

West Virginia Legislature
Senate Committee on the Judiciary

2014 *2nd Session of the 81st Legislature*

1st Extraordinary Session

BILL SUMMARIES



Senate Judiciary Committee
Building 1, Room 210W
1900 Kanawha Boulevard E.
Charleston, WV 25305

Corey Palumbo, Chair

SENATE JUDICIARY COMMITTEE

Staff Members - 2014

<u>Name</u>	<u>Title</u>	<u>Employment Status</u>
Kevin Baker	Counsel	Full Time
Trina Hartley	Committee Secretary	Full Time
Jay Lazell	Counsel	Full Time
Jared Wyrick	Legislative Analyst	Full Time
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Betty Caplan	Counsel	Per Diem
Brooke Farber	Herndon Intern	Per Diem
Linda Gibson	Secretary to Chairman	Per Diem
Leah Macia	Counsel	Per Diem
Brandon Meadows	Messenger	Per Diem
Kiena Smith	Receptionist	Per Diem
Tom Smith	Chief Counsel	Per Diem
Jeanne Young	Committee Secretary	Per Diem

WV SENATE COMMITTEE ON THE JUDICIARY STATISTICS 2014

**TOTAL NUMBER OF BILLS INTRODUCED
IN THE SENATE: 631**

**TOTAL NUMBER OF SENATE RESOLUTIONS INTRODUCED
IN THE SENATE: 171**

**TOTAL NUMBER OF HOUSE BILLS AND RESOLUTIONS
INTRODUCED IN THE SENATE:**

**HOUSE BILLS: 148
RESOLUTIONS: 102
TOTAL: 250**

**TOTAL NUMBER OF BILLS AND RESOLUTIONS
REFERRED TO SENATE JUDICIARY:**

**SENATE BILLS: 390
HOUSE BILLS: 85
RESOLUTIONS: 19
TOTAL: 494**

**TOTAL NUMBER OF BILLS AND RESOLUTIONS
ORIGINATING IN SENATE JUDICIARY:**

**BILLS: 0
RESOLUTIONS: 0**

**TOTAL NUMBER OF BILLS AND RESOLUTIONS
REPORTED FROM SENATE JUDICIARY: 148**

**TOTAL NUMBER OF BILLS AND RESOLUTIONS REPORTED
FROM SENATE JUDICIARY THAT COMPLETED
LEGISLATIVE ACTION:**

**BILLS: 102
RESOLUTIONS: 1
TOTAL: 103**

**TOTAL NUMBER OF BILLS AND RESOLUTIONS REPORTED
FROM SENATE JUDICIARY THAT BECAME LAW: 100**

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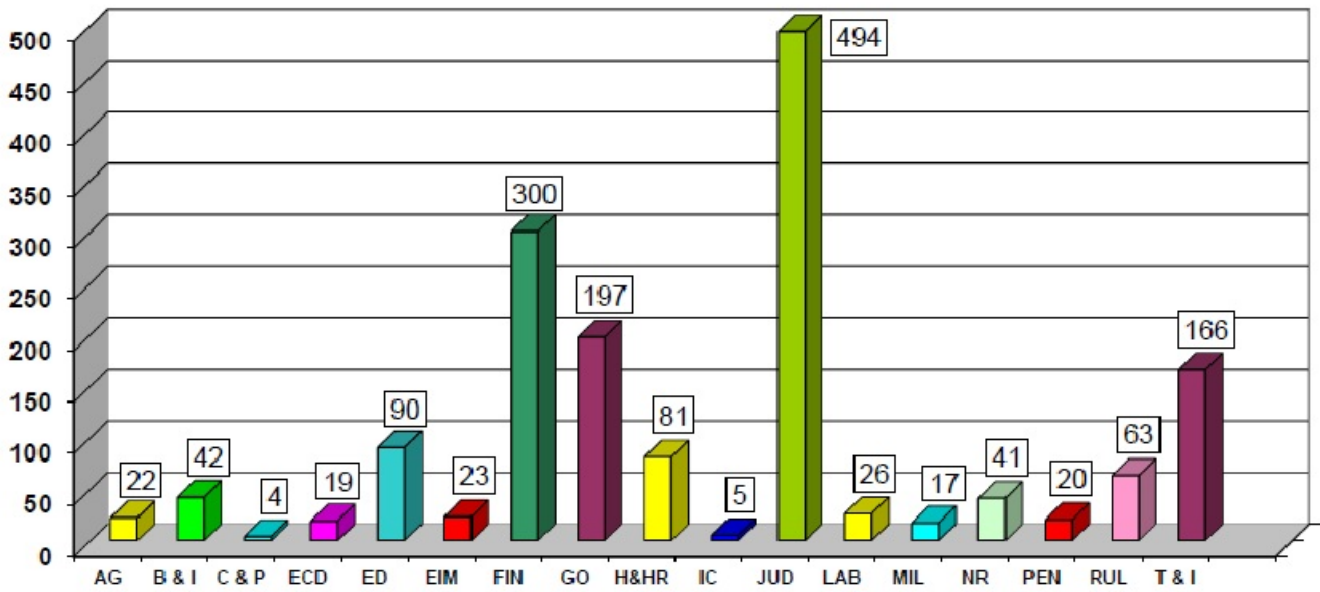


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SENATE BILL NO. 3

SHORT TITLE: Creating Uniform Real Property Transfer on Death Act

CODE REFERENCE: West Virginia Code §New article: §36-12-1 through §36-12-17

The bill creates the Uniform Real Property Transfer on Death Act (URPTODA) which allows the owner of real property to pass property directly to a beneficiary upon the death of the owner without probate. The property passes by means of a recorded transfer on death deed (TOD deed). As long as the owner of the property is living, the beneficiary of a TOD deed has no interest in the property and the owner has the power to transfer or encumber the property or to revoke the deed.

A TOD deed must: contain the essential elements and formalities of a properly recordable *inter vivos* deed; must state that the transfer to the designated beneficiary is to occur upon the transferor's death; and must be recorded before the transferor's death in the office of the clerk of the county commission in the county in which the property is located. A TOD deed will be exempt from the payment of the excise tax upon recording of the deed because no interest in the property is being transferred and the deed is revocable until the transferor's death.

The TOD deed is effective without: notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or consideration.

A TOD deed may be revoked and the bill contains the requirements for making a valid revocation.

A TOD deed does not: (1) affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property; (2) affect an interest or right of a transferee, even though the transferee has actual or constructive knowledge of the deed; (3) affect an interest or right of a secured or unsecured creditor or a future creditor of the transferor; (4) affect the transferor's or designated beneficiary's eligibility for any form of public assistance; (5) create a legal or equitable interest in the beneficiary; or (6) subject the property to claims of a creditor of the beneficiary.

A beneficiary may disclaim all or any part of his or her interest as provided in §42-6-1 *et seq.* (Uniform Disclaimer of Property Interests Act).

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 26, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 12**

SHORT TITLE: Relating to expedited partner therapy treatment

CODE REFERENCE: West Virginia Code §16-4F-1 through 5 (New); §30-3-14, §30-3-16, §30-5-3, §30-7-15a, §30-14-11 and §30-14A-1 (Amends and Reenacts)

This bill was vetoed by the Governor.

It would have allowed healthcare providers to prescribe an antibiotic for the sexual partner or partners of a patient they are treating for a sexually transmitted disease without first having to conduct an examination of the partner or partners in cases where the patient presents with a sexually transmitted disease. The logic is that if the partner is not treated simultaneously with the patient, the course of treatment for the patient will have little or no effect.

The bill would also have defined terms, required the Department of Health and Human Resources to develop outreach materials for use in counseling of patients on sexually transmitted diseases, provided for limited liability for a healthcare practitioner who provides the service, and authorized rulemaking for the Department of Health and Human Resources in defining what a sexually transmitted disease is.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Vetoed March 25, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 58**

SHORT TITLE: Relating to basis for voidable marriages and annulments

CODE REFERENCE: West Virginia Code §48-3-103 and §48-3-105 (Amends)

This bill addresses grounds for voidable marriages and annulments by updating archaic language in the code and removing certain grounds for voiding marriages. In particular, it changes “infamous crime” to a crime punishable by imprisonment for one year or more. In doing so, it clarifies that a marriage may be voidable if one person was convicted of a felony before the marriage and the other party to the marriage was unaware. However, if the person becomes aware and chooses to continue cohabitation, then it is no longer an option for annulment.

EFFECTIVE DATE: June 2, 2014

DATE OF PASSAGE: March 5, 2014

ACTION BY GOVERNOR: Signed March 14, 2014

SENATE BILL NO. 88

SHORT TITLE: Relating to claims for total loss and debris removal proceeds under farmers' mutual fire insurance companies

CODE REFERENCE: West Virginia Code §33-22-2 and §38-10E-1 (Amends)

This bill ensures farmers' mutual fire insurance companies may not use policy proceeds to pay on claims of total loss, unless and until the insurer "receives certification that the refuse, debris, remnants, or remains of the dwelling or structure have been cleaned up, removed or otherwise disposed of" through an internal cross-reference to W. Va. Code §33-17-9b, pertaining to claims for total loss; debris removal proceeds.

In doing so, the bill makes farmers' mutual fire insurance companies subject to municipal liens on insurance proceeds for cleanup costs. An insurer that determines there is a total loss due to a fire or explosion is required to notify the municipality's treasurer or the sheriff by letter that a covered claim constitutes a total loss within ten days. A municipality or county may then perfect and preserve a lien within 30 days of receipt of this letter. A lien may be released in a variety of ways, including by a property owner making the necessary cleanup within 60 days. The bill also provides that, with respect to farmers' mutual fire insurance companies, in no event may the lien amount exceed ten percent of the policy limits for loss to the real property, including any coverage for debris removal.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 24, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 90**

SHORT TITLE: Creating criminal offense for interfering or preventing call for assistance of emergency service personnel

CODE REFERENCE: West Virginia Code §61-5-17 (Amends)

This bill creates a new criminal offense for interfering with or preventing another person from making an emergency communication, which a reasonable person would consider necessary under the circumstances, to law-enforcement, fire, or emergency medical service personnel. A violation is a misdemeanor with punishment upon conviction of one day to one year in jail or \$250-\$2,000 fine or both. A second conviction carries three months to one year in jail or \$500-\$3,000 fine or both. A third or subsequent conviction is punishable by six months to one year in jail or \$500-\$4,000 fine or both. For purposes of calculating previous convictions, only convictions in the past ten years may be used.

In addition, the bill changes the penalty for felony fleeing an officer when the flight of the person causes death from a determinative sentence between 5 and 15 years to an indeterminate sentence of 5 to 15 years.

EFFECTIVE DATE: June 2, 2014

DATE OF PASSAGE: March 5, 2014

ACTION BY GOVERNOR: Signed March 18, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 133**

SHORT TITLE: Authorizing the Department of Environmental Protection to promulgate legislative rules

CODE REFERENCE: West Virginia Code §64-3-1 (Amends)

This is the rules bundle for the Department of Environmental Protection (DEP). It authorizes the DEP to promulgate eleven environmental rules, one governing horizontal well operations, seven relating to air quality, one governing water quality standards, one pertaining to state certification of activities requiring federal licenses and permits, and one establishing procedures and standards for voluntarily cleaning up and revitalizing contaminated sites.

1. Horizontal Well Development, (35 CSR 8)

This rule establishes requirements for horizontal well operations in the state. Amendments to the rule clarify that the Well Site Safety Plan (Plan) must include the material safety data sheets for the chemical components added to the hydraulic fracturing fluid, and that upon completion of the well pad, the operator must give the Plan to the surface owner and any water purveyor or surface owner entitled to receive notice and water testing.

2. Ambient Air Quality Standards, 45 CSR 8

This rule adopts national primary and secondary ambient air quality standards in West Virginia for various pollutants (sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead) promulgated by the U. S. Environmental Protection Agency (EPA), pursuant to the federal Clean Air Act (CAA) and implementing regulations (federal counterpart). These national standards define levels of air quality needed to protect the public health and welfare from any known or anticipated adverse effects of a pollutant. The rule also adopts air monitoring methods established by the federal counterpart.

Modifications to the rule adopt and incorporate by reference annual updates to the national primary and secondary ambient air quality standards promulgated by the EPA as of June 1, 2013. The modifications also adopt and incorporate by reference ambient air monitoring reference and equivalent methods promulgated by EPA as of June 1, 2013. These are used to demonstrate whether a source is in attainment with national ambient air quality standards.

These modifications are necessary to maintain consistency with the federal counterpart.

3. Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration of Air Quality, 45CSR14

This rule establishes a state permit program for the prevention of significant deterioration of air quality at major stationary sources of air pollution.

Modification to the rule exempt carbon dioxide emissions (CO₂) from the combustion or decomposition of non-fossilized or biodegradable material (biomass material) from a source's annual CO₂ emissions until July 1, 2014. This modification brings the state rule into conformity with the federal counterpart, which is allowing the exemption while EPA reconsiders its decision to include CO₂ emissions from biomass material in annual CO₂ emissions.

4. Standards of Performance for New Stationary Sources (45CSR16)

This rule establishes and adopts national standards of performance for new stationary sources of air pollution promulgated pursuant to the CAA.

The modifications to the rule incorporate by reference annual updates to the federal counterpart, update the promulgation history of the rule, and make minor stylistic changes to the rule.

These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards.

5. Control of Air Pollution from Combustion of Solid Waste, 45CSR18

This rule establishes emission guidelines and compliance timelines pursuant to the CAA to control pollutants from solid waste combustion and incineration units in the State.

The modifications to the rule incorporate by reference federal standards of performance for new commercial and industrial solid waste incinerators, set forth emission guidelines for existing commercial and industrial solid waste incinerators, and update the applicability requirements governing new commercial and industrial solid waste incinerators. These modifications are necessary for the state to meet its responsibilities under the CAA.

6. Permits for Construction and Major Modification of Major Stationary Sources Which Cause or Contribute to Nonattainment Areas, 45 CSR 19

This rule establishes a state preconstruction permit program consistent with the CAA for the construction, operation, or modification of a major stationary source of pollution located in a non-attainment area or impacting a non-attainment area.

Modifications to rule revise emission offset requirements to conform the rule to the federal counterpart. The rule is also modified to provide that any reference to a federal regulation or standard is a reference to the regulation or standard in effect as of June 1, 2013.

These modifications are necessary to maintain consistency with the federal counterpart as required by the CAA.

7. Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities, 45CSR25

This rule establishes and adopts standards for a state program of regulation over air emissions and emission standards for the treatment, storage, and disposal of

hazardous waste promulgated in accordance with the federal Resource Conservation and Recovery Act (RCRA).

The modifications incorporate by reference annual updates to the federal counterpart, update the promulgation history of the rule, and make minor stylistic changes to the rule.

These modifications are necessary to maintain consistency with applicable federal laws and allow West Virginia to continue as the primary enforcement authority of the RCRA in the State.

8. Emission Standards for Hazardous Air Pollutants, 45CSR34

The rule adopts a state program of national emission standards for hazardous air pollutants promulgated pursuant to the CAA.

Modifications to the rule incorporate by reference annual updates to the federal counterpart and exclusions to adoption of standards. The modifications also update the promulgation history of the rule and include revisions which are stylistic in nature.

These modifications are necessary for the State to fulfill its responsibilities under the CAA and allow the State to continue to be the primary enforcement authority for National Emission Standards for Hazardous Air Pollutants (NESHAP).

9. Requirements Governing Water Quality Standards, 47 CSR 2

This rule establishes water quality standards to protect and maintain water quality and water uses in surface waters statewide. Several modifications to the rule are proposed.

First, the definitions section is modified to revise the definition for “Cool water lakes” and to add a definition for “Warm water lakes.” The revised definition provides that “Cool water lakes” refer to standing or relatively still water bodies with summer residence time greater than 14 days that are managed by the Division of Natural Resources (DNR) or are expected to support cool water fish species, such as walleye and trout. Excluded from the revised definition are water bodies that are stocked with trout but do not support them throughout the year. The definition added for “Warm water lakes” provides that these water bodies contain standing or relatively still water with summer residence time greater than 14 days that are managed by the DNR or are expected to support warm water fish species, like bass and catfish.

Second, two tributaries of the Cheat River are removed from the category of waters that are designated for human consumption after conventional water treatment.

Third, a variance previously granted to Dow (formerly Union Carbide) from meeting the water quality standard for chlorides in a tributary of the Kanawha River is removed from the rule. The variance is no longer needed because Dow is currently meeting the standard in the tributary.

Fourth, a site-specific standard for dissolved zinc is approved for West Virginia American Water in a branch of the New River. The standard will be based on a

certain equation and will apply to chronic and acute exposure to dissolved zinc.

Next, the in stream water quality standard for beryllium for public water supply is revised from .0077 ug/l to 4 ug/l to reflect the current EPA-approved maximum contaminant level goal for beryllium.

Sixth, the site specific standard for dissolved oxygen (DO) in the Kanawha River main stem, Zone 1, 4.0 mg/l, is removed. The site specific standard is no longer needed because the river is currently meeting the statewide standard. This means that the DO standard for the Kanawha River main stem, Zone 1, will revert back to the statewide standard of 5.0 mg/l.

Seventh, specific temperature criteria for the Bluestone River, Bluestone Lake, New River, and the Greenbrier River are removed because the criteria do not adequately protect aquatic life.

Finally, a stylistic revision is made which relates to nutrient standards (phosphorous and chlorophyll-a) in cool water and warm water lakes, and a cleanup revision corrects the spelling of the parameter "Indeno" in Appendix E, Table 1 at 8.23.

10. State Certification of Activities Requiring Federal Licenses and Permits, 47 CSR 5A

This rule implements the State's duty under Section 401 of the Federal Clean Water Act to issue certifications for certain activities which require a federal permit or license. Section 401 requires applicants for a federal permit or license to conduct an activity that will or may discharge into waters of the United States to obtain a certification from the State that details the impact that the activity will have on the waters. The rule also sets forth the application process to obtain the State certification.

The activities requiring a federal permit are for the discharge of dredged or fill material into waters the State (Section 404 of the Clean Water Act, 33 U.S.C. §1344) or for the construction of any structure in or over any waters of the State, including barge fleeting areas, (Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. §403). The activity requiring a federal license involves the construction of hydroelectric power operations (Federal Power Act, 33 U.S.C. §403).

The proposed amendments bring the State rule into compliance with the federal counterpart, which was amended by the U. S. Army Corps of Engineers in 2008, and reflect the certification procedure implemented by the DEP to conform with the federal counterpart.

Specifically, the amendments include a reference to the mitigation hierarchy contained in the federal counterpart (including purchasing credits from a mitigation bank and an in-lieu fee program), provide a rate for temporary impacts (3% of permanent impact fee, per year of impact), increase the application fee from \$250 to \$350 to reflect inflation, clarify that mitigation is required for Section 10 permits for barge fleeting areas, require the DEP to evaluate the recreational resources of activities involving hydropower operations and public access to those resources, require mitigation for fish loss at hydropower operations, and allow the DEP to increase mitigation by up to 25% if an applicant fails to obtain a certification prior to conducting a permitted or licensed activity.

11. Voluntary Remediation and Redevelopment, 60 CSR 3

This rule implements the Voluntary Remediation and Redevelopment Act (“VRRRA”), W. Va. Code §§22-22-1 through 21. The rule establishes the procedures and standards for cleaning up and revitalizing contaminated sites on a voluntary basis.

The proposed amendments revise chemical toxicological profiles contained in Table 60-3B, which sets forth minimum cleanup standards at contaminated sites. The standards are used during remediation operations to determine whether contamination at a site exceeds levels that protect human health. The revisions are necessary to bring state remediation standards into compliance with revisions to the federal counterpart.

The proposed amendments also revise provisions which allow the agency to recover staff costs for oversight of cleanup operations at voluntary remediation program projects. Specifically, the amendments revise the method of calculating the hourly rate, change the hourly rate multiplier, and amend the use of the application fee to ensure that it will not be applied to direct project oversight costs.

The VRRRA program is funded entirely by a federal grant and from the recovery of costs from applicants who participate in the voluntary remediation program. Funding from the federal grant has gradually decreased since 2008. The grant for 2013 represents a 50% decrease from the 2008 grant. Moreover, federal funding is expected to decline further in 2014. Therefore, the amendments to the cost-recovery provisions are proposed to offset declining federal funds and allow the voluntary remediation program to continue at current funding levels. Without these amendments, the VRRRA program will decline in this State.

EFFECTIVE DATE: March 8, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed April 1, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 140**

SHORT TITLE: Authorizing Department of Commerce to promulgate legislative rules

CODE REFERENCE: West Virginia Code §64-10-1, §64-10-2, & §64-10-3 (Amends)

This is the rules bundle for the Department of Commerce. It authorizes the Office of Miners' Health, Safety and Training, the Division of Labor, and the Division of Natural Resources to promulgate the following legislative rules:

Office of Miners' Health, Safety and Training

1. Assessing Health and Safety Violation Penalties, 56 CSR 12

Amendments to the rule implement provisions in the governing statute which imposes monetary civil penalties for coal mine operators who violate health or safety rules. The maximum civil penalty that may be levied against mine operators is increased from \$3,000 to \$5,000.

2. Rules Governing the Program for the Sharing of Information between Employers, 56CSR18

This is a new rule proposed by the Office of Miners' Health, Safety and Training ("Office") in response to legislation passed in 2012, which directed the Office to implement a mechanism for sharing information between employers concerning the identity of persons who have been decertified due to a violation of an employer's substance abuse policy and testing program. The purpose of the rule is to protect and enhance public safety in the work area.

The rule provides for the compilation and maintenance of a database of persons whose certifications have been suspended or revoked by the Office for violation of an employer's substance abuse policy and testing program. The database will be publically available on the internet or employers may confirm a suspended or revoked certification by submitting a written inquiry to the Office.

3. Substance Abuse Screening, Standards and Procedure, 56 CSR 19

This is a new rule in response to legislation passed in 2012, which directed the Office to create a program that requires employers of certified mine personnel to implement a substance abuse screening policy and program that meets certain minimum requirements.

Among other things, the program requires operators, independent contractors, subcontractors or anyone who employs persons to work in mines, or persons who, as part of their employment, are regularly present at a mine, to have a substance abuse policy and testing program for employees who are certified in some capacity by the Office. The program must include pre-employment testing of applicants, random testing of current employees, and the testing of any person involved in a serious or fatal accident. The rule also requires employers to test any employee

suspected by the employer of being under the influence of alcohol or a controlled substance.

The rule requires the Office to approve the employer's program. The rule provides a mechanism for employees to challenge positive results and a right to appeal an adverse employment decision based on a positive test.

The rule also addresses the collection and testing of samples by referencing standards promulgated by the U.S. Department of Transportation (DOT) and the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA). Employers are required to review their substance abuse testing program with job applicants at the time of their employment and with employees, annually. Both new and current employees must be informed of the mandatory substance abuse policy and testing program and their rights and responsibilities under the program, including that their refusal to comply with the testing program is grounds for dismissal

Employers are required to inform the Office within 7 days of a positive test result. Upon receiving the employer's notice, the Office must temporarily suspend all certifications held by the employee. The notice of suspension must inform the suspended person of all of their rights, including appealing a suspension or revocation of a certification.

Division of Labor

1. Wage Payment and Collection Act, 42 CSR 5

This rule repeals and replaces a current legislative rule. It applies to the Division of Labor and all persons, employers and employees subject to the Wage Payment and Collection Act. It requires, among other things, employers to establish a work week, pay period and pay day and provide notice to the employees. An employer must notify affected employees of any changes to these or any other terms of employment at least one full pay period prior to the effective date of the change.

