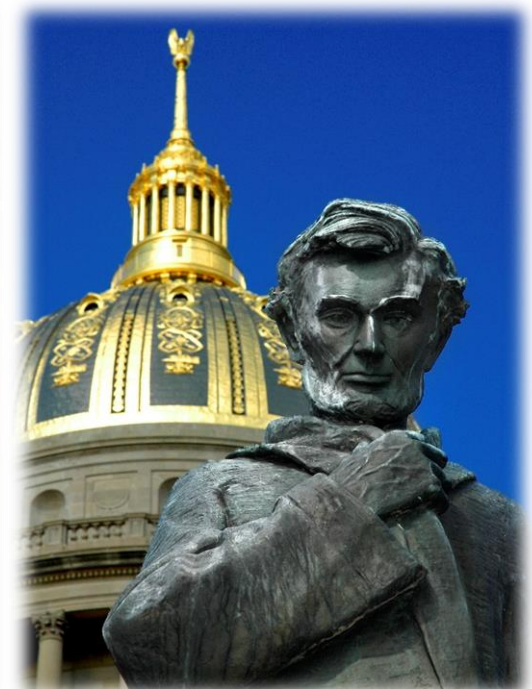


WEST VIRGINIA LEGISLATURE
SENATE COMMITTEE ON THE JUDICIARY
2022 BILL SUMMARIES



COMMITTEE ON THE JUDICIARY
WEST VIRGINIA SENATE

EIGHTY-FIFTH LEGISLATURE
SECOND REGULAR SESSION



APRIL 2022

SENATE COMMITTEE ON THE JUDICIARY

2022 Regular Legislative Session

Staff Members

The seal of the West Virginia Senate Committee on the Judiciary is a large, circular emblem in the background. It features a central image of the West Virginia State Capitol building, surrounded by a wreath of laurel leaves and a banner at the bottom with the Latin motto "MONTANI SEMPER LIBERI". The words "WEST VIRGINIA" are arched across the top, and "SENATE OF WEST VIRGINIA" is written around the inner border of the seal.

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Liz Schindzielorz	Counsel	Full Time
Beverly Douglas	Committee Clerk	Full Time
Adair Sankoff	Analyst/LRMRC	Full Time
<hr/>		
Leslie Smith	Administrative Assistant	Per Diem
Debra A. Graham	Counsel	Per Diem
Jay Lazell	Counsel	Per Diem
J. A. Curia	Counsel	Per Diem
Chloe Bailey	Herndon Fellow	Per Diem
Tom Smith	Chief Counsel	Per Diem

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(R – Wayne, 06)



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85th Legislature
West Virginia Senate

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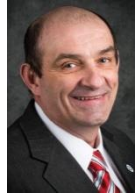
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2022 COMMITTEE MEMBERS



CHAIRMAN
Charles Trump
(R – Morgan, 15)

WEST VIRGINIA LEGISLATURE
SENATE COMMITTEE ON THE JUDICIARY
STATISTICS 2022

**TOTAL NUMBER OF BILLS AND RESOLUTIONS INTRODUCED
DURING THE 2nd SESSION OF THE 85th LEGISLATURE:**

BILLS:	2,216
RESOLUTIONS:	80
CONCURRENT RESOLUTIONS:	178
<u>JOINT RESOLUTIONS:</u>	<u>41</u>
TOTAL:	2,515

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

SENATE BILLS:	733
SENATE RESOLUTIONS:	60
SENATE CONCURRENT RESOLUTIONS:	65
<u>SENATE JOINT RESOLUTIONS:</u>	<u>13</u>
TOTAL:	871

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

HOUSE BILLS:	1,483
HOUSE RESOLUTIONS:	20
HOUSE CONCURRENT RESOLUTIONS:	113
<u>HOUSE JOINT RESOLUTIONS:</u>	<u>29</u>
TOTAL:	1,645

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

BILLS:	4
<u>CONCURRENT RESOLUTIONS:</u>	<u>4</u>
TOTAL:	8

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

SENATE BILLS:	320
HOUSE BILLS:	68
SENATE CONCURRENT RESOLUTIONS:	4
SENATE JOINT RESOLUTIONS:	13
HOUSE CONCURRENT RESOLUTIONS:	0
<u>HOUSE JOINT RESOLUTIONS:</u>	<u>1</u>
TOTAL:	40

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

SENATE BILLS:	73
HOUSE BILLS:	51
RULES BILLS:	134
JOINT RESOLUTIONS:	2
<u>CONCURRENT RESOLUTIONS:</u>	<u>4</u>
TOTAL:	264

