee on Agriculture and Natural Resources)—A Bill to amend and reenact §20-2-5j of the Code of West Virginia, 1931, as amended, relating to adding mortally wounded elk, turkey, wild boar, and bear to list of wounded animals that may be tracked and located using a leashed dog; allowing Class Q permit holders or certain physically disabled hunters to designate another hunter who holds a valid hunting license to accompany dog handler to kill mortally wounded animal; and providing that mortally wounded animal shall count toward bag limit of hunter who fired initial shot.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Bill Hamilton,
Chair.

The Senate proceeded to the sixth order of business.

At the request of Senator Weld, unanimous consent being granted, the following bills were considered introduced, read by their titles, and referred to the appropriate committees:

By Senator Clements:

Senate Bill 250—A Bill to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended, relating to require level one permit holders to display a student driver sign on the rear of the vehicle.

Referred to the Committee on Transportation and Infrastructure.

By Senator Azinger:

Senate Bill 251—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-34-1, relating to the display of the official motto of the United States in public elementary and secondary schools and in institutions of higher education.

Referred to the Committee on Education.

By Senator Azinger:

Senate Bill 252—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-29; and to amend and reenact §61-8A-1 of said code, all relating to the prohibition of obscene materials in or within 2,500 feet of West Virginia schools; and defining criminal penalties for obscene materials in or within 2,500 feet of West Virginia schools.

Referred to the Committee on the Judiciary.

By Senator Azinger:

Senate Bill 253—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8A-2a, relating to making it a criminal offense for a person to engage in a an adult cabaret performance where it may be viewed by a minor.

Referred to the Committee on the Judiciary.

By Senator Stuart:

Senate Bill 254—A Bill to amend and reenact §17A-10-3a of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-16-4 of said code, all relating to changing annual mandatory state inspections of antique motor vehicles and motorcycles, motor vehicles, trailers, semitrailers and pole trailers to mandatory inspections done every two years.

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

By Senator Maynard:

Senate Bill 255—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-3E-1, §16-3E-2, §16-3E-3, §16-3E-4, §16-3E-5, and §16-3E-6, all relating to informed consent for vaccinations; providing a short title; defining terms; prohibiting discrimination against patients for declining or delaying vaccines; establishing prohibited activities; creating rights for patients; and establishing monetary penalties and revocation of licensure for violations.

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

By Senator Jeffries:

Senate Bill 256—A Bill to amend and reenact §31-15-3 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Economic Development Authority; creating a Small Business and Minority Populations Economic and Workforce Development Taskforce to assist the Director of the Economic Development Authority in developing and implementing a procedure to address employment, labor force participation, and economic development problems of small business and low income and minority populations of West Virginia; and developing a pilot project that can be used as a model to promote the growth and development of small business to increase employment and labor force participation across West Virginia.

Referred to the Committee on Economic Development.

By Senator Oliverio:

Senate Bill 257—A Bill to amend and reenact §3-1-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-4A-11a of said code; to amend and reenact §3-5-13 and §3-

5-13a of said code; and to amend and reenact §3-10-6, §3-10-7, and §3-10-8 of said code, all relating to providing for the nonpartisan election for the offices of county sheriff, prosecuting attorney, assessor, clerk of the circuit court, clerk of the county commission, and surveyor of lands concurrently with primary elections; providing for the arrangement, form, and contents of ballots; and providing for procedures for the filling of vacancies.

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

By Senator Trump:

Senate Bill 258—A Bill to amend and reenact §46B-2-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §46B-3-8 of said code, all relating to the increase in the maximum fair market value of consumer goods subject to the regulation of rental agreements provided for in this article; and permitting a dealer to require a security deposit for those items.

Referred to the Committee on the Judiciary.

By Senator Jeffries:

Senate Bill 259—A Bill to amend and reenact §47-26-1 and §47-26-2 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §47-26-2a; and to amend and reenact §47-26-3 of said code, all relating to the regulation of pawnbrokers; removing an exception for certain transactions from the report required of all pawnbrokers; requiring all pawnbrokers to be equipped with certain surveillance equipment and signage effective January 1, 2024; prohibiting pawnbrokers from doing business with certain persons; prohibiting pawnbrokers from purchasing certain items or transacting with certain items from anyone; creating misdemeanor offenses for certain violations; and increasing the penalties for existing criminal offenses related to pawnbrokers.

Referred to the Committee on the Judiciary.

By Senator Jeffries:

Senate Bill 260—A Bill to amend and reenact §20-1-17 of the Code of West Virginia, 1931, as amended, relating to prohibiting the Natural Resources Commission from establishing a bag limit for antlered deer at three or more.

Referred to the Committee on Agriculture and Natural Resources.

By Senator Jeffries:

Senate Bill 261—A Bill to amend and reenact §8-10-2b of the Code of West Virginia, 1931, as amended; to amend and reenact §17B-3-3c of said code; and to amend and reenact §62-4-17 of said code, all relating to eliminating the ability of a person's driver's license to be suspended for failure to pay court fines and costs.