Employers must also maintain payroll and employment records during an employee's employment and for 5 years thereafter. It also sets forth information which must be contained in the employee's written record. Employee records must be kept at the place of employment or at a central record-keeping office and must be available for inspection by the Division.

Other provisions require an employer to pay all earned wages due an employee on the employer's scheduled pay day and furnish an itemized wage statement on the employer's scheduled pay day, either in writing or electronically.

2. Employer Wage Bonds, 42CSR33

This is a new rule. A significant portion of this rule is from 42 CSR 5, the Wage Payment and Collection rule. The provisions relating to wage bonds are placed into a new, independent rule. The rule applies to all persons subject to the wage bond sections of the Wage Payment and Collection Act. The Division of Labor enforces the rule.

An employer engaged in, or about to be engaged in, a covered activity must furnish

a wage bond to the Division. An employer is exempt from this requirement if it can document that it has been actively engaged in the intended principal activity with employees for at least the 5 years immediately preceding the Division's evaluation of the employer's status. Prime contractors must notify the Commissioner prior to entering into a contract or subcontract. The rule sets forth bonds that are acceptable to the Division.

Division of Natural Resources

1. Special Motorboat Regulations, 58 CSR 27

Amendments to the rule designate 2.3 miles of the West Fork River, all within the City of Clarksburg, as a No Wake Zone. Clarksburg will be responsible for purchasing, placing and maintaining the buoys and informational signs, which must conform to U.S. Coast Guard standards.

2. Electronic Registration of Wildlife, 58CSR72

This is a new rule. It allows hunters and trappers to electronically register wildlife in lieu of delivering carcasses to a Natural Resources Police Officer or an official game checking station. The Division or official game checking station will then issue a game tag number which is recorded on the hunter or trapper's field tag, or recorded on a separate piece of paper containing the hunter or trapper's name and address.

The rule also allows the Director, upon public notice to the affected area, to suspend electronic registration and require the physical inspection and checking of wildlife when there are concerns over epizootic disease, biological concerns, other circumstances, or an emergency that requires physical inspection.

EFFECTIVE DATE: March 8, 2014
DATE OF PASSAGE: March 8, 2014
ACTION BY GOVERNOR: Signed March 26, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 155**

SHORT TITLE: Authorizing the Department of Health and Human Resources to promulgate legislative rules

CODE REFERENCE: West Virginia Code §64-5-1, §64-5-2, §64-5-3, & §64-5-4 (Amends)

This is the rules bundle for the Department of Health and Human Resources. It authorizes the Department of Health and Human Resources, Bureau for Public Health, Health Care Authority and the Bureau for Child Support Enforcement to promulgate the following legislative rules.

Department of Health & Human Resources

1. Medication Administration by Unlicensed Personnel, 64SCR60

This rule is amended by the Department of Health and Human Resources in response to legislation passed during the 2013 Regular Session of the Legislature.

A number of modifications have been made to the definitions section in the rule. The definition of “administration of medication” has been modified to account for changes to the statute which now permit pre-filled insulin injections and insulin pens to be administered. The definitions of “adult family care home”, “personal care home”, “residential board care home” have been eliminated and the term “assisted living residence” has been added to the rule. Definitions for an “authorized registered professional nurse,” delegation,” delegation decision model” and “self-administration of medication with assistance” have also been added. Changes have been made throughout the rule to incorporate these terms where necessary.

The section in the rule pertaining to administration of medication has been altered to account for the performance of health maintenance tasks. The section specifically limits delegation only to those tasks which, after a registered professional nurse makes the appropriate decision, may be properly delegated. This section also requires that appropriate liability insurance must be maintained. It also exempts parents or guardians who administer medication or perform health maintenance tasks to adult children from regulation.

The rule specifies records that must be maintained at a facility and the information that must be included in the records. Most notable are written, signed and dated physician orders. The sections pertaining to monitoring and supervision and communication have been reorganized and updated, but are not substantially changed.

2. Child Care Centers Licensing, 78 CSR 1

The rule has been amended to expand the scope to all state, county or municipalities that operate child care services. These local governmental units were not previously subject to the provisions of the rule. The definitions section has also updated by deleting archaic terms and adding other terms that are now used throughout the rule.

The licensing section has been amended to provide that an incomplete application is considered withdrawn after 30 days. The section has also been updated to allow a dietician or nutritionist to develop a menu. The final amendment to the section deletes the portion of the rule which provides that provisional licenses expire after 6 months.

In the portion of the rule pertaining to governance, a provision has been added that requires an applicant to ensure safety and reduce risk. Additionally, the administrative manual is now required to include a statement of worker's and unemployment compensation coverage, expand the portion regarding behavior management to include positive guidance, time-out and communication to a parent when difficult behavior management plans are developed.

Additional changes to the rule require signed incident reports for accidents resulting in first aid. The required contents of that report are set forth in the rule. There are also documentation requirements for staff education and qualifications. These are required to be updated periodically. Required checks of staff persons on the State Police sex offender registry are also required. The rule also added a requirement that a staff person who has completed minimum training requirements is present for at least 1/2 of the daily operating hours.

Other changes to the rule limit interaction of varying age groups to 30 minutes and set forth very specific requirements for time-out, including limits on using time-out, that it be explained to a child by a staff person with whom the child is familiar and that it is ended in a positive manner. The rule also restricts the use of physical restraint of a child to situations where it is for the protection of the child or other persons.

Changes to the requirement relating to a child's health assessment require development of a medical plan of care if the child has a chronic health condition that could potentially result in an emergency. The new provision also exempts sun screen, diaper ointment and emergency medication from the requirement that all medication be locked. There is also a new provision that requires instruction from a child's healthcare provider to use teething medication that contains benzocaine and that in addition to calling 911 that poison control be notified in cases of overdoses.

Changes to the nutrition requirements now mandate that meals and snacks be consistent with the USDA Child and Adult Care Food Program, Meal and Snack Patterns. This is attached as an Appendix to the rule. Written care plans for children with special dietary needs are also required. Meals are required to be at least three hours apart. Additionally, a center may feed solid foods and fruit juices to a child four months of age only with a written plan of care from the child's health care provider. It also does not require a center to provide baby food.

Finally, there is a requirement for an evacuation plan with notice requirements to parents. This plan is required to be submitted to the Office of Emergency Services. Finally, the rule requires that surfaces for play comply with the Consumer Product Safety Commission. Facilities are given four years to comply with this requirement.

Bureau for Public Health

1. Clinical Laboratory Technician and Technologist Licensure and Certification, 64CSR57

This is a rule from the Department of Health and Human Resources, Bureau for Public Health. The amendments to the rule add additional fees to account for the growth in requests made to the Office of Laboratory Services for specialized services. The amendments also make a number of technical modifications to update the statute to accommodate changes in educational and certification requirements for certain professions.

Changes to the fees are primarily for specialized licensing services. They are as follows:

Late fee of \$10 per license for requests received after the due date.

Fee of \$20 for the replacement of a license.

Fee of \$20 for issuance of a lapsed license.

An emergency fee of \$35 per license for a request to process a licensing request immediately.

A Federal Clinical Laboratory Improvement Amendments survey citation penalty of \$40 per no licensed staff for licensure non-compliance.

A \$10 fee for issuing official licensure source verification on paper as opposed to in an electronic format.

A \$10 per license fee for special request for management issuance.

2. AIDS-related Medical Testing and Confidentiality, 64CSR64

This rule pertains to AIDS-related Medical Testing and Confidentiality. The amendments to the rule are necessary to comply with statutory changes passed during the 2011 Regular Session of the Legislature. The changes clarified the provisions regarding mandatory AIDS testing of persons charged with a sexual offense. The rule was amended in 2012 to reflect the changes but additional clarification is needed. The amendments to this rule also incorporate a recommendation from the Public Works audit which suggested that fees be charged for laboratory services for HIV testing.

Procedures are placed in the rule regarding powers and duties of a prosecuting attorney and the court with respect to HIV and other sexually transmitted disease testing of persons charged with a sexual offense. These include notice and confidentiality requirements and that the test must occur within 48 hours of the filing of the indictment. There are also provisions for release of the results to the victim, the victim's family and the defendant's counsel. Provisions are also in place allowing the court to order additional testing. There is also a provision for payment for the test and a \$30 annual laboratory fee.

3. Cancer Registry, 64CSR68

This is a rule from the Department of Health and Human Resources, Bureau for Public Health relating to the Cancer Registry. Amendments to the rule provide for the development and operation of a Cancer Registry. The registry is required by West Virginia Code §16-5A-2a.

Changes to the rule update definitions to include a definition for “Bureau” and “data linkage”. Additions are also made to include more data elements regarding a physical and a mailing address. Address data is currently captured. However, the new elements make a distinction between a “physical” address and a “mailing” address. The rule also provides that additional data elements may become necessary if required by the Center for Disease Control.

Final changes to the rule include greater detail regarding confidentiality and disclosure. The rule provides for release of information for research purposes upon receipt of written consent from the appropriate source and once an appropriate data linkage between the registry and the researcher is in place. The rule provides that a fee may be charged for this linkage. The rule also sets out the fee schedule as \$800 per linkage and a \$50 per hour assessment for staff time. The rule also provides that identifying information may be released with the appropriate consent and with confidentiality measures in place. There is also a provision which permits patient contact by the Registry

4. Medical Examiner’s Rule for Post-Mortem Inquiries, 64CSR84

This is a strike and insert amendment to an existing rule. The rule has not been modified or amended in a number of years. Many provisions are out dated. Amendments to the rule are necessary to reflect changes and improvements in operations, practices and technology.

The rule sets forth the minimum training and certification requirements for County Medical Examiners. These include passing a certification examination by the American Board of Medico-legal Death Investigators, meeting practice standards as provided in the West Virginia Handbook for Performance of Death Investigation and Certification and procedures for measuring both. There are similar requirements for a County Coroner.

The authority of a County Medical Examiner or Coroner is also set forth in the rule. These include investigation of all medico-legal investigations of deaths, investigations of death in criminal matters and a preclusion of conducting a post mortem examination should the Medical Examiner or County Coroner have administered life saving measures immediately prior to the death. The rule also specifically lists the circumstances that require a medico-legal death investigation.

Other provisions provide for specific responsibilities of the County Medical Examiner or County Coroner, and requirements for obtaining, testing and documenting blood, body fluid and tissue samples necessary for completion of the postmortem exam are set forth in the rule. The rule also sets forth standards for transporting a body to the appropriate location to complete examination of the body.

There is a comprehensive list of circumstances that require immediate consultation with the Medical Examiner which involve criminal and suspicious deaths. Circumstances that require a forensic autopsy are listed in the rule.

There are provisions in the rule regarding release of findings, results of ancillary studies, autopsy and investigative findings. Primarily, these may be released only to the next of kin, the executor or administrator of the estate or another person designated by the next of kin or administrator.

Finally, the rule provides for fees for performance of the duties of the Medical Examiner, the use of the facilities of the Medical Examiner and for providing testimony or production of an opinion.

Health Care Authority

West Virginia Health Information Network Rule, 65CSR28

This rule governs the development and operation of a West Virginia Health Information Network.

The rule provides that the Network's purpose is to house protected health information which may be exchanged between participating organizations, defined primarily as health care providers, licensed practitioners, public health entities and health plans. The rule sets forth two types of information which may be exchanged. One is the exchange of information on a particular patient for treatment purposes and one is a direct exchange of information between participants.

Permissible purposes for use of the Network are laid out in the rule. These include treatment, payment, health care operations, public health reporting, and other options set forth by state and federal law. Patients are also given the opportunity to opt out of the Network. Unless a patient affirmatively opts out, the patient's information will be included in the Network. Participating organizations are required to provide patients with information during their first encounter after enrollment regarding opt out provisions. Requirements for the educational information are spelled out and the Network is required to develop a public outreach campaign.

The Network must be operated in a transparent and patient centered manner and a participant may not deny services to a patient who opts out of the Network. A patient may have access to the patient's own data, request an amendment to the record, request an accounting of disclosures and request a restriction of disclosures consistent with HIPAA.

Disclosure and access to data is subject to HIPAA and the HITECH Act. Additionally, the Network is required to develop security standards to protect privacy and security.

The rule also provides for a complaint procedure for patients, users and participating organizations. These complaints are required to be in writing and will be investigated by a designated individual at the Network.

Finally, the rule requires demonstration pilot projects to help evaluate the Network.

Bureau for Child Support Enforcement

1. General procedural General Procedures Pertaining to Documents and Files, 97CSR1
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This is a new rule which sets forth the general rules and procedures employed by the Bureau for Child Support Enforcement (Bureau) regarding records and fillings made with the agency. It includes provisions clarifying the Bureau's primary responsibility to represent the state's interests in cases filed with the Bureau, and advising parties to a child support action to seek independent counsel to represent their individual interests in any action taken by the Bureau.

The rule includes general provisions protecting the confidentiality of information and records filed with the Bureau, and additional provisions to ensure that employees of the Bureau avoid conflicts of interests in matters before the Bureau, whenever they or their family members or household members seek the services of the Bureau, or are the subject of a pending action.

The rule also incorporates by reference the Fair Hearing standards applied to all hearings conducted before the DHHR Board of Review, and provides a mechanism for counsel and other interested persons to secure copies of the practice manual developed by the Bureau. This includes extensive summaries of applicable state and federal statutes and regulations, and the procedures and precedents applied in support actions.

2. Obtaining Support From Federal and State Income Tax Refunds, 97CSR3

This rule, initially issued in 1997, is being repealed. It establishes the procedures used by the Bureau for Child Support Enforcement to apply state and federal tax refunds to offset outstanding delinquent support obligations.

The Bureau is proposing to update the rule and incorporate it into a comprehensive new legislative rule (Support Enforcement Activities, 97CSR6), which broadly outlines the procedures and mechanisms used by the Bureau to enforce and collect child support obligations.

3. Interstate Income Withholding, 97CSR4

This rule, also initially issued in 1997, is being repealed, too. It sets forth the basic mechanism used by the Bureau to withhold and distribute income earned in West Virginia to meet support child obligations arising under support orders issued in this state or any other state, regardless of where the child resides or where the custodial parent resides.

The Bureau proposes to repeal the rule and include it in a comprehensive new rule (Support Enforcement Activities, 97CSR6), which addresses a number of procedures and methods employed by the Bureau to enforce child support obligations.

4. Support Enforcement Activities, 97CSR6

This is a new rule which incorporates and updates provisions from the repealed rules, 97CSR3 and 97CSR4. It sets forth the basic rules and procedures by which the Bureau determines and collects child support obligations owed in a pending case which is receiving services through the Bureau.

The rule also includes provisions pertaining to various methods applied by the Bureau to collect and enforce child support obligations in this state. It contains a

procedure for income withholding for income derived in the state of West Virginia for the purpose of satisfying or meeting support obligations arising under child support orders issued in this state or in any other state. It also provides a mechanism for enforcing child support orders issued in other jurisdictions, and provides a means for the collection and distribution of child support payments from income sources on behalf of children and the custodial parent or guardian of the child who reside both in this state or in other states.

The rule also includes a provision related to how interest is assessed on unpaid child support arrearage, includes a grace period for the assessment of accrued interest, and establishes an amnesty program which may be utilized to forgive the assessment or reduce the collection of assessed interest under appropriate circumstances.

5. Distribution of Support Payments, 97CSR7

This is a new rule which establishes the basic methods and procedures the Bureau must follow to distribute child support obligations collected and received by the Bureau while a case is receiving services through the Bureau.

The rule also sets forth various methods an obligor may use to make support payments to the Bureau, the hierarchy of how payments are allocated to one or more obligees or when the amounts received do not satisfy all outstanding delinquent obligations. The rule also establishes the manner by which any collection received by the State will pass through to obligees when the support is assigned to the State.

EFFECTIVE DATE: March 8, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed April 1, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 165**

SHORT TITLE: Authorizing the Department of Transportation to promulgate legislative rules

CODE REFERENCE: West Virginia Code §64-8-1 and §64-8-2 (Amends)

This is the rules bundle bill for the Department of Transportation. It authorizes the Office of Administrative Hearings and the Commissioner of the Division of Highways to promulgate the following legislative rules.

Office of Administrative Hearings

Appeal Procedures, 105 CSR 1

This bill authorizes the Office of Administrative Hearings (OAH) to amend a current legislative rule which sets forth the procedures for appeals to the Office of Administrative Hearings from orders and decisions of the Commissioner of Motor Vehicles. The majority of the amendments are clerical and technical in nature. The following is a synopsis of the substantive amendments:

1. The definitions of DUI case and investigating officer are updated for purposes of clarity.
2. The provision dealing with the calculation of time relating to service and filing deadlines is amended to clarify the rule does not extend jurisdictional time limits set forth in code. Additionally, the amendments remove language regarding filing deadlines, which previously caused confusion, and increase the period for filing a motion from at least seven days before the hearing to at least nine days before the hearing so that it coincides with the deadline for serving a motion on the opposing party.
3. Amendments to the provision governing continuances and postponement of hearings, and rehearings extend the timing for an emergency continuance request from less than seven days notice to less than nine days notice. The changes to this provision also allow more than just the first time an essential witness fails to appear as good cause to continue a hearing.
4. Amendments to the provision dealing with pre-hearing notifications reduce the number of days before a hearing which a petitioner must challenge a chemical test or official compliance with sobriety checkpoint guidelines from thirty days to ten days. The amendments also remove the requirement that the intent to call a rebuttal expert witnesses be declared prior to the hearing. Finally, the amendments clarify that if the state files an amended order of revocation, then it may be grounds for a continuance of the pending matter, but it is not grounds for dismissal.
5. Regarding subpoenas and discovery, the amendments add a new subsection that states the party who wants to call a witness is responsible for obtaining their presence at the hearing and that an executed subpoena is a satisfactory way to do so. If a subpoenaed witness fails to appear and the party can prove the witness was served, then a continuance may be granted. Upon three consecutive failures

of a subpoenaed person to appear, the hearing may be conducted without the appearance of the witness, with some exceptions.

6. Regarding motions and orders, the amendments require notation on a motion if a party objects and adjusts the process for submission of orders at the request of the OAH to give the opposing party five days to file an objection, rather than requiring agreement of all counsel before filing.

7. A provision pertaining to failure to appear is amended to allow the OAH to reverse the Commissioner's Order of Revocation if the Commissioner or designee does not request a timely continuance.

8. Regarding evidence and the hearing itself, the amendments give the Hearing Examiner the authority to sequester witnesses, as necessary, providing that the Petitioner and one law enforcement officer are the only witnesses permitted to remain in the room.

9. Finally, regarding reconsideration of a decision, the amendments clarify that a party that files a motion to reconsider must serve the motion on the hearing examiner who issued the final order and on the Chief Hearing Examiner.

Division of Highways

Transportation of Hazardous Wastes Upon the Roads and Highways, 157CSR7

The bill authorizes the Commissioner of the Division of Highways to amend a rule governing the transportation of hazardous wastes upon the roads and highways. The amendments incorporate updates from other rules and statutes. They also make minor technical changes. Additionally, the proposed amendments incorporate changes to federal law that must be adopted in order to continue full federal funding of the hazardous waste program.

EFFECTIVE DATE:	March 7, 2014
DATE OF PASSAGE:	March 7, 2014
ACTION BY GOVERNOR:	Signed March 20, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 167**

SHORT TITLE: Authorizing Department of Revenue to promulgate legislative rules

CODE REFERENCE: West Virginia Code §64-7-1, §64-7-2, §64-7-3 & §64-7-4 (Amends)

This is the rules bundle for the Department of Revenue. It authorizes the State Tax Department, the Insurance Commissioner, the Alcohol Beverage Control Commission and the Racing Commission to promulgate the following legislative rules.

State Tax Department

1. Municipal Sales and Service and Use Tax Administration, 110 CSR 28

This is a new rule and is in response to legislation passed during the 2013 regular session of the Legislature. Among other things, It requires municipalities to use the services of the Tax Department to administer the Municipal Sales and Service and Municipal Use Tax. It provides that these taxes are in addition to the Consumers Sales and Service Tax and special district excise taxes on all sales and services rendered and on the use of tangible personal property, custom software or taxable services within the boundaries of the municipality. It requires vendors to collect state and municipal taxes at the same time. The same relates to retailers and the state and municipal use taxes. A retailer or vendor is not required to collect the municipal tax if not required to collect the state tax.

2. Special Reclamation Tax Credit, 110CSR29

This is a new rule and it is also in response to legislation passed during the 2013 regular session of the Legislature. It establishes the procedure for a coal mine operator who reclaims a forfeited mine site to apply to the Tax Commissioner for a credit against the special reclamation tax owed by the operator. The Secretary of the Department of Environmental Protection must certify the amount of reclamation work completed and the amount of credit to be granted. The amount of the tax credit is to be determined using the project costs previously certified to the Tax Commissioner.

3. Withholding or Denial of Personal Income Tax Refunds from Taxpayers Who Owe municipal or Magistrate Court Costs, 110CSR40

This rule authorizes the Tax Department to amend a current legislative rule which authorizes the State Tax Commissioner to withhold an income tax refund from a taxpayer for failure to pay municipal court fines and costs. The amendment to rule also allows the Commissioner to withhold tax refunds to satisfy magistrate court fines and costs.

Insurance Commissioner

1. Utilization Review and Benefit Determination, 114CSR95

This is one of three rules (114CSR95, 114CSR96, and 114CSR97) proposed by the Insurance Commissioner as a result of legislation passed during the 2013 regular session of the Legislature. The rules provide for internal and external review of adverse health coverage determinations. Without these three rules, the external review of adverse decisions in West Virginia would be subject to federal law.

This rule applies to any issuer offering a health benefit plan that provides or performs utilization review services. The rule is based on the National Association of Insurance Commissioners' (NAIA) "Utilization Review Model Act" (Model 73), as amended in April 2012. The rule standardizes the procedures for how issuers make decisions. It makes the issuer (a health care services insurer) responsible for monitoring all utilization review activities.

The rule defines the scope and content of the utilization review program. Issuers are required to implement a written program for the filing of benefit requests, the notification of utilization review and benefit determinations, and the review of adverse determinations.

It also sets forth operational requirements. The utilization review program must use documented clinical review criteria. In addition, it must be administered by qualified health care professionals.

If an issuer fails to adhere to the criteria for utilization review and benefit determinations, and the failure is not a de minimis violation, a covered person may file a request for external review as provided in External Review of Adverse Health Insurance Determinations, 114CSR97. The Insurance Commissioner is given the authority to determine if a covered person has exhausted the provisions of the rule.

Procedures for standard utilization review and benefit determinations include requirements for written procedures, timing requirements, provisions for potential extensions of such time, consequences of failing to meet an issuer's filing procedures, and the content of adverse determinations. Such content of adverse determinations must include specific reasons for the denial, a description of grievance procedures, and contact information for the Insurance Commissioner.

2. Health Plan Insurer Internal Grievance Procedure, 114CSR96

This rule sets forth the internal grievance procedures of health plan insurers (issuers). If an issuer fails to adhere to the criteria for grievance procedures, and the failure is not a de minimis violation, a covered person may file a request for external review pursuant to the procedure set forth in 114 CSR 97. Issuers are required to certify to the Insurance Commissioner annually that they maintain a grievance procedure that complies with this rule. The grievance procedure must be included in the published coverage documentation.

The rule sets forth the procedure for first level reviews of grievances involving adverse determinations, which may be filed by a covered person within 180 days after receipt of a notice of an adverse determination. The issuer is required to ensure the independence and impartiality of individuals involved in the review of an

adverse determination. The makeup and responsibilities of the review panel, the rights of the covered person, notification requirements, and decision requirements are outlined in the rule.