**TOTAL NUMBER OF BILLS
THAT COMPLETED LEGISLATIVE ACTION:**

SENATE BILLS:	143
<u>HOUSE BILLS:</u>	<u>150</u>
TOTAL:	293*

**TOTAL NUMBER OF RESOLUTIONS
THAT COMPLETED LEGISLATIVE ACTION:**

SENATE CONCURRENT RESOLUTIONS:	44
<u>HOUSE CONCURRENT RESOLUTIONS:</u>	<u>51</u>
TOTAL:	95

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

SENATE BILLS:	36
<u>HOUSE BILLS:</u>	<u>51</u>
TOTAL:	87

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

<u>SENATE JOINT RESOLUTION:</u>	<u>0</u>
TOTAL:	0

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

SENATE BILLS:	35
<u>HOUSE BILLS:</u>	<u>50</u>
TOTAL:	85**

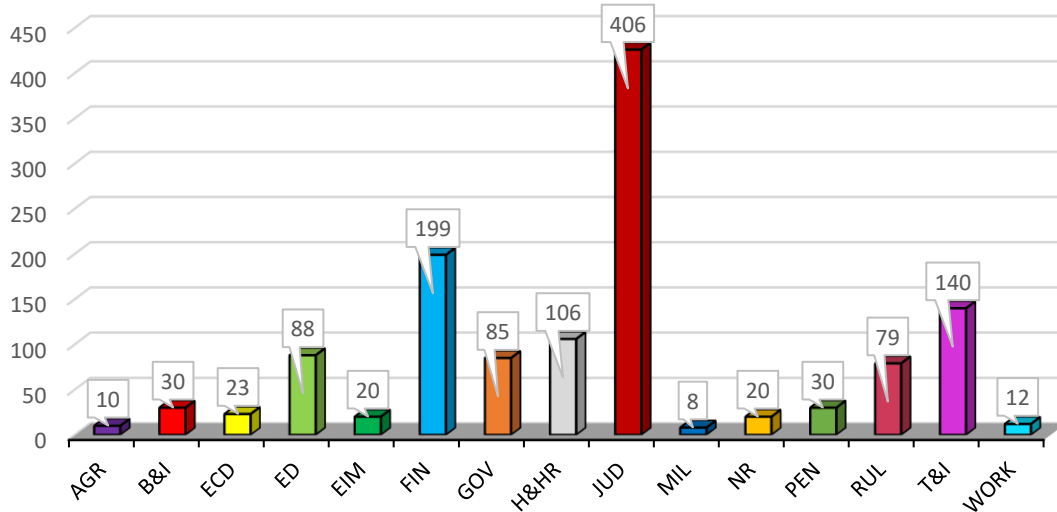
(Senate Judiciary Totals include Rules Bundles as a single bill)

(*Of the 293 Bills that Completed Legislative Action, there were five vetoes)

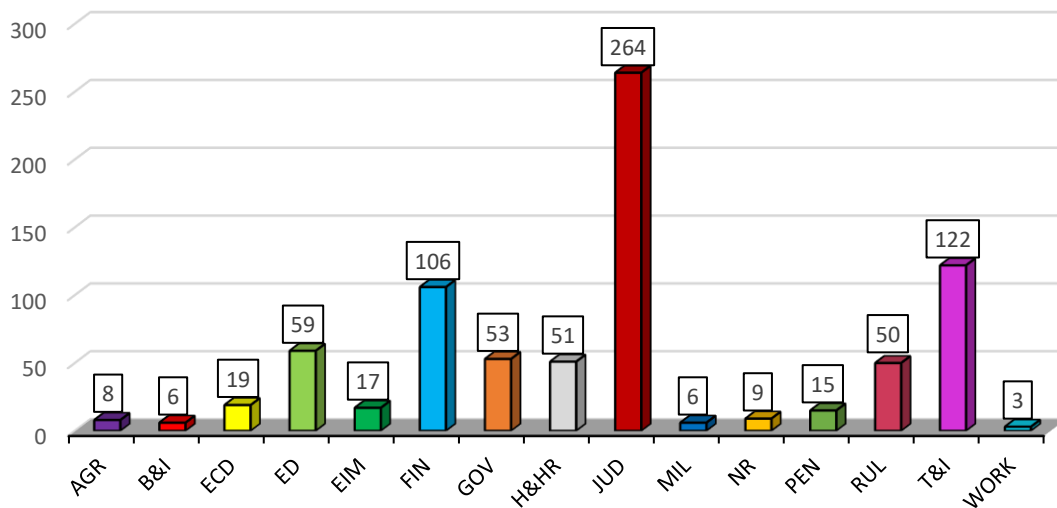
(**Of the 88 Bills reported that Completed Legislative Action, two bills were vetoed:
Senate Bill 573 and House Bill 2300.)