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

By Senator Weld:

Senate Bill 262—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-25e, relating to allowing students to transfer schools and retain his or her athletic eligibility at least one-time during a student's four years of secondary school.

Referred to the Committee on Education.

By Senator Phillips:

Senate Bill 263—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-22, relating to requiring the Public Service Commission to be involved in all construction contracts between utility companies under the auspice of the commission and vendors.

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

By Senator Weld:

Senate Bill 264—A Bill to amend and reenact §18-2-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-5-1a of said code, all relating to prohibiting persons who have been convicted of certain crimes against minors from holding positions on boards of education.

Referred to the Committee on Education.

By Senator Weld:

Senate Bill 265—A Bill to amend and reenact §17A-10-3a of the Code of West Virginia, 1931, as amended, relating to allowing for a special license plate for an antique motor vehicle to be permanent for the life of a vehicle.

Referred to the Committee on Transportation and Infrastructure.

By Senator Takubo:

Senate Bill 266—A Bill to amend and reenact §16-9A-1, §16-9A-2, §16-9A-3, §16-9A-4, §16-9A-7, and §16-9A-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §16-9A-11, §16-9A-12, and §16-9A-13, all relating to tobacco usage restrictions; modifying legislative intent; modifying definitions; prohibiting persons under the age of 21 from purchasing tobacco products, tobacco derived products, or alternative nicotine products; making it a misdemeanor to use tobacco products, tobacco derived products, or alternative nicotine products in a building used for school instruction; prohibiting sales of tobacco products, tobacco derived products, or alternative nicotine products by firm, corporation, or entity to person under age of 21; providing criminal penalties for sales of tobacco products, tobacco derived products, or alternative nicotine products; providing employer authority to terminate employment of employee who violates section; making the sale of tobacco products, tobacco derived products, or alternative nicotine products permissible reason for dismissal of employee; establishing that an employee's sale of tobacco products, tobacco derived products, or alternative nicotine products to persons under the age of 21 be considered gross misconduct for purposes of unemployment compensation; designating the Bureau for Behavioral Health of the Department of Health and Human Resources as the entity responsible to enforce tobacco laws and conduct compliance inspections; prohibit sales of tobacco products, tobacco derived products, or alternative nicotine products in a display independently accessible by individuals under the age of 21; making it a secondary misdemeanor offense to use tobacco products in a motor vehicle while an individual age 16 years of age or younger is present; and establishing prohibited areas of regulation for political subdivisions with respect to tobacco products and tobacco derived products.

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

By Senator Takubo:

Senate Bill 267—A Bill to amend and reenact §5-16-7f of the Code of West Virginia, as amended; to amend said code by adding thereto a new section, designated §9-5-31; to amend and reenact §33-15-4s of said code, to amend and reenact §33-16-3dd of said code; to amend and reenact §33-24-7s of said code; to amend and reenact §33-25-8p of said code; and to amend and reenact §33-25A-8s, all relating to prior authorizations; defining terms; requiring prior authorizations and relating communications to be submitted via an electronic portal; requiring electronic notification to the health care provider and insured confirming receipt of the prior authorization; establishing timelines for compliance; providing communication via the portal regarding the current status of the prior authorization; reducing time frames for prior authorization requests; providing a time frame for a decision to be rendered after the receipt of additional information; providing a time frame for a claim to be submitted to audit or if the step therapy is incomplete; requiring a provider conducting peer review to be licensed in West Virginia; revising the percentage approval for a health care provider to be considered for an exemption from prior authorization criteria; removing criteria related to electronic submission of pharmacy benefits; amending effective date; requiring oversight and data collection by the Office of the Insurance Commissioner and the Inspector General; and providing for civil penalties.

Referred to the Committee on Health and Human Resources.

By Senator Takubo:

Senate Bill 268—A Bill to repeal §5-16-5a and §5-16-5b of the Code of West Virginia, 1931, as amended; to amend and reenact §5-16-2, §5-16-3, §5-16-4, §5-16-5, §5-16-7, §5-16-7b, §5-16-7c, §5-16-7g, §5-16-8, §5-16-9, §5-16-10, §5-16-11, §5-16-13, §5-16-14, §5-16-15, §5-16-16, §5-16-18, §5-16-23, §5-16-25, §5-16-26, §5-16-28; and to amend said code by adding thereto one new section, designated §5-16-30; relating to public employees insurance.

Referred to the Committee on Health and Human Resources.

By Senator Takubo:

Senate Bill 269—A Bill to amend and reenact §9-5-12a of the Code of West Virginia, 1931, as amended, relating to increasing the coverage limit; requiring the Department of Health and Human Resources to require its managed care organizations to provide education to Medicaid enrollees regarding the availability of coverage; and requiring reporting.

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

By Senator Takubo:

Senate Bill 270—A Bill to amend and reenact §61-12-9 of the Code of West Virginia, 1931, as amended, relating to adding an exemption to the permit requirement.

Referred to the Committee on Government Organization.