The rule also sets forth procedures for standard reviews of grievances not involving an adverse determination. This includes the rights of the covered person, responsibilities of the issuer, time limits, and the content of the written decision by the issuer.

In addition, the rule sets forth procedures for expedited review of grievances involving an adverse determination. This includes notice requirements, time lines, and notification requirements regarding decisions.

An issuer that fails to comply with any of the rule's requirements is subject to statutory penalties, including refusal to renew, revocation or suspension by the Insurance Commissioner of the license of an insurer, or a fine not exceeding ten thousand dollars.

3. External Review of Adverse Health Insurance Determinations, 114CSR97

This rule is based on the National Association of Insurance Commissioners' (NAIA) "Uniform Health Carrier External Review Model Act" (Model 76) as amended in April 2010. It sets forth written notice requirements for issuers for the completion of the utilization review process or a final adverse determination. The notice must set forth the covered person's rights, the Commissioner's contact information, a description of review procedures, and the option for expedited review.

External review is available once a covered person has exhausted internal grievance procedures. The exhaustion requirement may be waived by the issuer and is subject to some exceptions.

Alcohol Beverage Control Commission

1. Private Club Licensing 175CSR2

This rule amends a current legislative rule. The amendments incorporate changes made during the 2013 Legislative Session regarding craft breweries and appeals. It also contains other general updates, including the removal of appendices from the rule.

2. Farm Wineries 175CSR3

This rule amends a current legislative rule. The amendments incorporate changes made during the 2013 Legislative Session to allow the sale of wine at licensed farm wineries on Sundays starting at 10 a.m. and to adjust appeal location criteria.

3. Sale of Wine 175CSR4

This rule amends a current legislative rule. The rule addresses the sale of wine and the amendments incorporate changes to code during the 2013 legislative session regarding the sale of wine at fairs and festivals as well as appeals of WVABCA hearings.

4. Nonintoxicating Beer Licening and Operations Procedures, 176CSR1

This rule amends a current legislative rule. The amendments to the rule incorporate changes made regarding nonintoxicating beer during the 2013 legislative session relating to distributor licenses, locations for hearing appeals and to resident brewers and brew pubs.

Racing Commission

Thoroughbred Racing, 178CSR1

This bill authorizes the Racing Commission to amend a current legislative rule which regulates thoroughbred racing in this state and the administration of the West Virginia Thoroughbred Development Fund. The amendments are an attempt to achieve uniformity among states in the Mid-Atlantic region regarding thoroughbred racing. The amendments also make other updates and clarifications in an effort to make the rule read more clearly.

EFFECTIVE DATE: March 8, 2014
DATE OF PASSAGE: March 8, 2014
ACTION BY GOVERNOR: Signed March 31, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 181**

SHORT TITLE: Authorizing Department of Administration to promulgate legislative rules

CODE REFERENCE: West Virginia Code §64-2-1 & §64-2-2 (Amends)

This is the rules bundle for the Department of Administration. It authorizes the Department of Administration and Consolidated Public Retirement Board to promulgate the following legislative rules:

Department of Administration

State Owned Vehicles (148CSR3)

This rule rules governs all state owned vehicles and aircraft and includes the minimum requirements for all state spending units that have a state vehicle or aircraft.

The amendments to the rule remove the requirement that spending units are responsible for fuel purchase violations and remove a provision giving spending units the discretion to seek reimbursement for fuel purchase violations from the vehicle's operator. The Fleet Management Office is the only entity to approve exceptions to fuel purchases requirements.

Consolidated Public Retirement Board

Public Employees Retirement System (162CSR5)

This rule establishes eligibility for membership and the general administrative procedures in the public employees retirement system.

The modifications to the rule add a definition of part-time employment, clarify that a member may not receive service credit from both employment and military service for the same month, clarify the post-retirement employment compensation permissible and make technical changes to the rule.

EFFECTIVE DATE: March 8, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 31, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 196**

SHORT TITLE: Authorizing Division of Rehabilitation Services promulgate legislative rule relating to Ron Yost Personal Assistance Services Act Board

CODE REFERENCE: West Virginia Code §64-4-1

This bill authorizes the Division of Rehabilitation Services, within the Department of Education and the Arts, to make two substantive amendments to a current rule which establishes a program that provides personal assistance services to persons with severe disabilities so they may live in their own homes and communities instead of more restrictive settings. The amendments relate to a quorum requirement and reimbursement of expenses.

The first amendment provides that four voting members of the Board are needed for a quorum and that only voting members are eligible to serve as officers of the Board. Current law allows non-voting members to count toward a quorum and to serve as an officer.

The second one changes the signatory authority needed to approve a member's reimbursement for expenses. Currently, the Chairperson of the Council has the authority. The amendment changes that to a Board member designated by the Council.

EFFECTIVE DATE: March 7, 2014

DATE OF PASSAGE: March 7, 2014

ACTION BY GOVERNOR: Signed March 21, 2014

SENATE BILL NO. 202

SHORT TITLE: Creating Benefit Corporation Act

CODE REFERENCE: West Virginia Code §31-F-101-103, §31F-2-2-2, §31-F-203, §31-F-3-301, §31F-4-401-403, and §31-5-501 (New)

The purpose of this bill is to allow for the creation of a new and voluntary corporate entity that will allow a business organized under this Act to consider societal and environmental purposes in addition to profit.

This would differ from traditional corporations, whose single duty to its shareholder's is to maximize profit. In contrast, a benefit corporation has the additional duties of benefitting society and the environment as well as producing a profit.

EFFECTIVE DATE: June 14, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 31, 2014

**COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 204**

SHORT TITLE: Relating to crime victims compensation awards

CODE REFERENCE: West Virginia Code §§ 14-2A-3,9,12,14 and 18
(Amends)

The bill makes the following substantive changes:

(1) Eliminates compensation to persons who own real property that is damaged by the operation of a methamphetamine laboratory;

(2) Increases the amount that may be awarded for a victim's relocation costs from \$2,000 to \$2,500;

(3) Allows for the awarding of compensation for lost student loans;

(4) Authorizes the Court of Claims to hire up to two more claim investigators;

(5) Authorizes claim investigators to acquire autopsy reports, including toxicology results, from the State Medical Examiner to be used solely for determining eligibility for compensation awards;

(6) Extends time within which a report to a law enforcement officer or agency of the crime must be done from 72 to 96 hours;

(7) Allows that, in the case of a sexual offense, instead of reporting to a law enforcement officer or agency, the claimant undergo a forensic medical examination within 96 hours from the time of the crime in order to be eligible for an award, unless there is good cause shown why such an examination was not performed; and

(8) Requires the filing of a criminal charge as a prerequisite for receipt of compensation unless the claimant is a juvenile or, if an adult if law enforcement believes a crime occurred and that the failure to file criminal charges is for a reason other than the desire of the claimant.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 24, 2014

**COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 252**

SHORT TITLE: Allowing certain expelled students to return to school through Juvenile Drug Court

CODE REFERENCE: West Virginia Code §18A-5-1a (Amends) and §18A-5-1d (New)

This bill permits the county school board, county superintendent, principal, or the parent, guardian or custodian of an expelled student to refer the student to a Juvenile Drug Court. The judge of the Juvenile Drug Court then has the option to accept the student and, if so, retains jurisdiction over the student in the same manner as with regard to other drug court participants.

If the student complete Juvenile Drug Court or makes satisfactory progress toward completion, then it may warrant a return to school that would shorten the expulsion time. The Juvenile Drug Court judge must alert the superintendent who will then meet with the Juvenile Drug Court treatment team, the court, and the student assistance team at the school from which the student was expelled. The superintendent retains final decision-making power on whether to reinstate the student and, if the superintendent chooses to reinstate the student, it must occur within ten school days of the notice from the court.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 26, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 267**

SHORT TITLE: Ensuring state courts' jurisdiction of fraudulent or unauthorized purchasing card use

CODE REFERENCE: West Virginia Code §6-9-2c and §12-3-10b (Amends)

This bill creates a new offense of knowingly or intentionally possessing with the intent to use a purchasing card without authorization, and provides that jurisdiction for prosecution of purchasing card offenses rests with any county in which the card was issued, unlawfully obtained, fraudulently used, used without authorization, or where any substantial or material element of the offense occurred.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 24, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE NO. 307**

SHORT TITLE: Authorizing community corrections programs to operate pretrial release programs

CODE REFERENCE: West Virginia Code §51-10-1, §51-10-2, §51-10-3, §51-10-4, §51-10-5, §51-10-6, §51-10-7, §51-10-8, §51-10-9 and §51-10-10, §62-11C-5 and §62-11C-7(Amendments and Reenacts); §51-10-5a, §62-11F-1, §62-11F-2, §62-11F-3, §62-11F-4 and §62-11F-5 (New)

The bill authorizes community corrections programs to establish pretrial service programs to supervise pretrial defendants to reduce regional jail cost. The bill authorizes a \$7.00 per day fee to county commissions for pre-trial participants and a \$30.00 per month fee for post-conviction supervisees. (Chapter 62)

The bill also establishes a program to regulate bail bonding companies under the Insurance Commission. This program takes effect September 1, 2015.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed April 1, 2014

**COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 317**

SHORT TITLE: Relating to municipal firearm laws

CODE REFERENCE: West Virginia Code §8-1-5a, §8-12-5, and §8-12-5a
(Amends)

This bill would make a number of changes to current law regarding firearms in municipalities by amending three sections of code.

First, the bill would remove references to firearms that were placed in the home rule section last year. In doing so, the bill ensures that home rule municipalities are not treated differently with regard to firearms than other municipalities.

Second, the bill clarifies that the authority of municipalities to arrest, convict or punish an individual for carrying a firearm only extends to persons in violation of applicable state or federal law or an ordinance authorized by code.

Third, the bill ensures that municipalities cannot limit the right of a person to purchase, possess, transfer, own, carry, transport, sell or store a firearm or ammunition in any manner inconsistent with state law. The bill then goes on to state:

(1) That a municipality may enact an ordinance prohibiting or regulating the carrying or possessing of a firearm in a courthouse, city hall, convention center, administrative building or other similar municipal building.

(2) That a municipality may enact an ordinance prohibiting a person from openly carrying a firearm or carrying concealed without a valid permit from bringing the firearm into a recreational facility. However, a person with a valid concealed carry permit would be permitted to carry their firearm into a recreational facility and securely store the firearm out of view and access to others while they use the recreational facility.

(3) A person may keep a lawfully possessed firearm in a car in municipal parking facilities if the vehicle is locked and the firearm is out of view.

(4) A municipality may only regulate firearms on other municipally owned or operated property by prohibiting those without a valid concealed carry permit from possessing a firearm on that property.

The bill contains a provision requiring signs stating the firearm regulation to be posted at entrances to applicable buildings. However, the bill provides an absolute defense to an alleged violation of the ordinance if the person is otherwise lawfully possessing the firearm and either leaves the premises or temporarily relinquishes the firearm after being told that he or she is in violation of the municipal ordinance.

Finally, the bill makes clear that municipalities cannot restrict the carrying or possessing of firearms, which are otherwise lawfully possessed, on public streets and sidewalks, with a narrow exception that authorizes municipalities to prohibit persons without a valid concealed handgun license from possessing a firearm in an area where a street is closed for an official municipal event of limited duration.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 25, 2014

**COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 353**

SHORT TITLE: Relating to timber theft in state forests

CODE REFERENCE: West Virginia Code §19-1A-3b 9 (New)

The purpose of this bill is to define timber theft, and to provide the Division of Forestry the authority to investigate and enforce violations occurring in state forests managed by the division.

Currently, the DOF special natural resources police officers only have the authority to assist in investigations of timber theft. Further, current fines and penalties do not appear to be deterring theft from public areas. This bill would set more substantial fines and penalties: for theft of \$25,000 or less, not more than \$5,000; for theft of \$25,000 or more, fine of up to \$10,000 and jail time. Civil penalties can also be assessed.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Forest Management Review Commission.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

**COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 356**

SHORT TITLE: Relating to purchasing reforms

CODE REFERENCE: West Virginia Code §12-3-10d, §5A-1-1, §5A-3-1, §5A-3-3, §5A-3-4, §5A-3-5, §5A-3-11, §5A-3-17, §5A-3-28, §5A-3-30 and §5A-3-31 (Amends); and §5A-1-10, §5A-3-10d, §5A-3-10e and §5A-3-60 (New)

This bill implements purchasing reforms for state government. The bill clarifies the purposes of the purchasing provisions of the code and authorizes the Secretary of the Department of Administration and the Director of the Purchasing Division to issue cease and desist notices when a spending unit has violated competitive bidding requirements. In addition, the bill imposes a civil penalty on individuals who have knowingly and willingly violated competitive bidding requirements and imposes a criminal penalty on individuals who undermine the fair competitive bidding process.

The bill provides the Purchasing Division with alternative methods to purchase certain commodities, including the reverse auction and pre-qualification agreement/secondary bid processes. The bill adds a new provision for purchase authorizations through master contracts, which may authorize the direct ordering for only one type of commodity. If the director determines a vendor meets the requirements set forth in the master contract, the vendor is permitted to enter into the master contract as a pre-approved vendor. At least two vendors must be pre-approved in order for the master contract to be valid. The direct ordering process may not be utilized for any request for commodities anticipated to cost more than \$50,000, or for information technology anticipated to cost more than \$1 million, unless approved in writing by the director.

The bill provides that grants and subgrants awarded by the state are exempt from competitive bidding requirements unless the grant is used to procure commodities and services that directly benefit a spending unit. The bill creates requirements for certain executive department officials to attend annual training on purchasing procedures. Finally, the bill reduces the percentage of purchasing card rebate moneys transferred to Hatfield-McCoy Regional Recreation Authority from 15.5% to 10% and authorizes an additional 10% rebate moneys to be remitted to the State Park Operating Fund.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 24, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 357**

SHORT TITLE: Relating to Logging Sediment Control Act civil and criminal penalties

CODE REFERENCE: West Virginia Code §9-1B-12 (Repeals) §19-1B-12a (Amends)

This bill amends the Logging Sediment Control Act (WVC §19-1B-1 through §19-1B-14) by repealing the civil penalties section (Section 12) and merging it into the criminal penalties section (Section 12a) to create administrative efficiency in prosecuting cases and collecting fines and penalties.

Current law, Section 12, authorizes the Division of Forestry to commence a civil action to recover a penalty for any violation of the Sediment Control Act. The penalty for a civil violation cannot exceed \$2,500 for the first violation and \$5,000 for any subsequent violation. Section 12a provides that the penalty for a criminal violation is not less than \$250 nor more than \$500.

The bill repeals the civil penalties section and combines it with the criminal penalties section to provide that a person convicted of a criminal violation also incurs a civil penalty of \$500. The penalty for a criminal violation remains unchanged.

The bill also adds another violation to the Act, "Failure to Reclaim." This establishes another level of enforcement against timber operators who fail to reclaim the land using best management practices, as required by the Division.

EFFECTIVE DATE: June 4, 2014

DATE OF PASSAGE: March 7, 2014

ACTION BY GOVERNOR: Signed March 18, 2014

SENATE BILL NO. 359

SHORT TITLE: Removing hand canvassing requirements of electronic voting machines

CODE REFERENCE: West Virginia Code §3-4A-28 (Amends)

This bill reduces the percentage of precincts to be chosen at random and subject to manual count of the voter-verified paper ballots from 5% to 3% during a post-election canvass and recounts in counties using electronic voting systems.

EFFECTIVE DATE: March 8, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 24, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 365**

SHORT TITLE: Excepting certain Ethics Act provisions for elected conservation district supervisors

CODE REFERENCE: West Virginia Code §19-21A-4a (New)

The bill provides that if an elected conservation district supervisor applies or intends to apply to participate in a West Virginia Conservation Agency program, all applications for that particular program in that particular district shall be evaluated and approved by a conservation district other than the one being supervised by the elected conservation district supervisor. The State Conservation Committee is authorized to propose legislative rules which are to include: the criteria, ranking and standards required for an applicant to qualify to participate in West Virginia Conservation Agency programs; (2) a process to disclose the recipients of the award; and (3) a process for an unsuccessful qualified applicant to appeal an award.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 26, 2014

**COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 373**

SHORT TITLE: Relating to water resources protection

CODE REFERENCE: West Virginia Code §16-1-2, §16-1-9a (Amends); §16-1-9c, §16-1-9d and §16-1-9e (New); §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-7 and §22-26-8 (Amends); §22-30-1, §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-18, §22-30-18, §22-30-19, §22-30-20, §22-30-2, §22-30-22, §22-30-23, §22-30-24 and §22-30-25 (New); §22-31-1, §22-31-2, §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12 (New); and §24-2G-1 and §24-2g-2 (New)

This bill establishes a program to regulate Aboveground Storage Tanks (AST) to protect the water resources of the state from contamination and provide safe, clean water for consumption by commerce, industry and the public.

To achieve this, the bill requires certain AST owners and operators to register with the Department of Environmental Protection (DEP) and provide detailed information about their ASTs, including location, capacity and age, type of fluid and volume of fluid, proximity to water intakes and whether the ASTs are currently regulated by a state or federal program and, if so, the standards and requirements imposed by the program. Thereafter, the DEP must determine whether the ASTs meet certain minimum standards and requirements imposed by a regulatory program that the DEP must develop for new and existing ASTs. Essential elements of the program include the following:

- A requirement to obtain a permit for certain ASTs owners and operators;
- Design, construction and maintenance requirements that promote structural integrity;
- Installation of leak detection systems;
- Construction of secondary containment structures to capture released fluids;
- Development of corrective action plans to respond to releases; and
- Creation of a procedure to identify ASTs located in certain critical areas that serve as a water source for public water intakes.

Other key provisions in the bill require AST owners and operators to comply with the following requirements:

- Submit a Spill Prevention Response Plan for each AST to the DEP for approval. The plan must be developed in consultation with the State Bureau for Public Health (BPH) and county and municipal emergency management

agencies and discuss, among other things, the specific action to be taken in response to a release of fluids;

- Submit an annual certification to the DEP that each AST meets the minimum requirements of the regulatory program;
- Provide evidence of adequate financial resources to undertake reasonable corrective action for releases of fluids; and
- Send notice to local governments and affected public water systems which provides detailed information about the type and quantity of fluids stored in the ASTs, including Material Safety Data Sheets associated with each stored fluid, and a copy of the approved Spill Prevention Response Plan.

The bill also requires certain public water utilities to submit a Source Water Protection Plan (Plan) to BPH for approval no later than July 1, 2016. Plans must address several areas, including the following:

- A contingency plan detailing the utility's response to contamination of its water supply source;
- An examination and analysis of the utility's ability to isolate or divert contaminated water from its intake or water supply along with its raw water storage capacity;
- An examination and analysis of the utility's ability to switch to an alternative water source or intake;
- An examination and analysis of the utility's ability to close its intake and the length of time the intake can remain closed without causing a public health emergency;
- An examination and analysis of the technical and economic feasibility of installing an alternative intake drawing from a different water source, constructing additional raw water storage, or connecting to other water systems;
- A description of how the utility will protect its water supply source from contamination;
- A procedure to notify the public and health authorities of a contamination event; and
- A complete list of potential sources of significant contamination located within the applicable zone of critical concern.

Related to the requirement to develop and submit a Plan, the bill directs BPH to seek funds to help offset the cost of completing a Plan. Certain public water utilities are also required to implement a monitoring system that tests for contamination of water sources.

The bill also directs the BPH to conduct a study of the long-term health effects resulting from the January 2014 spill and submit the study's findings to the Legislature by January 1, 2015.

The AST program created by this bill also contains the following provisions that are typically found in regulatory programs relating to the environment:

- Authority for the DEP to promulgate emergency & legislative rules to implement the AST program;
- Authority to incorporate AST program requirements into certain other permit programs administered by the DEP;
- Provisions authorizing the DEP to conduct inspections, monitoring and testing of ASTs as need;
- Authority to charge permit and registration fees;
- Creation of funds to administer the program and to respond to spills;
- Provisions for injunctive relief and civil and criminal penalties;
- Procedure for administrative enforcement and resolution of violations;
- Requirement that DEP report annually to Legislature and Water Resources Commission on effectiveness of AST program;
- Requirement for interagency cooperation;
- Provision giving the public access to all documents and information related to any AST, subject to the exemptions contained in FOIA;
- Requirement to post signs informing public about an AST facility;
- Prohibition against duplicative enforcement; and
- An appeal procedure.

The bill also creates the Public Water Supply Protection Act (WVC §22-31-1 through §22-31-12), which directs the DEP to compile an inventory of all facilities that have the potential to cause significant contamination of public water sources in the event of a release of fluids and to regulate the facilities pursuant to a permit program.

Finally, the bill amends the Water Resources Protection and Management Act (WVC §22-26-1 through §22-26-9) by adopting the Statewide Water Management Plan (Plan) developed by the DEP. The Plan is an inventory of water available in the state for commerce, industry & the public. It also incorporates the following amendments recommended by the Plan:

- Changes the definition of large quantity user (LQU) from a person who withdraws more than 750,000 gallons in a month to more than 300,000 gallons withdrawn in a thirty-day period, excluding farm use;
- Requires LQUs to report actual water withdrawals or by a method approved by the DEP instead of providing an estimate;

- Requires depth to groundwater of wells to be reported; and
- Requires agencies funding the stream gage network to provide notification if they are unable to continue funding the network.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed April 1, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 376**

SHORT TITLE: Requiring certain construction workers complete OSHA safety program

CODE REFERENCE: West Virginia Code §21-3-22 (New)

This bill requires all employees of persons or business entities that provide services as a contractor or subcontractor under a contract, entered on or after July 1, 2014, for the construction, reconstruction, alteration, remodeling or repairs of any public improvement by or on behalf of a public authority, where the total contract cost of all work to be performed by all contractors and subcontractors is \$50,000 or more, to complete a ten-hour construction safety program designed by OSHA.

If the contractor chooses to use, employ or assign any person to work at the work site who has not successfully completed a ten-hour construction safety program designed by the OSHA, the bill requires the person to obtain the training no later than twenty-one calendar days after starting employment at a public improvement site. During the first year of this bill's effectiveness, the person has ninety calendar days, rather than twenty-one, to complete the training.

The bill gives the Commissioner of Labor the authority to issue civil penalties and creates a misdemeanor offense for presenting false documentation of completion of the OSHA safety training. Finally, the bill requires a report by January 1, 2017 on the accident and injury rates at public improvement work sites between July 1, 2012 and July 1, 2016.

EFFECTIVE DATE: July 1, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 26, 2014

**COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 378**

SHORT TITLE: Relating to special speed limitations as to waste service vehicles

CODE REFERENCE: West Virginia Code §17C-6-11 (New); §17C-15-26 (Amends)

The bill prohibits a person from driving a motor vehicle and meeting or overtaking from either direction a stopped waste service vehicle at a speed in excess of fifteen miles per hour. It defines "waste service vehicle" as any garbage collection vehicle, including a vehicle collecting recyclables or yard waste, which is used for curbside collection, makes frequent stops and is not fully automated.

In order for the speed limit to apply, the waste service vehicle (1) must be identifiable as a waste service vehicle; (2) must warn others by use of flashing lights or a visual signal of the presence of workers, and (3) must not be located on a private driveway or major highway. The bill permits a waste service vehicle to be equipped with special yellow or amber flashing warning lights.