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Senate Bill 6

COMMITTEE SUBSTITUTE

SHORT TITLE: Establishing common law “veil piercing” claims not be used to impose personal liability.

CODE REFERENCE: §31B-3-303 (Amends and Reenacts)

SUMMARY:

Senate Bill 6 modifies the application of the “corporate veil piercing” analysis adopted by the Supreme Court of Appeals in *Joseph Kubican v. The Tavern, LLC*, 232 W.Va. 268 (2013) for the purpose of imposing personal liability on a member or manager of a limited liability company.

In subsection (a), the bill clarifies that a member or manager of an LLC is not personally liable for fines, fees, or penalties individually assessed against another member or manager for unrelated acts.

Prior to amendment, subsection (c) provided that members may be held liable in their capacity as members for debts, obligations, or liabilities of the company if a provision to that effect is contained in the articles of organization and the member has consented in writing to the adoption of the provision or to be bound by the provision. The bill adds the following as additional circumstances in which members may held liable:

1. The member against whom liability is asserted has personally guaranteed the liability obligation of the limited liability company in writing;
2. There is any tax liability of the limited liability company which the law of the state or of the United States imposes liability upon the member; or
3. The member commits actual or constructive fraud which causes injury to an individual or entity.

In new subsection (d), the bill authorizes courts to apply the *Kubicon* “corporate veil piercing” analysis only if a company is not adequately capitalized for the reasonable risks of the corporate undertaking and the company does not carry certain minimum limits of liability insurance coverage for the primary risks of the business (\$100,000 or such higher amount as may be specifically required by law).

In new subsection (e), the bill authorizes non-human members of an LLC to be held liable under the doctrine of joint enterprise liability rather than veil piercing.

In new subsection (f), the bill confirms that a member may still be held liable as a tortfeasor, and that veil piercing does not apply under these circumstances.

In new subsection (g), the bill authorizes a judgment creditor of an LLC to “clawback” funds from a member to reimburse the LLC for the lesser of the amount of a judgment or amount transferred from the LLC to the member in bad faith, and specifies the following circumstances in which this may occur via primary liability rather than veil piercing: conflicted exchange, insolvency distribution, or siphoning of funds.

Lastly, in new subsection (h), the bill defines several new terms: “conflicted exchange”, “insolvency distribution”, “insolvent”, and “siphoning of funds”.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 25

COMMITTEE SUBSTITUTE

SHORT TITLE: Updating provisions of Medical Professional Liability Act.

CODE REFERENCE: §55-7B-2, §55-7B-4, and §55-7B-6 (Amends and Reenacts)

SUMMARY:

Senate Bill 25 addresses prerequisites for filing a lawsuit against a health care provider under the Medical Professional Liability Act.

In §55-7B-2(h), the bill adds “injury” as a defined term synonymous with the existing term “medical injury”.

In §55-7B-4, the bill includes references to the term “medical injury” and clarifies time limitations for bringing a cause of action under the statute. The bill adds a statement of legislative intent to subsection (b) confirming the applicability of the one-year limitations period for a cause of action for medical injury resulting in injury or death to a person alleging medical professional liability against a nursing home, assisted living facility, related entities or employees, or a distinct part of an acute care hospital providing intermediate or skilled nursing care or its employees.

In §55-7B-4(e), the bill shortens the time period in which a claimant must furnish the health care provider with a statement of intent to provide a screening certificate of merit from 180 days to 120 days of the date the provider receives the notice of claim with respect to this same category of actions. In subsection (i)(2), the bill also shortens the tolling period for any statute of limitations applicable to a cause of action against a provider upon whom notice was service for alleged malpractice from 180 days to 120 days.

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 232

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to punishment for third offense felony.

CODE REFERENCE: §61-11-18 (Amends and Reenacts)

SUMMARY:

This bill clarifies the criminal offenses that qualify a person for enhanced sentencing for second and subsequent offenses. Offenses more than 20 years old do not qualify for enhanced sentencing, but the bill excludes from that 20-year time period time spent in incarceration, parole, or supervised release.