By Senator Trump:

Senate Bill 271—A Bill to amend and reenact §29-32-2 of the Code of West Virginia, 1931, as amended, relating to modifying the approval process requirements for the First Responders Honor Board to allow for submission of nominations for consideration by the Legislature at other times and/or during other sessions of the Legislature, not just before the first day of the regular legislative session.

Referred to the Committee on Government Organization.

Senator Maynard offered the following resolution:

Senate Concurrent Resolution 4—Requesting the Division of Highways name bridge number 30-3/5-14.73 (30A291), 37.89343, -82.23993. The original name being Kirk Beam Span Bridge feature intersected West Fork of Twelvepole Creek bridge number 30-3/5-14.73 (30A291), (37.89343, -82.23993), locally known as Kirk Beam Span Bridge, carrying CR 3/5 over West Fork of Twelvepole Creek in Mingo county, the "Ira 'Noon' Copley and Marie Copley Memorial Bridge".

Which, under the rules, lies over one day.

Senator Maroney offered the following resolution:

Senate Resolution 9—Designating January 18, 2023, as Jan Lilly-Stewart Disability Advocacy Day at the Legislature.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

Senate Resolution 6, Congratulating Bob Huggins on his induction into Naismith Memorial Basketball Hall of Fame.

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

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

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

The roll being taken, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Takubo—1.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 6) adopted.

Thereafter, at the request of Senator Caputo, and by unanimous consent, the remarks by Senator Oliverio regarding the adoption of Senate Resolution 6 were ordered printed in the Appendix to the Journal.

At the request of Senator Weld, unanimous consent being granted, at 11:16 a.m., the Senate recessed to present Senate Resolution 6.

The Senate reconvened at 11:20 a.m. and, at the request of Senator Oliverio, and by unanimous consent, returned to the second order of business and the introduction of guests.

The Senate again proceeded to the seventh order of business.

Senate Resolution 7, Designating January 17, 2023, as Girl Scouts Day.

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

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

Senate Resolution 8, Designating January 17, 2023, as Tucker County Day.

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

At the request of Senator Smith, 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 ninth order of business.

Com. Sub. for Senate Bill 83, Authorizing tactical medical professionals to carry firearms.

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.

Senate Bill 74, Providing for substantial deference to State Superintendent's interpretations of school laws.

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

The Senate proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senator was removed as a co-sponsor of the following bill on January 16, 2023:

Senate Bill 104: Senator Taylor.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following bills and resolutions on January 16, 2023:

Senate Bill 4: Senators Plymale and Jeffries;

Senate Bill 7: Senators Stuart, Plymale, and Jeffries;

Senate Bill 49: Senator Hunt;

Senate Bill 53: Senator Hunt;

Senate Bill 95: Senator Woelfel;

Senate Bill 157: Senator Stuart;

Senate Bill 177: Senator Woelfel;

Senate Bill 188: Senator Plymale;

Senate Bill 197: Senator Woelfel;

Senate Bill 225: Senators Deeds and Hunt;

Senate Bill 228: Senator Deeds;

Senate Bill 230: Senators Trump and Martin;

Senate Bill 231: Senators Phillips and Clements;

Senate Bill 232: Senator Rucker;

Senate Bill 233: Senators Trump and Phillips;

Senate Bill 234: Senator Woelfel;

Senate Bill 235: Senators Grady and Woelfel;

Senate Bill 236: Senator Rucker;

Senate Bill 237: Senators Swope, Grady, Boley, Azinger, and Hamilton;

Senate Bill 238: Senator Swope;

Senate Bill 241: Senator Woelfel;

Senate Bill 244: Senator Trump;

Senate Bill 245: Senator Deeds;

Senate Bill 248: Senator Rucker;

Senate Joint Resolution 3: Senator Queen;

Senate Resolution 6: Senators Trump, Deeds, Swope, Nelson, Martin, Grady, Phillips, Barrett, and Queen;

Senate Resolution 7: Senator Woelfel;

And,

Senate Resolution 8: Senator Taylor.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Weld, at 11:31 a.m., the Senate adjourned until tomorrow, Wednesday, January 18, 2023, at 11 a.m.

SENATE CALENDAR

**Wednesday, January 18, 2023
11:00 AM**

UNFINISHED BUSINESS

S. C. R. 4 - Ira 'Noon' Copley and Marie Copley Memorial Bridge

S. R. 9 - Designating January 18, 2023, as Jan Lilly-Stewart Disability Advocacy Day

THIRD READING

Eng. Com. Sub. for S. B. 83 - Authorizing tactical medical professionals to carry firearms

SECOND READING

S. B. 74 - Providing for substantial deference to State Superintendent's interpretations of school laws

FIRST READING

S. B. 115 - Providing procedure for WV to select delegates to Article V Convention

Com. Sub. for S. B. 124 - Authorizing child sexual abuse and sexual violence prevention program and in-service training in child sexual abuse prevention

Com. Sub. for S. B. 200 - Allowing leashed dogs to track wounded elk, turkey, bear, and wild boar when hunting

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2023

Wednesday, January 18, 2023

1 p.m.

Economic Development

(Room 451M)