Any person who violates the speed limit is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100 nor more than \$300. However, if the offender exceeded the 15 mph speed limit by fifteen miles per hour or more or caused serious injury or death to a waste service vehicle worker, upon conviction, the person shall be fined not less than \$300 nor more than \$1,000 or confined in jail for not more than one year, or both.

EFFECTIVE DATE: June 3, 2014

DATE OF PASSAGE: March 6, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

SENATE BILL NO. 380

SHORT TITLE: Redefining “all terrain and utility terrain vehicles”

CODE REFERENCE: West Virginia Code §17A-1-1 and §17A-6-1 (Amends)

The bill redefines the terms “all-terrain vehicle” and “all-utility terrain vehicle.” The purpose of this bill is to change the statutory definition of “all-terrain vehicles” and “all-utility terrain vehicles” as part of an effort by the ATV and UTV manufacturing industry to standardize those definitions among the 50 states.

This definition update would allow for consistency between states, thus making it easier for riders who are traveling between states to understand West Virginia’s trail access.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 24, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 383**

SHORT TITLE: Permitting certain residential real estate owners limited exemptions from licensing requirements

CODE REFERENCE: West Virginia Code §31-17-1 and §31-17A-2 (Amends)

The bill amends the definition sections of the West Virginia Residential Mortgage Lender, Broker and Servicer Act and the West Virginia Safe Mortgage Licensing Act to exclude under the definitions of "Lender" and "Mortgage loan originator" owners of residential real estate who within any twelve month period make no more than three residential self-financed home mortgage loans to purchasers of the residential real estate. The bill requires the person making the loans to, within 30 days of the loans, report the loans to the Division of Financial Institutions. Failure to report may result in the imposition of a civil administrative penalty of up to \$250.

EFFECTIVE DATE: July 1, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 18, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 387**

SHORT TITLE: Clarifying duly authorized officers have legal custody of their prisoners while in West Virginia

CODE REFERENCE: West Virginia Code §15-10-6 (New)

Recognizing that law enforcement “officers of other jurisdictions often have a need to travel through or to West Virginia with prisoners,” this bill provides that “duly authorized law-enforcement officers of the United States, the District of Columbia and other states...who are transporting prisoners through this state, delivering prisoners to this state or taking custody of a person in this state for transport to another jurisdiction are deemed to have lawful custody of said prisoner while in this state.”

EFFECTIVE DATE: June 4, 2014

DATE OF PASSAGE: March 7, 2014

ACTION BY GOVERNOR: Signed March 14, 2014

**COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 395**

SHORT TITLE: Relating to operation and oversight of certain human services benefit programs

CODE REFERENCE: West Virginia Code §9-5-8b and §61-4-9 (New)

This bill authorizes investigation into misuses of benefit programs and creates a new state crime for unlawfully using benefits or benefit access devices. First, the bill expands the investigatory powers of the Investigation and Fraud Management Division with the Inspector General's Office of DHHR investigative power to include investigations into activities related to misconduct regarding programs, benefits or intra-agency employee misconduct. Other areas of code already give the Division the authority to investigate DHHR programs and the language used in this bill is similar to existing code related to medicaid fraud investigations. The authority includes the power to administer oaths, issue subpoenas, request search warrants and seek orders to compel compliance from the Circuit Court.

Second, the bill creates a crime for unlawfully using benefits or benefit access devices - such as cards, plates or account numbers. There is a sliding scale of penalties based upon the value of the benefits that have been misappropriated--if less than \$1,000 has been misappropriated, the charge is a misdemeanor, but if \$1,000 or more has been misappropriated, then a felony may be prosecuted. There is also a provision which permits the court to allow the individual to perform work in lieu of confinement in order to provide restitution.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 26, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 397**

SHORT TITLE: Expanding scope of activities considered financial exploitation of elderly

CODE REFERENCE: West Virginia Code §61-2-29b (Amends)

The purpose of the committee substitute is to define financial exploitation in order to improve the effectiveness of the criminal penalties against the financial exploitation of an elderly person, protected person or incapacitated adult.

The committee substitute provides a specific cross reference to the penalties for a violation of this section. Furthermore, the committee substitute adds a definition of financial exploitation to the definitions subsection of this section. The committee substitute specifically states that acting as a guardian, conservator, trustee, attorney, or having power of attorney in and of itself is not a defense to a violation of this section. Good faith is a defense by statute.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 18, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 405**

SHORT TITLE: Requiring presiding judge's permission to release juror qualification forms after trial's conclusion

CODE REFERENCE: West Virginia Code § 52-1-5a ; 52-1-9 (Amends)

The bill is intended to protect private information of persons serving as petit court jurors by limiting availability of the juror questionnaire forms to counsel of record, upon request for prospective jurors, and as to persons actually serving on juries, questionnaires may be only obtained with the permission of the presiding judge after trial is over. If the judge denies a request, he or she must inform the parties in writing as to the reasons therefore.

EFFECTIVE DATE: March 5, 2014

DATE OF PASSAGE: March 5, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 408**

SHORT TITLE: Relating to parole

CODE REFERENCE: West Virginia Code §62-12-13 (Amends)

The bill follows up on some of the criminal justice reforms implemented as a result of S. B. 371 enacted during the 2013 regular legislative session. The bill removes the three month good conduct condition as a prerequisite for parole, and requires the Parole Board to consider for parole an inmate who is otherwise eligible regardless of whether they are confined in a facility not administered by the Division of Corrections (DOC).

EFFECTIVE DATE: March 5, 2014

DATE OF PASSAGE: March 5, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

**COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 414**

SHORT TITLE: Redirecting nonprobate appraisement filings

CODE REFERENCE: West Virginia Code §11-11-7 and §44-1-14 (Amends)

The bill eliminates the requirement that the personal representative of a resident decedent file a nonprobate inventory form with the Tax Commissioner. Instead, the bill requires that a nonprobate inventory form be filed with the clerk of the county commission or the fiduciary supervisor beginning on or after July 1, 2014. The bill further provides that the forms shall remain confidential and not a part of a county commission's records.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 20, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO.427**

SHORT TITLE: Relating to motor vehicle insurance

CODE REFERENCE: West Virginia Code §17D-2A-2, §17D-2A-5 and §17D-2A-7 (Amends)

The bill deletes provisions that required insurers to notify the DMV when insurance has been cancelled. Insurance verification is now done by continual re-verification. It clarifies penalties, clarifies that fees collected shall be deposited in the Motor Vehicle Fees Fund, clarifies that the security provisions do not apply to commercial vehicles, and makes technical corrections.

The bill increases license suspension penalties from thirty to ninety days for failure to have vehicle insurance in place for a second offense within five years. It prohibits the DMV from taking action against a person cited for driving without insurance if the citation is received by the DMV more than one year from the date of the offense.

It also replaces the driver's license suspension penalty of a person who knowingly operates a vehicle without the required security with a provision stating that a person who is not the vehicle owner and who is convicted of operating a motor vehicle that does not have the required security shall have the conviction placed on the driver's license record.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 434**

SHORT TITLE: Eliminating revocation period for certain DUI offenders

CODE REFERENCE: West Virginia Code §17C-5A-3a (Amends)

This bill would permit the deferral of the revocation period for certain DUI offenses through participation in the Motor Vehicle Alcohol Test and Lock Program. The bill would convert the time period currently devoted to license revocation into additional time on the test and lock program.

The bill also provides that the acceptance into the program constitutes a waiver of the administrative hearing before the Office of Administrative Hearings.

Furthermore, the bill would make technical and descriptive corrections.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 450**

SHORT TITLE: Relating to sale and consumption of alcoholic beverages in certain outdoor settings

CODE REFERENCE: West Virginia Code §60-1-5 and §60-8-3 (Amends)

This bill amends the definition of public place as it relates to the sale and consumption of alcoholic beverages to allow the sale and consumption of alcoholic beverages in demarcated outdoor areas that also serve prepared food and are directly adjoining establishments that are licensed to sell such beverages and in NCAA Division I college and university sports stadiums.

The bill also allows the ABCA Commissioner to issue a special license to allow for the sale of wine at NCAA Division I college and university sports stadiums at a cost of \$250 per license. The bill sets certain requirements for the licensees and provides that the wine sales area must be closed to free and unrestricted entry by the general public. The bill also requires these special licensees to be subject to the requirements of other licensees, unless the ABCA creates rules specific to sports stadiums. The bill gives the ABCA the authority to create such rules.

EFFECTIVE DATE: March 8, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 27, 2014

SENATE BILL NO. 454

SHORT TITLE: Defining dam "owner"

CODE REFERENCE: West Virginia Code §22-14-3 (Amends)

The Interim Agriculture and Agribusiness Committee studied conservation dams this past year and determined that the Dam Control Act does not have a definition for "dam owner," but does have one for a "noncompliant dam owner." Essentially, the dam owner was presumed to be the surface owner of the property. This is, however, not always the case with agricultural dams.

Accordingly, this bill defines the owner of a dam for purposes of the Dam Control Act to include:

1. A person who holds legal possession, ownership or partial ownership of an interest in the dam;
2. A person who has a lease, easement or right-of-way to construct, operate or maintain the dam; or
3. A sponsoring organization, such as the West Virginia Conservation Agency, with existing or prior agreement with the Natural Resources Conservation Service for a dam or its appurtenant works constructed with assistance from the Flood Control Act of 1944, the Watershed Protection and Flood Prevention Act of 1954, the pilot watershed program authorized under the heading "Flood Prevention" of the Department of Agriculture Appropriation Act of 1954 or the Resource Conservation and Development Program.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 26, 2014

SENATE BILL NO. 457

SHORT TITLE: Requiring programs for temporarily detained inmates in regional jails

CODE REFERENCE: West Virginia Code §31-20-5h (Amends)

The bill requires the WVDOC to make available to each inmate in the custody of the commissioner who is detained in a regional jail facility prior to transfer to a WVDOC facility, those programs and classes, determined by an individual inmate's risk and needs assessment, that are necessary to prepare the inmate for parole. The programming and courses must be provided by the WVDOC's personnel or the designees of the commissioner.

Additionally, the Regional Jail and Correctional Facility Authority (RJCFJA) must provide at each of its facilities, rooms and equipment necessary to implement the provisions of the section.

EFFECTIVE DATE: June 4, 2014

DATE OF PASSAGE: March 7, 2014

ACTION BY GOVERNOR: Signed April 1, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 458**

SHORT TITLE: Dedicating certain circuit court fees to fund low-income persons' civil legal services

CODE REFERENCE: West Virginia Code §59-1-11 (Amends)

This bill increases the civil action filing fee from \$155 to \$200 and creates filing fees of \$200 for the filing of a counterclaim, cross claim, third-party claim or motion to intervene. The bill clarifies that the \$200 filing fee applies to removal from magistrate court and that the magistrate clerk shall collect the fee and transfer it to circuit court. All of the new revenue created by the increase in the filing fee and the creation of the other fees is deposited into the Fund for Civil Legal Services for Low Income Persons, which was previously created in code, is administered by the Division of Justice and Community Services and provides funding for non-profit organizations such as Legal Aid of West Virginia.

EFFECTIVE DATE: July 1, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

SENATE BILL NO. 470

SHORT TITLE: Providing completed grand jury questionnaires are confidential

CODE REFERENCE: West Virginia Code §52-2-16 (New)

The purpose of this bill is to provide that completed grand jury questionnaire forms are confidential and may only be released from the custody of the clerk with the written permission of the circuit court.

EFFECTIVE DATE: June 1, 2014

DATE OF PASSAGE: March 4, 2014

ACTION BY GOVERNOR: Signed March 14, 2014

SENATE BILL NO. 485

SHORT TITLE: Exempting DOH from certain permitting requirements of Natural Stream Preservation Act

CODE REFERENCE: West Virginia Code §22-13-17 (Amends)

This bill exempts the Division of Highways (DOH) from the permitting requirements of the Natural Stream Preservation Act (NSP Act) when it is working in a stream to repair or replace damaged bridges. This exemption is subject to the condition that the work cannot materially change or impact the free-flowing characteristics of the stream and boats must be able to navigate the stream during the repair or replacement project.

The NSP Act requires persons to apply to the Department of Environmental Protection for permission to conduct work in a stream and to demonstrate that the work will not materially alter or affect the free-flowing characteristics of the stream and is necessary to prevent undue hardship.

The DOH would still have to obtain a Section 404 permit (federal Clean Water Act) from the federal government. A Section 404 permit provides for stream protection similar to the NSP Act to perform the bridge work. Thus, the bill effectively eliminates an unnecessary layer of bureaucracy.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 31, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 507**

SHORT TITLE: Relating to Board of Barbers and Cosmetologists.

CODE REFERENCE: West Virginia Code §30-27-4 and §30-27-6 (Amends)

The bill removes one of the two licensed cosmetologist positions on the Board and replaces that position with a representative from a privately owned beauty school licensed by the West Virginia Council for Community and Technical College Education. Additionally, the bill requires the board to offer examinations in all languages other than English, if available to the Board and requested by the applicant. Outdated language is also removed from the Bill.

EFFECTIVE DATE: July 1, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed April 1, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 553**

SHORT TITLE: Relating to deadlines for independent candidates to file for municipal elections

CODE REFERENCE: West Virginia Code §3-5-24 (Amends)

This bill provides an exception to the August 1 filing deadline for municipal or other elections not held in conjunction with regular state and county general elections. In those case the certificates must be filed not later than 90 days before the date of the election, unless otherwise provided by charter, ordinance or code.

The section is additionally amended to provide that nomination certificates for a municipal election be filed with the recorder or other official designated by charter or ordinance to perform election responsibilities.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

SENATE BILL NO. 572

SHORT TITLE: Relating to financing statements covering as-extracted collateral or timber to be cut

CODE REFERENCE: West Virginia Code §46-9-515 (Amends)

This bill amends the secured transactions part of the Uniform Commercial Code to conform §46-9-515 to §46-9-502.

Section 9-502 currently provides in part that a recorded mortgage is effective as a financing statement for fixtures, as-extracted collateral (e.g., coal) or for timber to be cut.

The companion section on time, Section 9-515, provides in part that a filed financing statement is effective for a period of five years after the date of filing, subject to certain exceptions. The exception for a mortgage as a financing statement for fixtures provides that instead of five years, it remains in effect until the mortgage is released, satisfied or effectively terminates as to the real property. Inadvertently, the mortgage exception does not apply to as-extracted collateral or timber to be cut, as provided in Section 9-502(c).

To correct this oversight, the bill adds as-extracted collateral or timber to be cut to Section 9-515 to ensure that a mortgage as a financing statement for those two items will remain in effect until it terminates.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed April 1, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 574**

SHORT TITLE: Clarifying mobile home permanently attached to real estate is not personal property under certain conditions

CODE REFERENCE: West Virginia Code §11-5-12 and §17A-3-12b (Amends)

Existing code provides that the owner of a mobile home that has been affixed to the owner's real property may apply to DMV to cancel the certificate of title, whereupon DMV would send one copy of the cancellation certificate to the owner and another copy to the clerk of the county commission for recording. This bill clarifies that a mobile home permanently attached to the real estate by the owner may not be classified as personal property if the owner has filed a canceled certificate of title with the clerk of the county commission through the application process with the DMV and the clerk has recorded the canceled certificate of title in the deed book. The bill also establishes a procedure for returning a copy of the recorded cancellation certificate to either the owner or the holder of a lien.

EFFECTIVE DATE: March 8, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 579**

SHORT TITLE: Creating Land Reuse Agency Authorization Act

CODE REFERENCE: West Virginia Code §31-18E-1, §31-18E-2, §31-18E-3, §31-18E-4, §31-18E-5, §31-18E-6, §31-18E-7, §31-18E-8, §31-18E-9, §31-18E-10, §31-18E-11, §31-18E-12, §31-18E-13, §31-18E-14, §31-18E-15, §31-18E-16, §31-18E-17 and §31-18E-18 (New)

This bill creates the West Virginia Land Reuse Agency Authorization Act. The bill authorizes any municipality, county or combination thereof (referred to as a land reuse jurisdiction) to create a land reuse agency. The bill provides broad discretion for any land reuse jurisdiction to create a land reuse agency and specify the makeup of the entity and terms of the land reuse agency necessary for operation, as long as they are not inconsistent with this article.

The land reuse agency may acquire real property according to its terms and conditions. The bill specifically allows the land reuse agency to purchase land from a municipality, accept transfers from a municipality, and accept conveyances from an urban renewal authority. The bill prohibits acquisition of land by eminent domain, acquisition of land outside the land reuse jurisdiction, or acquisition of an interest in oil, gas or minerals. If authorized by the land reuse jurisdiction, the land reuse agency may acquire an interest in property at a tax sale.

The bill creates exemptions from property taxes for property held within the land reuse agency under certain circumstances. The bill also requires the land reuse agency to keep a public list of all property held by the land reuse agency. The bill creates an expedited quiet title process for land depositories that allows the land reuse agency to file a quiet title complaint and receive a judgment within 120 days following proper notice.

The bill provides a process for dissolution of a land reuse agency. Finally, the article requires the land reuse agency to submit an annual audit to the West Virginia Housing Development Fund with copies to all jurisdictions that make up the land reuse agency.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed April 1, 2014

SENATE BILL NO. 585

SHORT TITLE: Removing unconstitutional language regarding access to rail lines

CODE REFERENCE: West Virginia Code §24-1-1 (Amends) and §24-3-3b (Repeals)

This bill removes language regarding open access to rail lines in West Virginia, which was held unconstitutional in *Association of Am. R.R. v. Public Serv. Comm'n*, 745 F. Supp. 1175 (S.D.W. Va. 1989). The bill repeals the section specifically held unconstitutional, pursuant to the commerce clause and the supremacy clause of the United States Constitution, and amends a portion of another section that referenced the unconstitutional section.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

SENATE BILL NO. 586

SHORT TITLE: Removing unconstitutional language regarding jurors and verdicts permitted in certain civil litigation

CODE REFERENCE: West Virginia Code §55-7B-6d (Repeals) and §56-6-11 (Amends)

This bill removes unconstitutional language regarding the number of jurors and types of verdicts permitted in medical malpractice cases, following the West Virginia Supreme Court of Appeals decision in Louk v. Cormier, 218 W. Va. 81, 622 S.E.2d 788 (2005).

The Court held that the section of code requiring a twelve person jury in medical malpractice cases and permitting a verdict of nine members of the jury rather than a unanimous verdict was an unconstitutional violation of constitutional separation of powers because it was in conflict with Court rules. It was not in the Legislature's power to change Court rules because the Rule-Making Clause of Article VIII, §3 of the West Virginia Constitution grants the Court the authority to promulgate rules concerning non-unanimous jury verdicts and Court rules clearly state the number of jurors permitted and the process for permitting non-unanimous verdicts.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

SENATE BILL NO. 601

SHORT TITLE: Removing unconstitutional language regarding relief in circuit court against erroneous assessments

CODE REFERENCE: West Virginia Code §11-3-25 (Amends)

This bill corrects the code in light of a Supreme Court decision in *Shenandoah Sales & Service, Inc. v. assessor of Jefferson County*, 228 W. Va. 762, 724 S.E.2d 733 (2012), which held the section unconstitutional insofar as it permitted a non-lawyer agent of an entity to appeal a decision of the Board of Equalization and Review or the Board of Assessment Appeals to the circuit court on behalf of the entity. The bill clarifies that those types of appeals must be instituted by attorneys representing the party and removes reference to an “agent.”

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 623**

SHORT TITLE: Requiring notification of certain substance abuse screening of mine personnel

CODE REFERENCE: West Virginia Code §22A-1A-1 (Amends)

This bill amends the statute relating to substance abuse testing for miners by requiring employers to clarify the duty of an employer to notify the Office of Miners' Health, Safety and Training when a miner tests positive for drugs or alcohol in accordance with the employer's substance abuse program.

EFFECTIVE DATE: March 8, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

HOUSE BILL NO. 107
(1st Extraordinary Session)

SHORT TITLE: Allowing the disposal of drill cuttings and associated drilling waste generated from well sites in commercial solid waste facilities

CODE REFERENCE: West Virginia Code §22-15-8 and §22-15-11 (Amends)

The Legislature passed this bill during the 2014 First Extraordinary Session.

The Horizontal Well Control Act of 2011 requires all drill cuttings and drilling waste from a horizontal well site to be disposed of at a properly permitted landfill, unless both the property owner and secretary of the West Virginia Department of Environmental Protection (DEP) consent to burying the waste at the drilling site.

When this additional horizontal drilling waste was directed to certain commercial solid waste landfills (landfills), it soon became apparent that certain landfills did not have sufficient capacity for the additional waste and therefore needed to either increase capacity or construct a separate cell solely for the horizontal drilling waste. Either action needed regulatory review and approval before expanding the landfill's capacity or permitting and constructing a separate cell.

This bill allows the DEP to authorize the landfills to receive horizontal drilling waste above their permitted monthly tonnage limits subject to several conditions.

First, the cuttings and waste must be placed in a separate cell dedicated solely to the horizontal drilling waste. Second, the separate cell must be constructed in accordance with applicable standards. Third, by March 8, 2014, the landfills must have obtained a certificate of need (CoN), an amended CoN, or have an application for a CoN pending before the Public Service Commission (PSC). Fourth, authorization to exceed tonnage limits only applies to landfills that applied to the DEP by December 31, 2013, for a permit modification to construct a separate cell for horizontal drilling waste in excess of monthly tonnage limits. Fifth, the landfills may not exclude or refuse to take municipal solid waste up to and including its permitted tonnage limit.

Additionally, the landfills must install devices no later than January 1, 2015, that will monitor the waste and leachate for acceptable levels of radiation. The DEP must also promulgate appropriate rules for radiation monitoring. Also, by July 1, 2015, the DEP must submit a study to the Legislature that examines the character of the leachate generated at the landfills, the technical and economical feasibility and benefits of developing landfills operated by the oil and gas industry for horizontal drilling waste, the impact of leachate on surface water and groundwater, and the viability of using horizontal drilling waste as fill for roads, brownfield development or other projects.

Finally, the bill imposes an additional \$1 per ton fee on the horizontal drilling waste to offset the DEP's cost to perform the study and help repair roads impacted by traffic associated with horizontal drilling operations.

EFFECTIVE DATE: March 14, 2014

DATE OF PASSAGE: March 14, 2014

ACTION BY GOVERNOR: Signed March 31, 2014

HOUSE BILL NO. 108
(1st Extraordinary Session)

SHORT TITLE: Sexual assault nurse examination network

CODE REFERENCE: West Virginia Code §15-9B-1 through 3 (NEW)

This bill creates a Sexual Assault Forensic Examination Commission within the Governor's Committee on Crime, Delinquency and Correction. Its purpose is to create a statewide system to facilitate and manage collection of forensic evidence with regard to sexual assault.

The bill sets forth membership on the Commission. It is to be chaired by the director of the Division of Justice and Community Service. The powers and duties of the Commission are set forth. These include: creating local sexual assault forensic examination boards, approving local plans for areas of the state, setting minimum training requirements for providers and establishing a statewide training and forensic examination system. The Commission is granted rulemaking authority to implement the provisions of the article.

A Local Sexual Assault Forensic Examination Board is required to be convened by the county prosecutor. Membership of the board is set forth in the bill. The board's duties include: identifying facilities for treatment of sexual assault victims, assessing and designating physician or nurses to conduct examinations, evaluating needs and resources, working with local government to provide transportation for examination if necessary and developing an alternative plan to provide for continuity of service should circumstances change.