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 244

INTRODUCED

SHORT TITLE: Relating to appointment of judges to Intermediate Court of Appeals.

CODE REFERENCE: §51-11-6 (Amends and Reenacts)

SUMMARY:

Senate Bill 244 corrects a typographical error in a provision of the West Virginia Appellate Reorganization Act which sets forth the initial terms of office of the first three judges to serve on the Intermediate Court of Appeals.

In subsection (b)(3), the bill replaces the word “elected” with the word “selected” to bring it into conformity the other two instances of this word and clarify that all three initial judges are appointed by the Governor.

The bill creates a new subsection (g) providing for retroactive application of this amendment to December 27, 2021.

DATE OF PASSAGE: February 1, 2022

EFFECTIVE DATE: February 1, 2022

ACTION BY GOVERNOR: Signed February 9, 2022

Senate Bill 245

COMMITTEE SUBSTITUTE

SHORT TITLE: Revising wage payment and collection.

CODE REFERENCE: §21-5-3 and §21-5-4 (Amends and Reenacts)

SUMMARY:

This bill allows an employer to elect the form of payment to an employee. An employer may choose to pay its employee via lawful money of the United States, check or money order, payroll card, or direct deposit.

Should an employer make payment using the payroll card option, an employer is required to provide a written disclosure of any fees associated with the payroll card and ensure that the employee has the ability to make at least one withdrawal or transfer from the payroll card per pay period without cost to the employee. The employer must also make an alternate method of payment via direct deposit available to employees should the employer elect to pay an employee via a payroll card.

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 253

INTRODUCED

SHORT TITLE: Relating to voting precincts and redistricting.

CODE REFERENCE: §3-1-5 (Amends and Reenacts)

SUMMARY:

Senate Bill 253 clarifies the process by which county commissions modify their voting precinct boundaries and these modifications are provided to the U.S. Census Bureau for purposes of certain data collection phases in the years before redistricting occurs. It also clarifies the process by which the new maps and data are provided to the U.S. Census Bureau and made available to the public after redistricting.

In subsection (c), the bill clarifies that the geographic physical features or municipal boundaries to which precinct boundaries must conform upon modification are those recognized by the U.S. Census Bureau. The bill removes a requirement that county commissions report to the Joint Committee on a decennial basis and to the Census Bureau upon request; instead, county commissions will be required to submit precinct modifications to the Secretary of State (on an ongoing basis) in accordance with the process outlined below.

In subsection (d), the bill designates the Secretary of State as the Legislature's agent to the U.S. Census Bureau, the county commissions, and the clerks of the county commissions during certain pre-redistricting and post-redistricting data collection phases of the Census Bureau's Redistricting Data Program and authorizes the Secretary to delegate technical responsibilities of that role to staff within his or her office. The bill requires each county commission to submit to the Secretary on an ongoing basis its updated precincts and other information needed to participate in preliminary data collection and verification phases of the Redistricting Data Program. The bill requires the Secretary coordinate with the counties in this process, to compile the precinct information submitted by them, and to submit and verify such information to the Census Bureau in keeping with Redistricting Data Program deadlines. The bill also requires the Secretary to provide copies of each such submission to Legislative leadership. The bill requires the Legislature to provide updated maps and accompanying technical files to the Secretary after redistricting, and it requires the Secretary to submit this information to the Census Bureau during the post-redistricting collection phase of the Redistricting Data Program. The bill requires the Secretary to post the current maps and files to its website and make them available to the public during business hours in its physical office at the Capitol, and to maintain previous maps and files in its records.

In subsection (e), the bill requires that the maps made publicly available by counties at the courthouse also depict magisterial districts. The bill requires county commissions to submit their current maps and technical files to the Secretary of State upon updating precincts and magisterial districts. The bill also requires the Secretary to post the current maps and files to its website and make them available to the public during business hours in its physical office at the Capitol, and to maintain previous maps and files in its records.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 279

COMMITTEE SUBSTITUTE

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

CODE REFERENCE: §64-3-1 et seq. (*Amends and Reenacts*)

SUMMARY:

This bill is the Department of Environmental Protection bundle. It contains 8 rules.

Department of Environmental Protection – Ambient Air Quality Standards, 45 CSR 08

The rule amends a current legislative rule which establishes and adopts standards of ambient air quality in West Virginia specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, and incorporates by reference the national primary and secondary ambient air quality standards, as promulgated by the United States Environmental Protection Agency (EPA).