EFFECTIVE DATE: June 11, 2014

DATE OF PASSAGE: March 14, 2014

ACTION BY GOVERNOR: Signed March 31, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2387**

SHORT TITLE: Relating to reasonable accommodations under the West Virginia Fair Housing Act for persons with disabilities who need assistive animals

CODE REFERENCE: West Virginia Code §5-11A-3, §5-11A-5, §5-11A-6 and §5-11A-7 (amends)

This bill amends the West Virginia Fair Housing Act to conform it with the federal Fair Housing Act with regard to assistance or support animals. The bill requires accommodations be made with regard to housing when a disabled person needs an assistance animal. In doing so, the bill prohibits a landlord from unreasonably denying a request for a reasonable accommodation or from conditioning the housing on payment of a fee or deposit. The bill provides that a disabled person may be required to submit documentation of the disability related need for the assistance animal, but prohibits a requirement that a person submit or provide access to medical records or medical providers or to provide detailed or extensive information or documentation of a person's physical or mental impairments.

The bill provides for when a person with a disability may be denied the accommodation of an assistance animal and requires that a determination that the individual characteristics of the specific assistance animal pose a direct threat of harm to others or would cause substantial physical damage to the property of others if that is the reason to deny the accommodation.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 24, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2477**

SHORT TITLE: Permitted certain auxiliary lighting on motorcycles

CODE REFERENCE: West Virginia Code §17C-15-23 (Amends)

This bill permits additional auxiliary lighting for motorcycles, including “amber and white illumination,” “standard bulb running lights” and “light-emitting diode pods and strips” as long as such auxiliary lighting is “nonblinking,” “nonflashing,” “nonoscillating,” and is “directed toward the engine and the drive train of the motorcycle.”

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 24 , 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2757**

SHORT TITLE: Private cause of action for the humane destruction of a dog

CODE REFERENCE: West Virginia Code §19-20D-1, 2 and 3 (New)

The bill creates a private cause of action seeking the humane destruction of a dog if: (1) it has attacked a person causing personal injuries requiring medical treatment in the amount of \$2,000 or (2) the dog has attacked that person and attacked another person in the past twelve months. The bill provides for the elements of the cause of action and the contents of the petition. The bill allows for attorneys fees and costs. The court must issue a written order if the dog is to be euthanized. The owner of the dog must provide proof that the dog has been euthanized. If the dog is not ordered to be humanely destroyed, the court shall dismiss the action with prejudice.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 3011**

SHORT TITLE: Removing the provision that requires an applicant to meet federal requirements concerning the production, distribution and sale of industrial hemp prior to being licensed

CODE REFERENCE: West Virginia Code § 19-12E-5,9 (Amends)

This bill amends the 2002 Industrial Hemp Development Act by removing the requirement that “a person growing industrial hemp for commercial purposes” shall have “complied with all applicable requirements of the United States department of justice, drug enforcement administration for the production, distribution and sale of industrial hemp.”

The bill also removes the inclusion of meeting DOJ/DEA requirements as part of a complete defense to prosecution for possession or cultivation of marijuana. Consistent with recent federal legislation State departments of Agriculture and colleges may grow industrial hemp for research purposes without being in violation of Federal law.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 21, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 3108**

SHORT TITLE: Relating to criminal background checks on applicants for employment by nursing homes

CODE REFERENCE: West Virginia Code §16-5C-21 (New)

The Committee Substitute prohibits a nursing home from hiring a person who has been convicted of any of the eighteen listed criminal offenses unless he or she has been granted a variance by the secretary of the Department of Health and Human Resources. The offenses listed are the same as those contained in the Medicaid Reimbursement Manual. The secretary is authorized to propose rules to allow a person to contest an initial negative determination and to implement any variance procedure required by state or federal law.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 3156**

SHORT TITLE: Granting a labor organization a privilege from being compelled to disclose any communication or information the labor organization or agent received or acquired in confidence from an employee

CODE REFERENCE: West Virginia Code §6C-2-8 (New)

This bill creates a confidential relationship between a public employee and an employee organization with respect to the public employee grievance procedure and only to the extent the communication is germane to the grievance. The confidentiality created by this bill does not extend to circuit court proceedings or any other proceedings outside of the public employees grievance process. The confidentiality also does not extend to written documents.

The bill does not preclude the employee from being required to divulge the information pursuant to other law. The bill requires the employee organization to disclose the communication if it is necessary to prevent death, substantial bodily harm, a crime, or to comply with court order. The bill also provides circumstances under which the employee organization may disclose the communication.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 26, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4003**

SHORT TITLE: Granting dual jurisdiction to counties where a student who lives in one county and attends school in another in order to enforce truancy policies

CODE REFERENCE: West Virginia Code § 18-8-2 (Amends)

The purpose of this bill is to allow jurisdiction in enforcing compulsory school attendance laws where a child attends school in a county other than his or her county of residence to be in both counties.

EFFECTIVE DATE: June 1, 2014

DATE OF PASSAGE: March 4, 2014

ACTION BY GOVERNOR: Signed March 20, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4005**

SHORT TITLE: Relating to criminal offenses for child abuse and child neglect

CODE REFERENCE: West Virginia Code §61-8D-1, §61-8D-3, §61-8D-4 and §61-8D-9 (Amends)

This bill creates new misdemeanor offenses for child abuse and child neglect. The bill adds a new definition for “gross neglect” and amends the definition for “neglect” to include an educational choice exception, a religious exception and an exception for athletic activities.

The bill creates offenses for child abuse or neglect that creates a substantial risk of bodily injury. First and second offenses are misdemeanors, while third and subsequent offenses are felonies. For persons convicted of a misdemeanor, the bill adds the additional potential penalty of parenting classes, substance abuse counseling, anger management counseling, or other appropriate services, or any combination thereof.

Any person convicted of a misdemeanor child abuse or neglect offense is not required to register on the abuse and neglect registry, may not be declared an abusive parent by reason of the conviction, and may not have their custody, visitation or parental rights automatically restricted. The bill clarifies that a felony conviction is required to have a person automatically declared an abusing parent with regard to any child who resides in the same household, pursuant to chapter forty-nine, article six.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 21, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4006**

SHORT TITLE: Relating to the possession and distribution of child pornography

CODE REFERENCE: West Virginia Code 61-8C-3 (Amends)

Current code makes it a felony to knowingly send, cause to be sent, distributes, exhibits, possesses, displays or transports any material portraying a minor engaged in sexually explicit conduct. Such offenses are punishable by a sentence of up to 2 years and a fine of up to \$2,000. The bill would include “accesses with intent to view” as a defined felony offense under this statute. The offense of “accesses with intent to view” was added to address automatic file sharing tools in which a user of the file sharing tool would inadvertently open the file, or open the file not knowing that it was a file containing child pornography.

- Penalties are based on the number of images:
 - 1) 50 or fewer images - up to two years and/or a fine up to \$2,000
 - 2) 51 to 599 images - two to ten years and/or a fine of up to \$5,000
 - 3) 600 or more images or if the images depict violence against a child or a child engaged in bestiality - five to fifteen years and/or a fine of up to \$25,000
- Regarding videos and movies - a number of images based on length:
 - 1) 5 minutes or less is equivalent to seventy-five images
 - 2) 75 images for every two minutes over five.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 24, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4039**

SHORT TITLE: Authorizing Miscellaneous Boards and Agencies to Promulgate Legislative Rules

CODE REFERENCE: West Virginia Code §64-9-1 through §64-9-17 (Amends)

This is the rules bill for miscellaneous agencies and boards. It authorizes the promulgation of rules by the Municipal Pensions Oversight Board, Real Estate Commission, State Election Commission, Real Estate Appraiser Licensing and Certification Board, West Virginia Massage Therapy Licensure Board, Treasurer's Office, Bureau of Senior Services, Agriculture, Board of Examiners for Speech-Language Pathology and Audiology, Board of Chiropractic Examiners, Board of Dental Examiners, Board of Examiners for Licensed Practical Nurses, Board of Pharmacy, State Board of Sanitarians, Board of Professional Surveyors, Board of Veterinary Medicine, and Infrastructure and Jobs Development Council.

Municipal Pensions Oversight Board

Policemen's and Firemen's Pension Disability Calculation, 211CSR1

This is a new rule. It provides that the pension secretary and the municipal treasurer are to independently determine the monthly amount awarded to a member awarded a total and temporary or a total and permanent disability. They are then to compare their calculations to ensure their accuracy. It also sets forth formulas to calculate "year one adjusted salary", "year two adjusted salary", "average adjusted salary" and "average adjusted salary times one hundred and twenty percent". The "annual salary" used to determine the monthly salary for a disability calculation is the lesser of "average adjusted salary times one hundred twenty percent" and the "three year total salary"

Per the Code, this section also provides for an additional percentage per year, for up to four years of service for active military duty or qualified military service.

Real Estate Commission

1. Requirements in Licensing Real Estate Brokers, Associate Brokers, and Salesperson and The Conduct of Brokerage Business, 174CSR1

The West Virginia Real Estate Commission seeks to modify the current legislative rule that regulates the Requirements in Licensing Real Estate Brokers, Associate Brokers, and Salesperson and The Conduct of Brokerage Business. The modification to the current rule series is specifically required under §30-40-11(f)(7). The modification to the current rule series provides that individuals who are original applicants for a broker, associate broker or salesperson license must submit to a state and national criminal history record check. The modification to the current rule also details the policies and procedures relating to the criminal history checks.

2. Fee Schedule, 174CSR2

The Real Estate Commission seeks to modify the current legislative rule that establishes their fee schedule. The modifications to current rule series:

1. Delineates the fee schedule for examinations/reexaminations provided by the Real Estate Commission and those provided by an accredited examination provider;
2. Increases the broker/associate broker license fee from \$100.00 to \$150.00 per year;
3. Increases the salesperson licence fee from \$50.00 to \$75.00 per year;
4. Increases the branch office license fee from \$100.00 to \$150.00 per year;
5. Increases the broker/associate broker renewal fee from \$100.00 to \$150.00 per year;
6. Increases the salesperson's renewal fee from \$50.00 to \$75.00 per year;
7. Increases the branch office renewal fee from \$100.00 to \$150.00 per year; and
8. Increases the returned check charge from \$20.00 to \$35.00.

State Election Commission

West Virginia Supreme Court of Appeals Public Campaign Financing Program, 146CSR5

The proposed rule amends the current legislative rule relating to the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Project. The previous rule addressed only the 2012 election, due to the pilot project status. During the 2013 legislative session, the Legislature made the project permanent and made other changes to the project. This amended rule incorporates the legislative changes and amends the rule such that it is prospective for future elections.

Real Estate Appraiser Licensing & Certification Board

1. Requirements for Licensure, 190CSR2

This rule is amended as follows:

§190-2-2. Definitions.

This section adds definitions for "Classroom hour of distance education, "National Registry of the Appraisal Subcommittee" and "Written exam."

§190-2-4. General Qualifications for Licensure or certification.

This section removes dated language and adds a requirement, effective for licenses issued after January 1, 2015, for an applicant to submit to a state and national criminal history records check. Also details the policies and procedures for the background checks.

§190-2-5. Additional Qualifications for Licensed Residential Real Estate Appraisers.

This section removes dated language and adds recognition of classroom hours of distance education. Adds recognition of degrees in Real Estate from accredited degree granting college or university approved by the association to advance collegiate schools of business, or a regional or national accreditation agency recognized by the U.S. Secretary of Education, provided that the college or university has had its curriculum reviewed and approved by the AQB.

Removes the provision where there is no time limit for an applicant to obtain education credit by adding a requirement that all qualifying education credit must be completed within five years prior to the application for an apprentice permit.

Removes a list of various appraisal courses that apply toward classroom hour credits specific to one and four unit residential properties and renumbers the remaining subsection.

Adds the requirement, effective January 1, 2015, an applicant for the Licensed Residential Real Estate Appraiser certification shall have an associates degree or higher or shall pass and complete a minimum of 30 hours of college education.

Changes the exam requirement on state regulation to successful completion of a 3 hour West Virginia law course with exam.

§192-2-6. Additional Qualifications for Certified General and Certified Residential Real Estates Appraisers.

This section makes similar changes as shown in section 5 (above) regarding classroom hours of distance education.

Changes the provision where the board could award credit toward classroom hours to teachers of appraisal courses to allowing that up to 7 hours of continuing education credit may be granted to teachers of appraisal courses.

Removes the provision where there is no time limit for an applicant to obtain education credit by adding a requirement that all qualifying education credit must be completed within five years prior to the application for an apprentice permit.

Removes a list of various appraisal courses that apply toward classroom hour credits specific to an emphasis of non-residential properties and renumbers the remaining subsection.

Changes the requirement, effective January 1, 2015, an applicant for the Certified Residential Real Estate Appraiser certification shall have Bachelors degree or higher from an accredited college or university.

Specifies that of the (current) 2,500 hours of appraisal experience for state certified residential classification not less than 100 hours shall be in non-residential assignments.

Specifies that of the (current) 3,000 hours of appraisal experience for state certified general classification not less than 100 hours shall be in residential assignments.

Adds the requirement that effective January 1, 2015, education and experience must be completed prior to taking the national exam.

Before an initial license is issued, applicant must successfully complete a 3 hour West Virginia law course with exam.

§192-2-8. Qualifications for Licensure or Certification by Reciprocity.

This section adds that for a license or certification an applicant from another jurisdiction may apply for West Virginia license or certification that is the same as the out of state certification, provided that the appraiser program of the other state is in compliance with federal law. The other state has credentialing requirements that meet or exceed those of West Virginia. Additionally the applicant must be identified on the National Registry of the Appraisal Subcommittee and conforms to AQB criteria, and completes an application approved by the board.

§192-2-10. Licensure, Certification and Other Fees.

This section increases certain fees. Application fee increases from \$125 to \$150. Temporary permit fee increases from \$150 to \$250. Certification application fee increases from \$125 to \$150.

Allows an active duty service member on active duty outside the state of West Virginia to renew without payment of renewal fees plus for six months after discharge from active duty.

1. Inactive status fee increases from \$100 to \$150.
2. Adds an apprentice application fee of \$150.
3. Changes apprentice permit fee to annual apprentice permit fee.
4. Increases a certificate of good standing from \$20 to \$25.
5. Increases the upgrade application fee from \$125 to \$150.
6. Increases the exemption from supervisory accompaniment fee from \$125 to \$150.
7. Increases the roster fee from \$25 to \$35.
8. Increases the duplicate wall certificate from \$25 to \$50.
9. Increases the duplicate pocket card from \$25 to \$50.
10. Increases the continuing education and course approval fee from \$50 to \$75.
11. Adds a duplicate renewal application fee of \$25.

§192-2-11. Qualifications for Apprentices, Apprentice Supervisors, Apprentice Permits.

This section adds the requirement that all classroom hours be completed within five years prior to the submission of an application for apprentice permit.

Adds to the current requirement that the appraisal submitted to the Board for review must be a residential appraisal that at a minimum includes the cost and sales comparison approach to value.

Requires the applicant to submit to the state and national criminal history records check.

Requires, effective July 1, 2015, as a condition of renewal, an apprentice shall

complete a 3 hour West Virginia Law exam every four years.

Adds the requirement that the supervisor shall jointly maintain experience logs with the apprentice, on a form approved by the board.

§192-2-12. Inactive Status.

Provides that an apprentice shall not be eligible for inactive status.

If the appraiser has been inactive for a period exceeding 5 years, the individual shall be required to meet all the requirements for original licensure or certificate at the time of application.

2. Renewal of Licensure or Certification, 190CSR3

The proposed rule amends the Board's requirements and makes federal changes required by January 1, 2015. The proposed rule does the following:

- defines "Classroom hour of distance education";
- makes late license renewals subject to a delinquent license fee;
- bars receipt of continuing education credit on the same topic more often than every 3 years, except for the national Uniform Standards of Professional Appraisal Practice (USPAP) course required every 2 years;
- updates the list of courses for which Board may grant continuing education credit;
- requires renewing licensees to pass a 3-hour West Virginia law course every 4 years;
- allows the Board to grant up to 7 hours of continuing education credit to a licensee who teaches a Board-approved appraisal course;
- for licensees returning from deployment outside West Virginia while on active duty with the Armed Forces, provides a 90-day grace period for completion of continuing education requirements; and
- provides that only a state certified appraiser in good standing may teach a USPAP course; and
- removes unnecessary language.

West Virginia Massage Therapy Licensure Board

Schedule of Fees, 194CSR4

The proposed rule repeals the expiration date of the fee increase that was passed in 2012.

In 2012, an emergency rule went into effect whereby the fees assessed by the Board were increased. Such increase, by the terms of the emergency rule, was set to expire on July 1, 2014. The modification removes the expiration date and thus will allow the increases that went into effect in 2012 to remain.

Treasurer's Office

1. Procedures for Deposit of Funds in the Treasurer's office By State Agencies, 112CSR4

The proposed rule repeals a current legislative rule. The current rule duplicates the provisions contained in the Treasurer's Office rule, Procedure for the Deposit of Monies with the Office By State Agencies, 112CSR4.

2. Procedure for Deposit of Monies With the office By State Agencies, 112CSR4

The proposed rule amends a current legislative rule to update it to current Code and current practices. To accomplish the update, definitions for unused terms have been removed and other definitions have been amended. In addition, it deletes language which allowed an agency to engage the services of a courier or an armored car service. The current rule allows an agency to use a night deposit at a bank of its choice. Under the proposed rule, the depository must have an authorized receipt account. In addition to methods currently in the rule, the proposed rule allows an agency to accept credit card payments on a website approved by the Treasurer. An example for the endorsement of checks has been deleted and the Treasurer is required to endorse checks in accordance with applicable federal and state law.

3. Selection of State Depositories for Disbursement, 112CSR6

The proposed rule amends a current legislative rule to update it to current Code and current practices. To accomplish the update, definitions for unused terms have been removed and other definitions have been amended. It also amends the scope of the proposed rule to make it clear those activities and entities to which the proposed rule does not apply.

4. Selection of State Depositories for Receipt Accounts, 112CSR7

The proposed rule amends a current legislative rule to update it to current Code and current practices. To accomplish the update, definitions for unused terms have been removed and other definitions have been amended. It also amends the scope of the proposed rule to make it clear those activities and entities to which the proposed rule does not apply. The proposed rule also deletes Subsection 3.2 of the current rule, which prohibited a depository from being a state depository if any employee of the Treasurer's Office or his or her spouse or minor child was an officer, director or employee of the depository or owned greater than 2% of the depository.

5. Rules for Reporting of Debt Capacity, 112CSR9

The proposed rule repeals a current legislative rule. Committee Substitute for HB2837 repealed Article 6B. Debt Capacity Advisory Division, making this rule unnecessary.

6. Reporting Debt, 112CSR10

The proposed rule repeals and replaces a current legislative rule. The following is a section by section synopsis of the proposed rule.

Section 3. Quarterly Report.

This section adds additional requirements to those required in the Code for quarterly

reports.

Section 4. Proposed Debt Issuance Report.

This section specifies the information which a spending unit must include in the report of proposed debt filed with the Treasurer.

Section 5. Report of Final Sale.

This section sets forth the information which a spending unit must include in its report of final sale. The costs and expenses incurred in the issuance of the debt which must be reported are specified.

Section 6. Debt Position Reports.

In addition to the quarterly reporting required by the statute, this section requires the Division of Debt Management to issue an annual report on the status of the debt of the State and its spending units as of June 30.

Section 7. Debt Capacity Report.

This states that the Division will issue its annual debt capacity report with the cooperation and support of the Department of Administration, the Department of Revenue and the Bureau of Employment Programs. The goal is to keep the State within an average to low range of nationally recognized debt limits.

Section 8. Debt Impact Statement.

This section states that the Division will prepare a debt impact statement at the request of the Governor or any member of the Legislature. It specifies the minimum requirements for a debt impact statement.

Section 9. Other.

This section states that the Division will post copies of its quarterly and annual reports on its website. It also states that the Treasurer may issue advisory letters, notices and opinions on new debt issuance, the condition of the state's outstanding debt and any other factor which the Treasurer determines may directly or indirectly affect the State's credit rating.

7. Procedures for Fees in Collection by Charge, Credit or Debit Card or By Electronic Payment, 112CSR12

The proposed rule amends a current legislative rule to update it to current Code and current practices. To accomplish the update, definitions for unused terms have been removed and other definitions have been amended. The proposed rule also adds a new Subsection 3.4, which allows the Treasurer to allow a spending unit to use another entity other than the Treasurer, when the Treasurer's Office determines another entity may best meet the needs of the spending unit.

The current rule requires that the amount of convenience fees must be related to the convenience of the customer. This language has been replaced by a requirement that the use of convenience fees follow the merchant rules established

by card networks.

8. Providing Services to Political Subdivisions, 112CSR13

The proposed rule amends a current legislative rule to update it to current Code and current practices. To accomplish the update, definitions for unused terms have been removed and other definitions have been amended.

Bureau of Senior Services

In-Home Care Worker Registry, 76CSR2

West Virginia Code §16-5P-15 requires the Bureau of Senior Services to create and operate an In-Home Care Registry. The purpose of the registry is to provide the public a list of available in-home care workers and their qualifications. Inclusion on the registry is voluntary but does require a criminal background check. This rule amends the existing rule in accordance with H.B. 2395 which passed during the 2013 Regular Session of the Legislature. The amendment updates terms, allows for a waiver of the initial registration fee of \$10 for the first sixty days the registration is active and specifies that access to the registry is via the Internet through the Bureau's website.

Agriculture

1. Schedule of Charges for Inspection Services: Fruit, 61CSR8B

The proposed rule amends a current legislative rule by increasing the hourly rate for GAP.GHP/Audits from \$75.00 to \$92.00 as it relates to Federal-State inspection services for fruit. A cooperative agreement between the Agricultural Marketing Service, USDA and the Department, requires that "Fees for quality audit based Federal-State programs, terminal market inspection work and imported products inspection shall in no case be less than fees established by the Federal Agency for similar work." The fee for overtime per hour has been deleted.

2. Auctioneers, 61CSR11B

The proposed rule amends a current legislative rule. The following is a section by section synopsis of the proposed amendments:

§61-11B-4. Bond Requirements.

This section has been amended to raise the amount of bond required of an apprentice auctioneer from \$5,000 to \$10,000, the same as that required of auctioneers.

§61-11B-7. Receipts.

The current rule requires an auctioneer to provide a buyer with his or her name, license and permanent address only once, no matter how many items the buyer purchased. The proposed rule requires the information be provided for each item purchased.

The current rule requires an auctioneer to maintain a copy of all receipts issued for

a minimum of six months. The proposed rule requires that they be maintained for 3 years.

§61-11B-12. Apprenticeship.

The proposed rule adds a new subsection 12.2, which requires a sponsoring auctioneer to have held an auctioneer's license for no less than 5 consecutive years and limits him or her to two apprentice auctioneers at any one time.

3. Inspection of Meat and Poultry, 61CSR16

The proposed rule amends a current legislative rule by incorporating the most recent federal regulations, dated March 1, 2013, by reference, allowing the State to retain primacy and \$800,000 annually in federal funding. The current rule references the May 21, 2013, federal regulations. Additionally, the current rule deletes certain sections of the incorporated federal regulations. The proposed rule removes several sections from this list relating to the inspection of poultry. By incorporating these sections by reference, on-farm slaughtering of poultry is exempt from federal inspection regulations for up to 20,000 birds, but no more than 3,000 birds may be kept at any one time.

Board of Examiners for Speech-Language Pathology and Audiology

1. Licensure of Speech-Language Pathology and Audiology, 29CSR1

This proposed rule modifies the current legislative rule that regulates Licensure of Speech-Language Pathology and Audiology as follows:

- Amends the "Scope";
- Updates the definitions section to include "AAA", "Provisional License" and "Telepractice Services". Also updates existing definitions.
- Separates "Qualification" section in to two sections. "Qualifications for licensure in speech-language pathology" and "Qualification for licensure in Audiology";
- "Qualification for licensure in speech-language pathology" has been amended to include a requirement that applicants must pass a jurisprudence examination developed by the Board;
- "Qualification for licensure in Audiology" is the same as "Qualification for licensure in speech-language pathology" with the exceptions listed under 4.1.e.1 and 4.1.f.;
- Updates the qualifications for a provisional license to include the requirements and process the applicants must adhere to;
- Amends the "License Renewal" section to include provisional licenses and assistants registrations and provides that these licenses expire biennially on the 31st of December, on an even year;
- "License Renewal" section now includes the Board's notification process for licensees to renew their licenses;
- Updates "Reinstatement of Expired Licenses" to include that the continuing education requirement shall include ethics training;
- Updates "Retirement of Licenses" to require a form to be completed and submitted to the Board requesting the retired license status;
- Updates the "Schedule of Fees" to provide proration of fees in six month increments;

- Increases the “Academic Clinical Practicum Requirements” from 350 clock hours up to “a minimum of 400” clock hours. This section also details how those hours are to be divided;
 - “Academic Clinical Practicum Requirements” has also been amended to include an updated list of disorders and differences applicants must demonstrate experience with;
 - “Continuing Education” has been updated to include ethics continuing education as a requirement for licensure; and
 - A new section “§29-1-15. Telepractice” has been added that includes “Definitions”, “Service Delivery Models”, “Guidelines”, “Limitations” and “Licensure Requirements.”
2. Rule Governing Speech-Language Pathology and Audiology Assistants, 29CSR2

This proposed rule modifies the current legislative rule governing speech-language pathology and audiology assistants as follows:

- Amends and updates the “Definitions” section;
 - Removed dated language;
 - Updates the “Responsibilities of the Supervisor” section to detail the amount of direct and indirect supervision each supervisor must provide; and
 - Updates the continuing education requirement for Audiology Assistants.
3. Disciplinary and Complaint Procedures for Speech-Language Pathology and Audiology, 29CSR4

This proposed rule modifies the current legislative rule that regulates the Disciplinary and Complaint Procedures for Speech-Language Pathology and Audiology as follows:

- Largely stylistic; and
 - Makes minor clarifications.
4. Code of Ethics, 29CSR5

This rule modifies the current legislative rule that regulates the Code of Ethics as follows:

- Amends the “1.1 Scope” language
- Deletes “1.5 Preamble”
- Modifies §29-5-2 section heading.

Board of Chiropractic Examiners

1. Regulation of Chiropractic Practice, 4CSR1

This current rule is modified as follows:

- Adds a definition for “Pre-Payment Plan”;
- Updates internal code references ;
- Removed old language;
- Permits continuing education credits to be completed through online courses;

- ❑ Adds language under the “Abusive Billing Practices” section to specify the regulations relating to Pre-Payment Plans; and
- ❑ Removes the “Fees” section.

2. Fees Pertaining to the Practice of Chiropractic, 4CSR6

This is a new rule relating to fees. The fee schedule was moved from Series 1 (4 CSR 1) to this new rule Series 6 (4 CSR 6). Additionally, the Board is amending its fee schedule to provide for an increase of \$30,000 of additional board revenue.

Board of Dental Examiners

1. Rules for the West Virginia Board of Dental Examiners, 5CSR1

During the 2013 Legislative Session, the Board statutorily changed its name from the “West Virginia Board of Dental Examiners” to the “West Virginia Board of Dentistry.” The modifications to this rule implement that change by changing all references to the “Board of Dental Examiners” to the “Board of Dentistry.” Additional modifications are also made regarding oral and maxillofacial radiology, as well as the procedures surrounding dental intern and residency permits and teaching permits issued by the Board.

2. Formation and Approval of Professional Limited Liability Companies, 5CSR2

During the 2013 Legislative Session, the Board statutorily changed its name from the “West Virginia Board of Dental Examiners” to the “West Virginia Board of Dentistry.” The modifications to this rule implement that change. Modifications to the procedure for forming professional limited liability dental companies are also made in this rule.

3. Fees Established by the Board, 5CSR3

Modifications to this rule all concern fees assessed by the Board to its licensees.

§5-3-6. Schedule of Fees for Dental Corporations.

The modification adds a fee of \$25.00 for dental corporations submitting an application for a name change.

§5-3-8. Schedule of Fees for Professional Limited Liability Companies.

The modification adds a fee of \$25.00 for LLCs submitting an application for a name change.

§5-3-9. Schedule of Fees for Mobile Dental Facilities and Portable Dental Units.

The modification to this section of the rule implements a \$1500 mobile dental facility permit application fee and a \$1000 fee to renew such permit. It also implements a \$500 portable dental unit application fee and a \$250 fee to renew such permit.

4. Formation and Approval of Dental Corporations; and Dental Practice Ownership, 5CSR6

This rule is modified to reflect the name change to the West Virginia Board of Dentistry. Technical modifications and modifications to the process for dental corporation name changes are also included in the rule.

5. Dental Advertising, 5CSR8

The modifications to this rule implement the name change to the West Virginia Board of Dentistry.

Also, section 4 of the rule currently requires that any announcement or advertisement of general anesthesia or parenteral conscious sedation services, which includes, but is not limited to, sleep dentistry and twilight sleep be done by a licensed dentist in compliance with the Dental Practice Act. This language is modified to require that announcements or advertisements of any sedation services be done by a licensed dentist in compliance with the Dental Practice Act.

6. Practitioner Requirements for Accessing the West Virginia Controlled Substance Monitoring Program Database, 5CSR10

This rule is amended to reflect the name change to the West Virginia Board of Dentistry.

7. Continuing Education Requirements, 5CSR11

The modifications to this rule implement the name change to the West Virginia Board of Dentistry.

8. Administration of Anesthesia by Dentists, 5CSR12

This is a new legislative rule. It is proposed by the Board in compliance with legislation enacted in 2013, which directed the Board to propose rules regarding the administration of anesthesia by dentists. The following is a synopsis of the substantive provisions.

§5-12-3. General Rules for Administering Dentist.

This section requires each dentist that administers anesthesia to patients to be licensed to practice dentistry in West Virginia. Additionally, a licensee must apply to the Board for an anesthesia permit, submit the appropriate fee, and agree to an office inspection. Once a licensee obtains an anesthesia permit, the licensee is required to maintain his or her dental facility in compliance with the applicable requirements for the anesthesia level being administered.

§5-12-4. Education.

In order to apply for an anesthesia permit, a licensee must have obtained the required education. For all levels of anesthesia, the licensee must satisfactorily prove to the Board that he or she has a valid and current Health Care Provider BLS/CPR certification. The additional education required of licensees depends on the level of anesthesia the licensee seeks to administer.

Relative Analgesia/Minimal Sedation

(Defined as “an induced controlled state of minimally depressed consciousness,

produced solely by the inhalation of a combination of nitrous oxide and oxygen, or single oral pre-medication without the addition of nitrous oxide and oxygen in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command. Dosage of oral pre-medication is not to exceed the recommended dosage limits set by the manufacturer for the treatment of anxiety, insomnia or pain.”)

To administer this level of anesthesia, a licensee must have completed a training course of instruction in the administration of relative analgesia either while in dental school or during postgraduate education. No permit is required for a licensee to administer this level of anesthesia.

Anxiolysis/Minimal Sedation (Class 2)

(Defined as “removing, eliminating or decreasing anxiety by the use of a single anxiolytic or analgesia medication that is administered in an amount consistent with the manufacturer’s current recommended dosage for the unsupervised treatment of anxiety, insomnia or pain, in conjunction with nitrous oxide and oxygen.”)

To administer this level of anesthesia, a licensee must have completed a board approved course of at least 6 hours didactic and clinical during either post-doctoral dental school or postgraduate instruction.

Conscious Sedation/Moderate Sedation (Class 3)

(Defined as “an induced controlled state of depressed consciousness, produced through the administration of nitrous oxide and oxygen and/or the administration or other agents whether enteral or parenteral, in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command.”)

To administer this level of anesthesia, a licensee must have valid and current documentation showing successful completion of ACLS (Advanced Cardiac Life Support) and/or PALS (Pediatric Advanced Life Support) course if treating pediatric patients. Additionally, the licensee must have either: (1) a certificate of completion of a comprehensive training program in conscious sedation/moderate sedation beyond the undergraduate dental curriculum that satisfies the requirements in certain ADA guidelines; or (2) a certificate of completion of an ADA accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer this level of anesthesia. However, in lieu of have the certificate described in (1) or (2), the Board may accept evidence of equivalent training or experience in conscious sedation/moderate sedation anesthesia.

General Anesthesia/Deep Conscious Sedation (Class 4)

(Defined as “an induced controlled state of unconsciousness in which the patient experiences complete loss of protective reflexes, as evidenced by the inability to independently maintain an airway, the inability to respond purposefully to physical stimulation, or the inability to respond purposefully to verbal command.”)

To administer this level of anesthesia, a licensee must have valid and current documentation showing successful completion of ACLS (Advanced Cardiac Life Support) and/or PALS (Pediatric Advanced Life Support) course if treating pediatric patients. Additionally, the licensee must have either: (1) completed an advanced training program in anesthesia and related subjects beyond the undergraduate dental curriculum that satisfies the requirements in certain ADA guidelines; or (2)

completed an ADA or AMA accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer this level of anesthesia. However, in lieu of have the certificate described in (1) or (2), the Board may accept evidence of equivalent training or experience in general anesthesia/deep conscious sedation.

§5-12-5. Equipment and Emergency Drugs.

Dentists administering any level of anesthesia are required to have the following equipment: (1) an operating room and/or operating chair large enough to adequately accommodate the patient and those providing services to the patient; (2) an operating table or chair that allows the patient to be positioned so the patient's airway may be maintained, as well as allows the patient's position to be quickly changed in case of an emergency; (3) a lighting system that permits adequate inspection and evaluation of the patient; (4) appropriate suction equipment; (5) an oxygen delivery system; (6) a nitrous oxide delivery system; (7) a recovery area that has available oxygen, adequate lighting, suction and electrical outlets; (8) appropriate blood pressure monitoring and pulse oximeter equipment; (9) emergency drug kit; and (10) an external defibrillator device (only if Class 2, 3 or 4 anesthesia is administered).

Additionally, all equipment and medication utilized in connection with the administration of anesthesia must be in accordance with the age, height and weight of the patient being treated. During the administration of anesthesia, monitoring of breathing, respiration and airway management must be done in accordance with certain ADA guidelines.

§5-12-6. Qualified Monitors.

Qualified Monitors are defined in section 2 of this rule as "an individual who by virtue of credentialing and/or training checks closely and documents the status of a patient undergoing anesthesia and observes utilized equipment." In order to act as a Qualified Monitor, an individual hold a Qualified Monitor Certificate issued by the Board. Qualified Monitor Certificates must be posted in the Qualified Monitor's facility and must be renewed annually.

To apply for a Qualified Monitor Certificate for any level of anesthesia, an individual must complete an application and pay the appropriate application fee. Additional educational requirements are required depending on the class of anesthesia the Qualified Monitor will be monitoring. For Class 2 anesthesia, current health care provider BLS/CPR certification is required. For Class 3 or Class 4 anesthesia, current health care provider BLS/CPR certification and successful completion of an AAOMS (American Association of Oral and Maxillofacial Surgeons) or AAPD (American Academy of Pediatric Dentistry) anesthesia assistants certification program is required. RNs, LPNs, Paramedics, and EMTs may apply for a Qualified Monitor Certificate by demonstrating to the Board that his or her license, certificate or registration is current.

Also, when monitoring a nitrous oxide unit, a certificate to monitor nitrous oxide must be obtained from the Board. To be eligible to monitor a nitrous oxide unit, an individual must have received training and be competent in the recognition and treatment of medical emergencies, monitoring vital signs, the operation of nitrous oxide delivery systems and the use of the sphygmomanometer and stethoscope.

To obtain this certificate, an applicant must submit the appropriate application and fee to the Board.

The following individuals are authorized to act as Qualified Monitors without obtaining a Qualified Monitor Certificate from the Board: (1) a licensed dentist acting as a dentist anesthesiologist with a permit to induce any level of anesthesia who is only administering anesthesia during a dental procedure; (2) a licensed physician anesthesiologist or CRNA who is only administering anesthesia during a dental procedure; and (3) a licensed dentist inducing relative analgesia/minimal sedation.

§5-12-7. Continuous Monitoring.

A licensee administering any level of anesthesia to a patient is required to continually monitor the patient until discharge criteria have been met.

§5-12-8. Change of Employment of Address; Change of or additional facilities.

Qualified monitors that have been certified by the Board are required to report a change of employment within 24 hours and a change of residence within 30 days.

A licensee administering Class 2 anesthesia must notify the Board if the licensee relocates or adds a facility where such anesthesia is administered, as well as complete any necessary Board requirements. The licensee must receive authorization from the Board before administering Class 2 anesthesia at the relocated or additional facility.

A licensee administering Class 3 or Class 4 anesthesia must notify the Board in writing 60 days before relocating or adding a facility where such anesthesia is administered. Upon successful inspection by the Board of the relocated or additional facility, the licensee may administer Class 3 or Class 4 anesthesia at the relocated or additional facility.

9. Expanded Duties of Dental Hygienists and Dental Assistants, 5CSR13

The modifications to this rule implement the name change to the West Virginia Board of Dentistry.

10. Mobile Dental Facilities & Portable Units, 5CSR14

This is a new legislative rule. It is proposed by the Board in compliance with legislation enacted in 2013, which directed the Board to propose rules regulating mobile dental facilities and portable dental units.

Presently, mobile dental facilities and portable dental units are unregulated. Following the filing of this new rule, various stakeholders voiced their concern on the effect the rule would have on persons and entities currently operating mobile dental facilities and portable dental units. In light of such concerns, a meeting was held where the Board and those stakeholders were able to discuss the proposed rule, as well as suggested modifications that would make the rule clearer and better achieve the statutory intent behind the rule.

Board of Examiners for Licensed Practical Nurses

1. Policies Regulating Licensure of the Licensed Practical Nurse, 10CSR2

§10-2-2. Qualifications for Licensure.

This section contains the qualifications an applicant must have to seek licensure by the Board. The modification clarifies that an applicant who completes a course of study from another US jurisdiction that has been approved by the Board is eligible for licensure.

The licensure requirements for applicants educated in a nursing program located outside the US are modified to clarify that such program must be approved by an accrediting body or other authority within the foreign jurisdiction that is charged with approving nursing programs in that jurisdiction. Also, a Board approved credentials review agency must review the foreign program to ensure the program maintains the minimum standards prevailing for programs within the US that have been approved by the Board.

Presently, applicants educated in a nursing program located outside the US must present satisfactory documentation to the Board of English language proficiency. This requirement is modified by requiring such applicants to successfully pass an English proficiency exam that includes various components, including reading, speaking, writing and listening. However, the applicant will not be required to submit to the English proficiency exam if: (1) English is the native language of the country where the applicant was educated; (2) the nursing program was taught in English; and (3) the nursing program used English textbooks.

The final modification to this section clarifies that applicants educated in a nursing program located outside the US, that have been licensed to practice in a jurisdiction outside the US, must inform the Board of the applicant's licensure status in the foreign jurisdiction and whether any disciplinary action has been previously been taken against the applicant.

§10-2-4. Licensure by Examination.

Currently, an applicant for licensure is required to submit to a criminal history background check by furnishing the Board with a full set of fingerprints. The applicants' records are then checked through the criminal identification bureau of the State Police, a similar agency within the applicant's state of residence and the United States Federal Bureau of Investigation. This rule is modified to remove the specific bureaus and agencies through which the record check is to be performed, and simply requires that the record check be performed in accordance with the policy and procedures established by the Board. The modification also specifically provides that an applicant is required to report to the Board any criminal conviction, nolo contendere plea, Alford plea, deferred judgment, or other plea arrangement agreed to by the applicant in lieu of conviction.

The modification adds the requirement that the Board conduct a psychological evaluation on all applicants that have been convicted of a sexual offense involving a minor or performing a sexual act against the will of another person. The evaluation is to be performed by a qualified, Board approved expert. If the results of the psychological evaluation identify sexual behaviors of a predatory nature, the Board is required to deny licensure to the applicant.

The final modification to this section requires applicants who have had a substance abuse disorder within the past five years to submit to a substance use disorder evaluation. Such evaluation is to be conducted by a Board approved practitioner. The practitioner must verify, prior to the Board issuing a license to the applicant, that the applicant is capable of safely practicing nursing.

§10-2-7. Licensure by Endorsement.

Currently, an applicant for licensure by endorsement is required to submit to a criminal history background check by furnishing the Board with a full set of fingerprints. The applicants' records are then checked through the criminal identification bureau of the State Police, a similar agency within the applicant's state of residence and the United States Federal Bureau of Investigation. This rule is modified to remove the specific bureaus and agencies through which the record check is to be performed, and simply requires that the record check be performed in accordance with the policy and procedures established by the Board. The modification also specifically provides that an applicant is required to report to the Board any criminal conviction, nolo contendere plea, Alford plea, deferred judgment, or other plea arrangement agreed to by the applicant in lieu of conviction.

The modification mandates the same psychological and substance use evaluation requirements for applicants applying for licensure by endorsement that were added to those applicants seeking licensure by examination. Specifically, the Board is required to conduct a psychological evaluation on all licensure by endorsement applicants that have been convicted of a sexual offense involving a minor or performing a sexual act against the will of another person. The evaluation is to be performed by a qualified, Board approved expert, and if the results of the psychological evaluation identify sexual behaviors of a predatory nature, the Board is required to deny licensure to the applicant. With respect to licensure by endorsement applicants who have had a substance abuse disorder within the past five years, the Board must require a substance use disorder evaluation prior to granting licensure by endorsement to the applicant. The evaluation is to be conducted by a Board approved practitioner, and such practitioner must verify the applicant is capable of safely practicing nursing.

This section is further modified by requiring applicants seeking licensure by endorsement provide the Board with documentation from the appropriate regulatory body of any disciplinary action taken or initiated against the applicant's professional license. The Board is required to evaluate the documentation and determine whether or not the applicant is able to safely practice nursing. Also, an applicant seeking licensure by endorsement must disclose to the Board if he or she is currently participating in an alternative to discipline program in another jurisdiction.

§10-2-9. Annual Renewal of License.

The modification to this section allows a licensee to maintain his or her license in good standing while he or she is on active duty, deployed outside WV, as a member of the Armed Forces of the US, the National Guard of WV or any other state, or any other military reserve component, as well as for six months following the licensee's discharge from active duty. For this period of time, in addition to remaining in good standing, the licensee is not required to pay dues or maintenance/renewal fees. Further, the licensee's license shall remain in good standing despite the fact the licensee fails to fulfill continuing education requirements if the circumstances

associated with the licensee's military duty prevent the licensee from obtaining the required continuing education. The licensee is required to submit a written waiver request to the Board notifying it of his or her deployment.

The modification provides the same treatment to a licensee that accompanies his or her spouse who is on active duty. In such circumstances, the licensee must submit a written waiver request to the Board informing it of his or her spouse's deployment outside the US or in any combat area.

§10-2-10. Non-Practicing Status.

This section permits a licensee to have his or her license placed on non-practicing status, and also contains the information and documentation a non-practicing licensee must submit to the Board to have his or her license reinstated to active status. Such information/documentation includes: (1) application for reinstatement; (2) verification of continuing competence; and (3) reinstatement fee. The modification to this section adds an additional requirement by requiring a non-practicing licensee seeking reinstatement to disclose to the Board if he or she is currently participating in an alternative discipline program in any other jurisdiction.

§10-2-11. Change of Name or Address, Duplicate License.

This section permits licensees to request a duplicate license if he or she changes his or her name or address. The Board is required to issue a duplicate license so long as the current licensee is returned to the Board's office and the licensee pays the required fee. However, the licensee is not required to pay the fee if the name/address change is requested at the time his or her license is renewed or reinstated. The modification also exempts licensees who do not request a duplicate license from paying the fee.

§10-2-12. Disciplinary Proceedings: Grounds for Discipline.

This section permits the Board to take disciplinary action against a licensee upon satisfactory proof that the applicant engaged in certain conduct; a non-exhaustive list of such conduct is set forth in the rule. Currently, a licensee is prohibited from using the nurse/patient relationship to exploit or influence a patient. The modification clarifies that this prohibition includes, but is not limited to, exploiting a patient for financial gain or engaging in a sexual or romantic relationship with a patient. The modification adds to the list of prohibited acts by prohibiting a licensee from engaging in conduct that violates the security of the licensure examination or the integrity of the examination results.

§10-2-14. Investigations.

Currently, when the Board is investigating conduct which is alleged to have violated the LPN practice act or accompanying rules, the Board is permitted to require a criminal history records check. To accomplish this, the licensee must provide the Board with a full set of fingerprints, which are then checked through the criminal identification bureau of the State Police, a similar agency within the applicant's state of residence and the United States Federal Bureau of Investigation. This rule is modified to remove the specific bureaus and agencies through which the record check is to be performed, and simply requires that the record check be performed in accordance with the policy and procedures established by the Board. The

modification adds the requirement that the Board conduct a psychological evaluation on all individuals that have been convicted of a sexual offense involving a minor or performing a sexual act against the will of another person. The evaluation is to be performed by a qualified, Board approved expert. If the results of the psychological evaluation identify sexual behaviors of a predatory nature, the Board is required to deny licensure.

2. Fees for Services Rendered by the Board and Supplemental Renewal Fee for the Center for Nursing, 10CSR4

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

§10-4-1

Effective July 1, 2012, the West Virginia State Treasurer's Office increased the fee imposed for all returned checks from \$10.00 to \$15.00. In line with such fee change, this rule proposed by the Board increases the insufficient funds penalty assessed to applicants and licensees from \$10.00 to \$15.00.

3. Continuing Competence, 10CSR4

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

§10-6-3

Licensees are required to complete 24 contact hours of continuing competence education and 400 clock hours of practical nursing practice within the 24 month reporting period.

Currently, the Board provides an exemption to the continuing competence and practical nursing practice requirements for licensees who are government employees working as a licensed practical nurse and assigned to duty outside the US, so long as the licensee complies with any continuing competence requirements imposed by the government/military. A licensee serving on active duty as an LPN for more than 12 months of any 24 month reporting period is exempt from continuing education and practical nursing practice requirements for the entire reporting period. A licensee serving on active duty as an LPN for more than 3 months but less than 12 months of any 24 month reporting period is required to complete 12 contact hours of continuing education and 200 clock hours of practical nursing practice. A licensee claiming this exemption is required to submit evidence of his or her service to the Board upon request.

The modification alters the exemption given to licensees serving on active duty. Specifically, the modification allows a licensee to maintain his or her license in good standing while he or she is on active duty, deployed outside WV, as a member of the Armed Forces of the US, the National Guard of WV or any other state, or any other military reserve component, as well as for six months following the licensee's discharge from active duty. For this period of time, in addition to remaining in good standing, the licensee is not required to pay dues or maintenance/renewal fees. Further, the licensee's license shall remain in good standing despite the fact the licensee fails to fulfill continuing education requirements if the circumstances associated with the licensee's military duty prevent the licensee from obtaining the

required continuing education. The licensee is required to submit a written waiver request to the Board notifying it of his or her deployment.

The modification provides the same treatment to a licensee that accompanies his or her spouse who is on active duty. In such circumstances, the licensee must submit a written waiver request to the Board informing it of his or her spouse's deployment outside the US or in any combat area.

Board of Pharmacy

1. Continuing Education for Licensure of Pharmacists, 5CSR3

The proposed rule amendment simply adds topical standards on the continuing education requirements for pharmacists, and clarifies the methods of obtaining and reporting the continuing education. The proposed amendments requires a pharmacist to complete 3 hours of "drug training and best practice prescribing of controlled substances training", which includes a number of specified topics. The amendments also provide for the creation of an electronic CPE monitor to keep track of CPE credits and a repository of information with respect to credits earned by each licensee, and clarifies the various ways in which credits can be earned for CPE.

2. Controlled Substances Monitoring, 15CSR8

The proposed rule is attempting to adjust, reduce or limit certain records compilation or records retention requirements imposed by statute and corresponding legislative rule in 15CSR8, in recognition of the limitations of the Board's electronic CSMP reporting system.

By legislation adopted during the 2012 Legislative Session, and by corresponding amendments to these same legislative rules approved during the most recently concluded legislative regular session, pharmacists and other medical services providers dispensing prescriptions for certain controlled substances are required to collect and report the full legal name, address, date of birth of the person picking up the prescription on behalf of the patient, in circumstances when the patient themselves do not pick up the prescription. If the reporter is unable to input this information to the Board of Pharmacy's central repository at the time of reporting, the Legislative Rule approved for the Board of Pharmacy during the 2013 Legislative Session provided that the information may be retained by the reporting pharmacist or dispenser in either print or electronic form until such time as otherwise directed by the Board's promulgated rule.

At the time the proposed legislative rule was issued by the Board in 2012 and 2013, the Board of Pharmacy was in the process of revising its CSMP. The old CSMP could not receive all of the information required by the statute. The Board of Pharmacy's new CSMP was updated to the ASAP 4.2 reporting format required by national standards for prescription monitoring programs and associated federal grants which had been received for the Board of Pharmacy's establishment and maintenance of its CSMP system. When the Board turned on its new CSMP, it determined that it was unable to include enough fields to include all of this detailed information for people who are picking up prescriptions on behalf of patients.

Therefore, the Board of Pharmacy is proposing to revise the record retention and

reporting requirements by amending the legislative rule, so that the reporting requirement is satisfied electronically as long as the individual's first name, last name, official government-issued photo identification card number and the card's issuing authority or jurisdiction is inputted into the Board's CSMP electronic reporting system. Investigators could then use the ID information contained in the CSMP system to access the individual's full legal name, address and date of birth.

The proposed rule revision also eliminated the reporters need to retain copies of the information in print or electronic form if it was unable to input the more complete information into the Board's CSMP system.

The Board of Pharmacy has issued an emergency rule incorporating those same changes on July 16, 2013. The emergency rule was accepted by the Secretary of State's Office. The emergency rules were not timely filed with the Legislative Rulemaking Committee, and are not currently in effect.

State Board of Sanitarians

The Practice of Public Health Sanitation, 20CSR4

This is an amendment to an existing rule regarding the standards for regulation of public health sanitarians. The changes to the rule relate only to the required examination necessary for a designation as a registered sanitarian. The test currently administered is the Professional Examination Board exam entitled "Registration of Sanitarians Environmental Health Proficiency Examination. That exam is being discontinued. To meet the statutory requirement that registered sanitarians receive an annual exam, the Bureau for Public Health is substituting in its place the National Environmental Health Association exam entitled "Registered Environmental Health Specialist/Registered Sanitarian Exam. The provisions of the amended rule provide for a grandfathering clause to cover persons currently regulated by having achieved a passing score on the prior exam.

Board of Professional Surveyors

Examination and Licensing of Professional Surveyors in West Virginia, 23CSR1

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

§23-1-2. Definitions.

The modifications made to the definitions section of the rule were technical and grammatical in nature, including changing the term "exam" to "examination" and the word "cannot" to the phrase "is not permitted to."

§23-1-3. Application and Qualification for Licensure and Certification.

The modification clarifies that each application for licensure must be accompanied by an application fee. Additionally, rather than requiring an applicant to submit a statement of experience, the modification requires an applicant to submit an experience verification.

The modification also adds a subsection titled "Military Education and Experience."

Under this section, in conformity with WV Code 30-13A-1, veterans may submit evidence of surveying experience that may qualify for the licensure experience requirement.

Finally, this section is modified to update outdated references to code sections.

§23-1-4. Examination for Licensure and Certification.

Only technical modifications were made to this section.

§23-1-5. Survey Certificates and License.

Only technical modifications were made to this section.

§23-1-6. Endorsements and Specialized Fields of Practice.

No modifications were made to this section.

Board of Veterinary Medicine

1. Registration of Veterinary Technicians, 26CSR3

The West Virginia Board of Veterinary Medicine seeks to modify the current legislative rule that regulates the registration of veterinary technicians. The modifications to the current rule series would allow veterinary technician's to acquire their required continuing education credits via webinar.

The rule is amended as follows:

§26-3-14. Continuing Education.

This section has been amended to allow veterinary technicians to acquire their required continuing education credits via webinar.

2. Certified Animal Euthanasia Technicians, 26CSR5

The modifications to this rule provide as follows:

- That continuing education requirements may be achieved by either in class learning or a webinar based class; and
- Adds language permitting the West Virginia Board of Veterinary Medicine to grant continuing education hardship extensions to certified animal euthanasia technicians that were prevented from completing their continuing education requirements due to either a verified medical or military emergency.

§26-5-11. Continuing education requirement.

This section provides that continuing education requirements may be achieved by either in class learning or a webinar based class and adds language permitting the West Virginia Board of Veterinary Medicine to grant continuing education hardship extensions to certified animal euthanasia technicians that were prevented from completing their continuing education requirements due to either a verified medical

or military emergency.

3. Schedule of Fees, 26CSR6

The modifications to the current rule series adds language to comport with HB 4037 from the 2012 legislative session. The added language waives fees for licensing, registration, certification and renewals for a military veteran and their accompanying spouse during the military veterans deployment and for the first year after returning from qualified active duty. Additionally, the fee for inspection of a veterinary facility solely owned by a military veteran and/or their accompanying spouse will be waived for the first year upon return from qualified active duty.

Infrastructure and Jobs Development Council

The proposed rule amends a current legislative rule. Appendix A, which contains 2000 U.S. Census Bureau census tract information, is deleted from the proposed rule. Instead, the Council will use the American Community Survey which contains the median household income information and is updated more frequently. Many federal agencies are using the Survey for determining project eligibility. The proposed rule also allows the Council to update the average customer use statistics annually, rather than using a 4,000 gallon per month standard.

EFFECTIVE DATE: March 8, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 26, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4067**

SHORT TITLE: Authorizing the Department of Military Affairs and Public Safety to Promulgate Legislative Rules

CODE REFERENCE: West Virginia Code §64-6-1 through §64-6-4 (Amends)

This is the rules bill for the Department of Military Affairs and Public Safety. It authorizes the State Fire Marshal, the Fire Commission, the Regional Jail and Correctional Facility Authority to promulgate the following legislative rules:

State Fire Marshal

Certification of Electrical Inspectors, 103CSR1

The current rule requires professional liability insurance (errors and omissions) in the amount of not less than \$250,000. The proposed amendments would increase this amount to \$1 million, and require electrical inspectors to have general liability insurance coverage of at least \$750,000 in order to renew their certifications. Further, they must show proof of having passed the certification tests applicable to their classifications of licensure.

Continuing education requirements are increased from 3 units every 3 years to 14 units annually. If a certification has been expired for 3 years or less, the inspector must submit a renewal application, along with proof of having earned the required continuing education credits for the period of expired certification and the last certified period. If the certification has been expired for more than 3 years, the applicant must submit a new application and the late fee for 3 years, with proof that he or she has met all the application requirements, and has passed the certification tests within the last 3 years.

The certification fee is increased from \$50.00 to \$75.00. A new late renewal fee is established at \$50.00 per year for expired certifications.

The requirement that a certified electrical inspector annually submit to the State Fire Marshal a copy of his or her schedule is removed from the rule.

Provisions on hearing procedures for appeals are removed from the rule, and replaced with a reference to 87 CSR 9, Contested Case Hearing Procedures for State Fire Commission.

Fire Commission

1. State Fire Code, 87CSR1

This rule series completely replaces the current rule series. The current rule series, considered by the Commission to be confusing, is redrafted to adopt the National Fire Protection Association (NFPA) 1, Fire Code (2012) (hereinafter referred to as "the NFPA 1"), with specifically designated

exceptions and additions. The redrafted rule series is substantially similar to the current rule. It does, however, include the following additions:

- Clarifies the requirements for smoke detectors; (§ 2.2.d.);
- Requires fire alarms in mercantile occupancies with sales areas over 3000 square feet; (§ 2.2.d.);
- Provides clarification that the sale of fireworks to West Virginia residents is unlawful and may not be sold to anyone who does not possess a wholesale license; (§ 2.2.o);
- Requires hotels and motels with more than 2 stories and without direct outdoor exits for guest rooms to have a fire alarm system with 24 hour supervision; (§ 2.2.d.)
- Completely updates provisions regulating the use of explosives (§ 2.2.q.); and
- Updates the fire incident reporting provisions (§ 3).

2. Certification of Home Inspectors, 87CSR5

The Fire Commission has amended a current rule relating to the certification of home inspectors to add the following to the rule:

- A requirement that applicants for home inspector certification provide fingerprints for examination by the West Virginia State Police Criminal Investigation Bureau and the Federal Bureau of Investigation, as required by W. Va. Code. The costs of fingerprinting and fingerprint analysis will be paid by the applicant. (Subdivision 4.1.e.)
- Clarifications in the application procedure that the applicant submit the appropriate application fee, and that any applicant who has been denied a license may request a hearing before the State Fire Commission. (Section 5.)
- Requirements related to renewing an expired license; specifically, if a certification has been expired for 3 years or less, the inspector must submit a renewal application, along with proof of having earned the required continuing education credits for the period of expired certification and the last certified period. If the certification has been expired for more than 3 years, the applicant must submit a new application and the late fee for 3 years, with proof that he or she has met all the application requirements, and has passed the certification tests within the last 3 years. (Subsection 6.3.)
- An increase in the certification fee from \$100.00 to \$125.00, and a new late renewal fee of \$50.00 per year for expired certifications. (Section 7.)
- A list of prohibited acts that may result in the Fire Marshal's refusal to grant a certification or the suspension or revocation of a certification.

(Subsection 8.2.)

- The removal of an exclusion for the reporting of pests such as wood damaging organisms, rodents or insects. (Subdivision 13.1.o.)
- Requirements that a home inspector report on the presence or absence of carbon monoxide detectors, and recommend the proper installation of smoke detectors and carbon monoxide detectors in accordance with current National Fire Protection Association (NFPA) standards, to comply with W. Va. Code. (Subsection 18.5.)
- A clarification that home inspectors are not required to ignite or extinguish pilot lights. (Subdivision 19.5.c.)
- A requirement that a certified home inspector keep a current address and phone number on record with the State Fire Marshal. (Subsection 24.5)

The following new sections are also added to the rule:

- Section 27 - Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Certification of Home Inspectors;
- Section 28 - Disposition of Complaints;
- Section 29 - Appeal of Denial of Certification; and
- Section 30 - Hearing Procedure.

Regional Jail and Correctional Facility Authority

Criteria and Procedures for Determination of Projected Cost Per day for Inmates Incarcerated in Regional Jails Operated by the Authority, 94CSR7

This current legislative rule gives the Regional Jail Authority Board the power to evaluate the per diem charged to counties and to reduce it, if possible.

Section 2 in the rule addresses the calculation of the projected cost per inmate day and is the only section amended. The current rule states that the cost per inmate day is calculated based on the previous fiscal year. The amendments will allow the Regional Jail Authority Board to reduce the cost per inmate day based on other revenues, cash reserves, and cost efficiency efforts.

Governor's Committee on Crime, Delinquency and Correction

Law Enforcement Training and Certification Standards, 149CSR2

This rule establishes law enforcement training and certification standards.

The definition of "law enforcement officer" is amended to include persons employed by the Public Service Commission as motor carrier inspectors and weight enforcement officers, and persons employed as resort area rangers

at resort area districts.

Currently, there is one class of instructor. The rule is amended to create two classes of Law Enforcement Instructors. Level I qualifications remain the same as the current qualifications for a Law Enforcement Instructor. Level II instructors will have additional requirements as follows:

- 7 years of experience as a certified police officer;
- 4 years experience as a Level I instructor;
- Successful completion of an approved instructor/training course in the subject matter requested within the previous 5 years; and
- Approval of the Law Enforcement Subcommittee of the Governor's Committee.

To maintain certification, Level II instructors shall instruct at least 8 hours in an a Subcommittee certified instructor level program every 24 months from the date of their original certifications. Level II instructors placed on inactive status by the Subcommittee must, within 24 months of becoming inactive, to teach 8 hours in a Subcommittee approved instructor program under the direct supervision of a certified Level II instructor.

The proposed rule states that the standards set forth are to be considered minimum standards and do not prohibit a law enforcement agency from establishing more stringent qualification standards as an agency policy.

When a law enforcement officer separates from a West Virginia law enforcement agency, the chief of that agency is required to notify the Subcommittee of the separation. The rule adds a reference to the Law Enforcement Professional Standards Information System (LEPSIS) to which a law-enforcement agency may electronically report a separation from employment.

The rule eliminates the three person review board and provides that the Chair of the Subcommittee shall review applications for reactivation. The Chair may grant the applicant temporary reactivation pending approval of the Subcommittee, and must notify the Subcommittee of his or her actions and decisions.

EFFECTIVE DATE:	March 5, 2014
DATE OF PASSAGE:	March 5, 2014
ACTION BY GOVERNOR:	Signed March 21, 2014

HOUSE BILL NO. 4135

SHORT TITLE: Designating the first Thursday in May the West Virginia Day of Prayer

CODE REFERENCE: West Virginia Code §2-2-1a (Amend)

The bill designates the first Thursday in May to be the West Virginia Day of Prayer, which directly coincides with the National Day of Prayer. Like the other special memorial days mentioned in §2-2-1a, the Governor must issue an annual proclamation.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 21, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4139**

SHORT TITLE: Restricting parental rights of child custody and visitation when the child was conceived as a result of a sexual assault or sexual abuse

CODE REFERENCE: West Virginia Code §48-9-209a (New)

This bill provides that a person convicted of a sexual assault offense or sexual abuse of a minor where the crime resulted in the conception of a child is not eligible to gain custody of the child. The bill allows the court to permit parenting time by the convicted person only if it finds it is in the best interest of the child, the arrangement adequately protects the child and the victim, and the victim of the sexual crime consents.

The bill creates an exception for a couple that, after the conviction, chose to cohabit and establish a mutual custodial environment. Despite this, if the couple later divorces, the conviction carries a rebuttable presumption that the person so convicted should not gain custodial responsibility or parenting time unless the court finds it is in the best interest of the child, the arrangement adequately protects the child and the victim, and the victim of the sexual crime consents.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 24, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4147**

SHORT TITLE: Relating to emergency preparedness

CODE REFERENCE: West Virginia Code §15-5-1, §15-5-6, §46A-6J-1, §46A-6J-2, §46A-6J-3 and §46A-6J-4 (Amends and Reenacts)

Under current law, a declaration of a state of emergency may be proclaimed the Governor, or by the Legislature, by a concurrent resolution, upon a finding that an attack upon the United States has occurred or is anticipated in the immediate future, or that a natural or man-made disaster of major proportions has actually occurred or is imminent within the state and that the safety and welfare of the inhabitants of this state require an invocation of specifically enumerated emergency powers. Additionally, anti-gouging provisions of the Consumer Credit and Protection Act become operative upon a declaration of a state of emergency.

The bill characterizes the period prior to an imminent disruption of services or public order as a “state of preparedness” and then refers to the phrase concurrently with “state of emergency” throughout the bill. It also clarifies the events in which the state of preparedness or a state of emergency may occur to include the existence or imminence of a large-scale threat beyond local control. It adds the phrase “state of preparedness” to the price gouging provisions of the Consumer Credit and Protection Act, but, makes the price gouging provisions during a state of preparedness limited to those items or services set out in the governor’s proclamation.

EFFECTIVE DATE: March 8, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 21, 2014

HOUSE BILL NO. 4186

SHORT TITLE: Relating to the procedures for issuing a concealed
weapon license

CODE REFERENCE: West Virginia Code §61-7-4 (Amends and
Reenacts)

This bill adds certain provisions to the background check requirements which must be satisfied before a conceal and carry permit may be issued to an applicant. These further modifications and clarifications were required by the ATF before it would certify West Virginia's background requirements for a conceal and carry permit were sufficient to satisfy the state's request to be granted status as a "Brady Exemption state." This would allow gun dealers to prospectively accept a WV conceal and carry permit as proof that the holder had satisfied all NIC background check requirements.

EFFECTIVE DATE: June 3, 2014

DATE OF PASSAGE: March 6, 2014

ACTION BY GOVERNOR: Signed March 26, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4204**

SHORT TITLE: Relating to the nonrenewal or cancellation of property insurance coverage policies in force for at least four years

CODE REFERENCE: West Virginia Code §33-17A-4 (Amends)

This bill would prohibit insurers from cancelling or denying renewal of property insurance policies in two specific situations.

Under this bill, property insurance policies “in force for at least four years” may not be cancelled or denied renewal “solely as a result” of:

(1) First-party property damage claim within the previous 36 months arising from “wind, hail, lightning, wildfire, snow or ice...”

or

(2) First-party property damage claims within the previous 12 months, “both of which arose from claims solely due to a state of emergency for the county in which the insured property is located...”

Each prohibition contains an exception if “the insurer has evidence that the insured unreasonably failed to maintain the property and that failure...contributed to the loss.”

EFFECTIVE DATE: March 8, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 24, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4208**

SHORT TITLE: Banning synthetic hallucinogens

CODE REFERENCE: West Virginia Code §60A-1-101; §60A-2-204;
§60A-2-206; §60A-2-208; §60A-2-210 and
§60A-2-212 (Amends and Reenacts)

This bill updates the state drug schedule for certain controlled substances. The bill also includes updates, based on recommendations from the state police and board of pharmacy, to the scheduling of synthetic hallucinogens (Bath Salts and Synthetic Cannabinoids). The bill also makes Tramadol a schedule IV controlled substance.

Lastly, the bill keeps hydrocodone products that contain non-controlled active ingredients as schedule III, but limits refills to that applicable to schedule II.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed April 1, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO 4210.**

SHORT TITLE: Juvenile sentencing reform

CODE REFERENCE: West Virginia Code § 61-11-23; 61-12-13b
(New)

The bill prohibits any sentence of life imprisonment without the possibility of parole on a person who (1) Is convicted of an offense punishable by life imprisonment; and (2) Was less than eighteen years of age at the time the offense was committed.

- These persons will still be subject to being sentenced to life imprisonment, with the possibility of parole. Current law will govern the minimum years that must be served before the person sentenced after being transferred to adult court is eligible for parole, except that no sentence may prevent the person from becoming eligible for parole after 15 years.
- The bill provides a list of factors to be considered by a court when sentencing juveniles transferred to adult court convicted of a felony after the effective date of the bill. It also provides the factors that must be considered by any comprehensive mental health evaluation of the these persons.
- The bill provides a list of factors to be considered by the West Virginia Board of Parole when sentencing juveniles transferred to adult court and convicted of a felony when these persons have served the minimum sentence and have become eligible for parole. The Board must adopt rules and guidelines to do so that are consistent with existing case law.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4220**

SHORT TITLE: Relating to waiver of jury trial in claims arising from consumer transactions

CODE REFERENCE: West Virginia Code §16-5C-21 (New)

This bill requires an agreement with a nursing home, entered into on or after January 1, 2015, that includes a waiver of jury trial to have the waiver of jury trial on a separate and standalone document. A court may still determine the contract is enforceable, unenforceable, conscionable or unconscionable in whole or in part.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4237**

SHORT TITLE: Prohibiting the sale, distribution and use of electronic cigarettes, vapor products and other alternative nicotine products to persons under the age of eighteen

CODE REFERENCE: West Virginia Code §16-9A-2, §16-9A-3, §16-9A-4, §16-9A-7 and §16-9A-8 (Amends)

This bill defines “tobacco product” or “tobacco-derived product” to include alternative nicotine products and vapor products, such as e-cigarettes. The purpose of defining these terms is to preclude the sale to persons under the age of eighteen and to preclude the possession and use of those products in a manner identical to tobacco products.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4284**

SHORT TITLE: Pregnant Workers' Fairness Act

CODE REFERENCE: West Virginia Code §5-11B-1 through 7 (New)

This bill creates the Pregnant Workers Fairness Act (PWFA), which is intended to eliminate discrimination and promote women's health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy, childbirth, or a related medical condition.

The PWFA makes it unlawful to:

- Refuse to "make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a job applicant or employee" without demonstrating "undue hardship" to the employer;
- Deny employment opportunities to a woman in order to avoid making required accommodations;
- Force a woman to accept an accommodation she does not want; and
- Force a woman to take leave "under any leave law or policy if another reasonable accommodation can be provided" instead.

In certain circumstances, the West Virginia Human Rights Act (WVHRA) may offer some protection to a woman who is experiencing a medically complicated pregnancy. See *Haynes v. Rhone-Poulenc, Inc.*, 206 W. Va. 18, 521 S.E.2d 331 (1999). A woman who is pregnant and is experiencing complications resulting from the pregnancy must qualify as "disabled" under the WVHRA, before she would be entitled to be reasonably accommodated by her employer. The WVHRA defines "disability" as a physical disability that substantially limits one or more major life activities, a record of such an impairment, or a situation where an employee is regarded as having such an impairment. Cases are decided on a case-by-case basis.

West Virginia does not have a state law that specifically requires private employers to offer pregnancy leave. However, employers covered by the federal Pregnancy Discrimination Act (PDA) must provide the same leave benefits to women affected by pregnancy that are provided to employees with temporary disabilities (29 CFR 1604.10). The leave could be with or without pay, or not provided at all, as long as all employees are treated the same in their requests for temporary leave. The PDA covers private employers with 15 or more employees, and all state and governmental agencies. West Virginia employers with 50 or more employees are subject to the provisions of the federal Family and Medical Leave Act (FMLA).

The West Virginia Parental Leave Act (PLA) provides permanent employees of the state government and county boards of education with a total of twelve weeks of unpaid family leave to care for a newborn or adopted child, or in order to care for

a child, spouse, parent or dependent who has a serious health condition. *W. Va. Code § 21-5D-1 et. seq.* The PLA does not apply to private employers. However, private employers with 50 or more employees are subject to the federal FMLA. Private employers with fewer than 50 employees are free to provide leave time or not at their own discretion.

EFFECTIVE DATE: June 3, 2014

DATE OF PASSAGE: March 6, 2014

ACTION BY GOVERNOR: Signed March 21, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4287**

SHORT TITLE: Administration of health maintenance tasks

CODE REFERENCE: West Virginia Code §16-5O-2, 3, 5, 6, 7, 8, 10
and 12 (Amends)

The purpose of this bill is to update the administration of medication and performance of health maintenance tasks by unlicensed personnel to add tracheostomy and ventilator care to the list of tasks they may perform.

EFFECTIVE DATE: June 14, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 26, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4294**

SHORT TITLE: Establishing standards for court reporters and entities that provide court reporting services

CODE REFERENCE: West Virginia Code §47-27-1 through 4 (New)

This bill establishes standards for court reporters, including:

- clarifying who may serve as a court reporter;
- prohibiting entering into agreements which would limit a party or lawyer from selecting and using a court reporter of his or her own choosing; and
- setting forth specific requirements regarding the format and cost of transcripts produced by court reporters.

The bill sets forth prohibited conduct by a court reporter. The article does not apply, in part, to official court reporters or their substitutes appointed by judges, reporters of government proceedings not relating to a legal proceeding, workers' compensation proceedings or legal proceedings recorded with sound-and-visual devices.

There are civil penalties for violations of the article which are not less than \$2,500 for a willful violation, and up to \$5,000 for each violation if repeated and willful. No more than one civil penalty may be assessed in any one matter pending before the court.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

HOUSE BILL NO. 4302

SHORT TITLE: Relating to elections for public school purposes

CODE REFERENCE: West Virginia Code §11-8-17, §13-1-13 and §18-9-2 (Amends)

This bill makes the county commission the official board of canvassers for special elections relating to school levies and bonds. The board of education calling the election is still required to provide poll workers and election materials, but the actual canvass of the votes and the assistant canvassers will all be provided by the county commission.

EFFECTIVE DATE: June 3, 2014

DATE OF PASSAGE: March 6, 2014

ACTION BY GOVERNOR: Signed March 26, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4304**

SHORT TITLE: Providing rules for motor vehicles passing bicycles on roadways

CODE REFERENCE: West Virginia Code §17C-7-3, §17C-11-5 and §17C-11-7 (Amends)

This bill updates language related to bicycles on roadways in order to be more in line with other states. The bill permits bicyclists to ride on a roadway in the bicycle lane or, if there is no bicycle lane, as close as practicable to the right-hand edge of the roadway. The bill creates exceptions to that rule for when a bicyclist is passing, making a left turn, or when necessary for safety reasons. A further exception is made that permits a bicycle to ride on the left side of multi-lane one-way roads in order to safely prepare for a left turn.

The bill also removes current requirements that all bicycles be equipped with a bell and that would require bicyclists to ride on a path instead of on the road.

Finally, the bill requires vehicles that are passing bicycles to pass at least three feet away from the bicycle, at a careful and reduced speed, and to return to the right after reaching a safe distance beyond the bicycle. Failure to do so is a misdemeanor offense with a fine of up to \$100 for a first offense, a fine of up to \$200 for a second offense within a year, and a fine of up to \$500 for a third or subsequent offense.

EFFECTIVE DATE: June 2, 2014

DATE OF PASSAGE: March 5, 2014

ACTION BY GOVERNOR: Signed March 21, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4335**

SHORT TITLE: Relating to a child's right to nurse

CODE REFERENCE: West Virginia Code §16-1-19 (New)

The bill would create a new section providing that a mother may breast feed a child in any location open to the public.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4339**

SHORT TITLE: Ensuring that moneys from the Solid Waste Authority Closure Cost Assistance Fund are available to facilitate the closure of the Elkins-Randolph County Landfill and the Webster County Landfill

CODE REFERENCE: West Virginia Code §22-16-11 and §22-16-12 (Amends)

This bill amends the Solid Waste Landfill Closure Assistance Program (Closure Assistance Program) to provide that the Elkins-Randolph County Landfill and the Webster County Landfill are eligible for closure-assistance funds to complete closure activities upon the filing of an appropriate application. The bill also amends the Closure Assistance Program to make the Prichard landfill in Wayne County eligible for closure-assistance funds to complete post-closure maintenance and monitoring.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 31, 2014

HOUSE BILL NO. 4346

SHORT TITLE: Establishing separate standards of performance for carbon dioxide emissions

CODE REFERENCE: West Virginia Code §22-5-20 (New)

This bill creates a new section in the West Virginia Code to establish separate regulatory standards for carbon dioxide emissions from existing fossil fuel power generation plants. These standards are to be integrated into the state's plan to comply with section 111 of the Clean Air Act. The intention of the bill is to create flexibility and require consideration of additional factors in setting the emission standards.

The bill provides that existing coal-fired power generating units and existing gas-fired power generating units will have to meet standards particular to each respective class. In setting these standards, the West Virginia Department of Environmental Protection must consider consumer impacts, health and environmental impacts, energy demand, market factors, physical restrictions, overall cost, anticipated useful life of the plants, economic impacts of closure, site-specific factors affecting the reasonableness of the standards, and plant age and process factors.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed April 1, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4347**

SHORT TITLE: Relating to affirmative defenses against mechanics' liens

CODE REFERENCE: West Virginia Code §38-2-21 and §38-2-34 (Amends)

This bill is designed to protect homeowners facing mechanics' liens for building supplies and materials for which they have already paid contractors.

The bill amends current law to create an affirmative defense to a mechanics' lien in situations where an owner is not indebted to the contractor or is indebted to the contractor for less than the amount of the lien sought to be perfected. In the latter situation, the affirmative defense applies to the extent of the owner's prior payments to the contractor seeking to perfect the mechanics' lien. In other words, the owner has an affirmative defense up to all payments made to the contractor.

Additionally, the affirmative defense applies only to work on existing single-family dwellings, on dwellings used or intended as the owner's primary residence, and on single-family, owner-occupied dwellings. The defense does not, however, apply to a developer or builder of multiple residences, except for the residence that is occupied as the primary residence of the developer or builder.

The bill also defines dwelling, residence and outbuilding to clarify the scope of the application of the affirmative defense.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed April 1, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4349**

SHORT TITLE: Clarifying retirement dependent child scholarship and burial benefits under a Qualified Domestic Relations Order

CODE REFERENCE: West Virginia Code §5-10-27, 7-14D-20, 7-14D-21, 8-22A-22, 8-22A-23, 15-2-33, 15-2A-12, 16-5V-25, 16-5V-26 (Amends)

This bill would clarify that various burial and dependent-child scholarship benefits, awarded as retirement benefits on behalf of deceased uniformed service officers, are neither subject to division nor payable to an alternate payee under a Qualified Domestic Relations Order.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 31, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4360**

SHORT TITLE: Relating to consumer credit protection

CODE REFERENCE: West Virginia Code §46A-2-128 (Amends)

This bill adds collecting a debt after the statute of limitations has expired without notifying the consumer that they cannot be sued to the list of conduct that is deemed an unfair or unconscionable means to collect or attempt to collect any claim by a debt collector. The bill requires a specific statement notifying the consumer that the debt holder cannot sue the consumer and whether the debt holder can still report the debt to a credit reporting agency as unpaid, pursuant to federal law.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4363**

SHORT TITLE: Creating an informal dispute resolution process available to behavioral health providers

CODE REFERENCE: West Virginia Code §27-1A-12 (New)

The bill creates an informal dispute resolution process if a behavioral health care provider is adversely affected by an order or citation of a deficient practice issued by the secretary of the Department of Health and Human Resources.

A process is set forth for the dispute resolution including notice, a plan of correction, a means for selecting independent reviewers, timelines for issuance of a decision and the powers and duties of the secretary in the dispute resolution process. There are also provisions regarding payment for the independent review. The bill provides that use of this informal dispute resolution process does not preclude a provider's ability to seek administrative or judicial review.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 26, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4402**

SHORT TITLE: Providing a procedure for the conditional discharge for first offense underage purchase, consumption, sale, service or possession of alcoholic liquor

CODE REFERENCE: West Virginia Code §60-6-26 (New)

This bill creates a mechanism where persons aged 18-20 charged with first offense underage drinking or using false identification to obtain alcohol may be placed on probation and, upon successful completion of probation, may have the charges dismissed and their record expunged after a hearing. The person is still required to pay court costs associated with the charge.

EFFECTIVE DATE: June 2, 2014

DATE OF PASSAGE: March 5, 2014

ACTION BY GOVERNOR: Signed March 26, 2014

HOUSE BILL NO. 4421

SHORT TITLE: Allowing the lottery to pay prizes utilizing other payment methods in addition to checks

CODE REFERENCE: West Virginia Code §29-22-30 (New)

The bill authorizes the lottery to pay a prize by check, electronic funds transfer or any other method of payment acceptable to the Federal Reserve System.

EFFECTIVE DATE: June 1, 2014

DATE OF PASSAGE: March 4, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

HOUSE BILL NO. 4431

SHORT TITLE: Clarifying that persons who possess firearms, hunting dogs or other indicia of hunting do not necessarily need to have a hunting license

CODE REFERENCE: West Virginia Code §20-2-37 (Amends and Reenacts)

This bill relates to DNR's enforcement of hunting or fishing without a proper license. While investigating a matter, the office may require a person to exhibit for inspection any lawful license they may possess, and present all wildlife, paraphernalia, implement or devices which they have in their possession. The mere possession of a firearm does not, in and of itself, indicate that a person has been hunting, fishing, trapping or taking wildlife, but may be considered along with other evidence as to whether a person has been hunting fishing, trapping or otherwise taking wildlife.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4432**

SHORT TITLE: Adopting Principle Based Reserving as the method by which life insurance company reserves are calculated

CODE REFERENCE: West Virginia Code §33-7-9 and 33-13-30 (Amends)

This bill calls for phase-in adoption of “Principle Based Reserving” for calculation of reserves held by insurers in anticipation of potential claims against life insurance policies, as well as accident and health policies and “deposit-type contracts.”

Currently, such reserve calculations are governed by the Standard Valuation Law (W.Va. Code §33-7-9, unchanged since 2004), which this bill would amend pursuant to standards adopted by the National Association of Insurance Commissioners (NAIC).

Generally speaking, “Principle Based Reserving” aims to account for varied and emerging insurance product lines, premiums, risks, and claims data so as to permit a more flexible and accurate approach to reserve calculations. These calculations would be governed by a “valuation manual” adopted by the Insurance Commissioner; this manual would not take effect, and thus Principle Based Reserving would not begin, until after at least 42 states have adopted Principle Based Reserving (representing 75 percent of total applicable U.S. premiums).

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed April 1, 2014

HOUSE BILL NO. 4437

SHORT TITLE: Relating to the Division of Juvenile Services

CODE REFERENCE: West Virginia Code §49-5E-6a, 6b (New)

The purpose of this bill is to allow the Division of Juvenile Services to maintain trustee bank accounts, earning, and property for its residents in the same manner as accounts are handled by the Division of Corrections. It also creates a resident benefit fund for the benefit and welfare of the residents domiciled in any state juvenile facility and for the benefit of the victims.

The bill creates special revenue accounts in the Treasurer's office for the benefit accounts.

EFFECTIVE DATE: June 2, 2014

DATE OF PASSAGE: March 5, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

HOUSE BILL NO. 4445

SHORT TITLE: Modifying the definition of "battery" and "domestic battery"

CODE REFERENCE: West Virginia Code §61-2-9 and §61-2-28 (Amends and Reenacts)

This bill amends the definition of the offense of battery and domestic battery to allow a conviction of battery under § 61-2-9 or domestic battery under § 61-2-28, to be considered as a "misdemeanor crime of domestic violence" for the purposes of the federal prohibition on the possession of a firearm contained in 18 U.S.C. § 922(g)(9).

The bill is in response to the holding of *U.S. v. White*, 606 F.3d 144 (4th Cir. 2010). The 4th Circuit Court of Appeals held that a conviction under Virginia's battery statute, was not, on its face, a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9), because the Virginia statute was not an offense that had, as an element, the use or attempted use of physical force.

The bill amends the elements of assault and battery and domestic assault and battery as follows:

Battery means to "unlawfully and intentionally makes physical contact with force capable of causing physical pain or injury to the person of another or unlawfully and intentionally causes physical pain or injury to another person."

Assault means to "unlawfully attempts to use physical force capable of causing physical pain or injury to the person of another or unlawfully commits an act that places another in reasonable apprehension of immediately suffering physical pain or injury."

EFFECTIVE DATE: June 11, 2014

DATE OF PASSAGE: March 14, 2014

ACTION BY GOVERNOR: Signed March 31, 2014

HOUSE BILL NO. 4460

SHORT TITLE: Relating to violating provisions of the civil service law for paid fire departments

CODE REFERENCE: West Virginia Code §8-15-26 (Amend)

Currently, a person who violates any of the provisions of the civil service law for paid fire departments is guilty of a misdemeanor and, upon conviction, shall be confined in jail for not more than one year and/or fined not less than \$50 nor more than \$1,000. The bill increases the fine for violating the provisions of the civil service law for paid fire departments to not less than \$1,000 nor more than \$10,000.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4473**

SHORT TITLE: Relating to establishing voting precincts and changing the composition of standard receiving boards

CODE REFERENCE: West Virginia Code §3-1-5 and §3-1-29 (Amends)

This bill allows counties more flexibility in creating precincts. Current law permits urban precincts of 300-1500 voters and rural precincts of 200-700 voters. The bill permits a precinct to be smaller than the minimum in code upon a written finding that to do otherwise would cause undue hardship on the voters.

In addition, the bill permits consolidation of precincts that have polling places within one mile of each other, as long as the new precincts do not have more than 3000 voters in an urban area or 1500 in a rural area. There is a requirement that no consolidation may create a geographical barrier that would create an undue hardship to voters.

The bill also adjusts the definition of standard receiving board by increasing it from 4 persons to at least 5 persons. The bill removes language distinguishing by type of election the number of persons allowed, but keeps an exception allowing municipal elections not held in conjunction with regular elections to use only 4 persons per precinct. The bill also allows additional persons to work at the polls, at the discretion of the county, where more people are necessary to fairly and efficiently conduct the election.

Finally, the bill removes a paragraph requiring Legislative Services to consult with county commissions regarding precinct modification because Legislative Services does not currently and continuously have a redistricting office.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 31, 2014

HOUSE BILL NO. 4488

SHORT TITLE: Eliminating the requirement for notarization of the articles of incorporation for cooperative associations

CODE REFERENCE: West Virginia Code §19-4-6 (Amend)

The purpose of this bill is to eliminate the notarization requirement for articles of incorporation of cooperative associations, to make it consistent with filing procedures of other business associations and corporations. The bill also makes technical changes.

EFFECTIVE DATE: June 2, 2014

DATE OF PASSAGE: March 5, 2014

ACTION BY GOVERNOR: Signed March 21, 2014

HOUSE BILL NO. 4529

SHORT TITLE: Relating to the sale of wine

CODE REFERENCE: West Virginia Code §60-8-2 and §60-8-16
(Amends)

The purpose of this bill is to authorize trusts to be applicants for a wine distributor license and to add a definition of "person" in article eight, chapter sixty of the code, so that trusts and limited liability companies can be considered as persons for the purposes of applying the provisions of this article, which pertains to the sale and distribution of wine . A similar bill allowing trusts and limited liability companies or associations to be hold a beer distributor license was passed last session as Senate Bill 172.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

HOUSE BILL NO. 4549

SHORT TITLE: Clarifying the regulation of nonintoxicating beer brewers and distributors, agreements, networks, products, brands and extensions of a line of brands

CODE REFERENCE: West Virginia Code §11-16-3, 11-16-20 and §11-16-21 (Amends) 11-16-17a (New)

The bill requires the submission of a franchise agreement between the brewer and the distributors, and sets out the general contents and terms to be addressed in a franchise agreement. The franchise agreement is to be negotiated between the parties, and submitted to the ABCC Commissioner for review, approval or denial. It also imposes a new new 90 day post and hold provision for pricing.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 31, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4552**

SHORT TITLE: Relating to the court of claims

CODE REFERENCE: West Virginia Code §14-2-1, §14-2-8, §14-2-13, §14-2-13a, §14-2-16, §14-2-25 and §14-2-28 (Amends)

This bill amends the current provisions relating to the Court of Claims. The bill makes the following substantive changes:

- (1) Increases the number of days to be served by a judge from 100 to 120 each fiscal year;
- (2) removes a requirement that the Court provide advisory determinations on the “legal or equitable status, or both, of any claim referred to the court by the head of a state agency”;
- (3) Eliminates the authority of the Court of Claims to hear cases relating to the legal or equitable status, or both, of any claim referred to the court by the head of a state agency for an advisory determination;
- (4) Rewrites the provisions regarding claims for unjust arrest and imprisonment or conviction and imprisonment;
- (5) Authorizes the court to hire expert witnesses and pay them in an amount not to exceed \$3500 per expert;
- (6) Extends the time the court may take to make its decision after the close of evidence from 30 to 60 days and refocuses the purpose of the article from expeditious resolution of cases to impartial resolution of cases; and
- (7) Clarifies that the decisions of the court of claims are recommendations to the Legislature based upon a finding of moral obligation and therefore no right of appeal exists to such findings and any award recommendations in any court of the state.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 31, 2014

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 4560**

SHORT TITLE: Clarifying the regulation of nonintoxicating beer brewers and distributors, agreements, networks, products, brands and extensions of a line of brands

CODE REFERENCE: West Virginia Code §16-29-1, 16-29-2 (Amends)

This bill limits the amounts health care providers may charge patients for copies of their medical records. Currently, health care providers are limited to charging 75 cents per page for copies of medical records, plus a \$10 search fee.

This bill would bring West Virginia requirements closer to federal law, with the addition of a cap on the hourly rate for copying medical records and an annual adjustment for inflation. It would also remove antiquated language regarding physical copies of certain records, which are no longer maintained.

In the event a health care provider utilizes a third party to convert electronic medical records into a format suitable for storage, transmission and/or viewing, those actual costs may be passed along to the patient.

The bill exempts from these limits “private office practices of one or more health care professionals licensed to practice” pursuant to Chapter 30 (Professions and Occupations).

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed March 28, 2014

HOUSE BILL NO. 4588

SHORT TITLE: Protecting unborn children who are capable of experiencing pain by prohibiting abortion after twenty weeks

CODE REFERENCE: West Virginia Code §16-2M-1, §16-2M-2, §16-2M-3, §16-2M-4, §16-2M-5 and §16-2M-6 (New)

This bill creates a new article prohibiting an of abortion on a fetus twenty weeks after fertilization, which is approximately twenty-two weeks after the last menstrual cycle of a pregnant woman, with certain exceptions. The bill sets forth a legislative finding that there is evidence that at twenty weeks post-fertilization a fetus can feel pain. The bill also defines certain terms used throughout the article.

The bill requires that, except in a medical emergency, a physician must calculate the post-fertilization age of the fetus prior to conducting an abortion. The bill then prohibits a person from performing, inducing or attempting to perform or induce an abortion after twenty weeks post-fertilization, unless a physician using his or her reasonable medical judgment believes that the pregnant woman has a condition that so complicates her medical condition that an abortion is required to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function or if the physician determines that the fetus is a non-medically viable fetus, meaning that it contains sufficient fetal anomalies so as to render it medically futile or incompatible with life outside the womb.

If an abortion after twenty weeks post-fertilization is performed (due to one of the exceptions noted above), the bill requires the physician to take such action as to provide the best opportunity for the fetus to survive unless the physician, using his or her reasonable medical judgment, believes that such action would create a greater risk of death or serious risk of substantial and irreversible physical impairment of a major bodily function to the pregnant woman.

The bill further requires reporting information to the Division of Health by a physician who performs an abortion in West Virginia. The amendments require DHHR to create forms for the reports no later than December 31, 2014. The reports shall include (1) the post-fertilization age of the fetus, including how a determination was made and if one was not made, why not; (2) the method of abortion; (3) if the post-fertilization age was determined to be twenty or more weeks, what justified the abortion; and (4) if the post-fertilization age was determined to be twenty or more weeks, whether the physician took action so as to provide the best opportunity for the fetus to survive and if not, why not. The bill provides for strict confidentiality of the patients in the reports and requires that they not be disclosed except pursuant to a court order. The amendments also require DHHR to, beginning June 30, 2016, and annually thereafter, issue a public report providing statistics for the previous calendar year compiled from all of the reports submitted the previous year.

Finally, the bill creates a misdemeanor offense for any person who intentionally or recklessly performs or induces an abortion in violation of this article, with punishment of a fine of up to \$4,000. The bill is clear that no penalty may be assessed against the patient.

As stated at the Senate Judiciary Committee hearing, the opinion of counsel is that this bill is unconstitutional, pursuant to the following reasoning:

The Fourteenth Amendment of the United States Constitution states, in part, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The Ninth Amendment of the United States Constitution states, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

These two provisions have been interpreted since the 1800s to provide a Constitutional right to privacy. This right to privacy extends to making personal medical decisions subject to certain regulations by the State and Federal Government.

The United States Supreme Court has clearly held in a long line of cases that the state cannot broadly prohibit a woman from choosing an abortion before the point of fetal viability. This bill would prohibit a woman from choosing an abortion after twenty weeks post-fertilization and before the point of fetal viability, which is currently approximately twenty-three or twenty-four weeks post last menstrual cycle, depending on the unique characteristics of each fetus and pregnancy.

Other states have passed similar legislation equating the supposed pain of the fetus at twenty weeks with a reason to prohibit abortion after twenty weeks, despite the constitutional interpretations by the United States Supreme Court that say a state cannot constitutionally create a wholesale prohibition of abortion prior to viability of the fetus. Of those states, there have been three court decisions addressing the constitutionality of the similar laws and all three have found prohibitions on abortion at twenty or twenty-two weeks after the final menstrual cycle to be unconstitutional insofar as they prohibit abortion prior to fetal viability. Georgia’s law has been enjoined by a state court based on Supreme Court precedent, Idaho’s law has been enjoined by a federal district court based on Supreme Court precedent, and Arizona’s law has been enjoined by a federal circuit court based on Supreme Court precedent. In the Arizona case, the Supreme Court refused to hear an appeal, which further indicates an unwillingness to reverse and a high likelihood that this bill is unconstitutional.

The federal district court that reviewed the Idaho law emphatically stated the Pain Capable Unborn Child Protection Act “unconstitutionally burdens” the rights of women and that it “embodies a legislative judgment equating viability with twenty weeks gestational age, which the Supreme Court expressly forbids.” The Supreme Court has clearly stated, “[I]t is not the proper function of the legislature or the courts to place viability, which essentially is a medical concept, at a specific point in the gestation period.” The Idaho court concluded, “The State’s clear disregard of this controlling Supreme Court precedent and its apparent determination to define viability in a manner specifically and repeatedly condemned by the Supreme Court evinces an intent to place an insurmountable obstacle in the path of women seeking non-therapeutic abortions of a non-viable fetus at and after twenty weeks gestation.”

For these reasons and others garnered from a comprehensive review of the relevant case law and variations among other states statutes, it is Senate Judiciary Committee counsel’s opinion that this bill, as passed both the House and the Senate,

is unconstitutional.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Vetoed March 28, 2014

HOUSE BILL NO. 4601

SHORT TITLE: Relating to fiscal management and regulation of publicly-owned utilities

CODE REFERENCE: West Virginia Code §8-9-4; §8-20-10; §16-13-16; §16-13A-9 and §16-13A-18a; §24-1-1b; §24-2-1a and §24-2-4b (Amends)

This bill amends the Public Service Commission (PSC) regulatory scheme for rate approvals to give municipalities and public service districts greater flexibility to establish rates for publicly owned utilities.

Specifically, it allows immediate implementation of rate increases that do not exceed 25% of gross revenues, subject to PSC review and refund procedures.

Rate increases that exceed 25% may not be implemented until approved by the PSC. Public utilities may, however, request a waiver from the PSC to allow them to implement the rate increase immediately. Review and refund procedures would still apply.

Finally, the bill amends the statute to clarify that distribution of proceeds requirement from the sale of a utility does not apply when a utility is transferred from one public entity to another public entity.

EFFECTIVE DATE: June 5, 2014

DATE OF PASSAGE: March 8, 2014

ACTION BY GOVERNOR: Signed April 1, 2014