The changes to the rule adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2021.

The updates to the rule maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.

Department of Environmental Protection – Standards of Performance for New Stationary Sources, 45 CSR 16

The rule amends a current legislative rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2021. These amendments maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.

Department of Environmental Protection – Control of Air Pollution from Combustion of Solid Waste, 45 CSR 18

This rule amends an existing DEP rule which establishes and adopts national standards of performance and other requirements for air pollution caused by the combustion of solid waste, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2021. These modifications maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.

Department of Environmental Protection – Emission Standards for Hazardous Air Pollutants, 45 CSR 34

The rule amends a current legislative rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).

The amendments incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2021.

These amendments are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in this State for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA.

Department of Environmental Protection – Requirements for the Management of Coal Combustion Residuals, 33 CSR 1B

This rule is new and is promulgated under the Solid Waste Management Act which governs solid waste management and disposal. Specifically, this rule governs Coal Combustion Residuals, such as bottom ash and fly ash, produced when coal is burned for electric power generation.

The rule simply adopts by reference the Federal Regulation, 40 CFR Part 257, Subpart D, Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments. This is necessary to obtain and maintain closure and permitting primacy. DEP already regulates operations, and the rule will provide DEP with jurisdiction over cleanup and closure also.

The rule applies to owners and operators of new and existing landfills and surface impoundments, including any lateral expansions, who engage in solid waste management of residuals generated from the combustion of coal at electric utilities and independent power producers. These requirements also apply to disposal located off-site of the power producer.

The rule establishes minimum national criteria to determine which solid waste disposal facilities and solid waste management practices do not pose a reasonable probability of adverse effects on health or the environment under the Resource Conservation and Recovery Act.

Department of Environmental Protection – Requirements Governing Water Quality Standards, 47 CSR 02

The rule is the result of the Water Pollution Control Act found in W.Va. Code §22-11-1, *et seq.*, which provides rule-making authority to the DEP to establish rules necessary to carry out the requirements of the Act.

The rule amends the previous legislative rule which establishes requirements governing the discharge of sewage, industrial wastes, and other wastes into the waters of the state and establishes water quality standards for the waters standing or flowing over the surface of the state. The stated public policy of the State of West Virginia is to maintain reasonable standards of purity and quality of water consistent with (1) public health and public enjoyment; (2) the propagation and protection of animals, birds, fishes, and other aquatic life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture, and the provision of a permanent foundation for healthy industrial development.

New Subsection 8.2.c was added to the rule for the evaluation of factors related to human health on a case-by-case basis as part of the NPDES permitting process. CWA 303(c) is the water quality standards. The process begins with a regulated party investing in an environmental study. This study will be reviewed for proper protocols and water quality standards first by DEP and then by the EPA. Once approved by both the state and federal regulators, a permit may be issued with different criteria. This permit is not subject to legislative review.

Subsection 8.6. in the rule which required DEP to create a work group to analyze and recommend updates to human health criteria is being deleted from the rule because it is no longer necessary.

The most significant amendments are to the Requirements Governing Water Quality Standards to adhere to the federal requirement for Triennial Review of Water Quality Standards, as required by the Clean Water Act, Section 303(c)(1). This will be the third rule change in the last few years. These updates match West Virginia with the US EPA 2015 updates for nationally recommended criteria.

The rule includes changes to the human health criteria in Appendix E recommended by the Human Health Criteria Work Group. In this rule, the DEP is revising 31 substances and adding 4 substances to the human health criteria. Of these 28 criteria will become more stringent and 7 will become less stringent, and these 35 criteria will then be consistent with nationally recommended criteria. The units of measure for the substances in the table are also being revised to have the same units of measure for the

various substances. The legislature has now updated or added in total 59 of the EPA's 96 recommended criteria.

Finally, the rule is amended in Appendix A, Category B-2 – Trout Waters by adding language regarding the Summersville tailwaters above Collision Creek which states that the water temperature is limited to no more than 5 degrees above the natural temperature, not to exceed 72 degrees any time during the year. This change effectively increases the allowable water discharge temperature from the dam.

Department of Environmental Protection – Underground Injection Rule, 47 CSR 13

The rule amends a current legislative rule and is promulgated under the Water Pollution Control Act which governs the discharge and disposal of pollutants into the waters of the state to maintain reasonable standards of quality to ensure public health and enjoyment. Specifically, this rule governs the Underground Injection Control Program (UIC). The UIC program regulates underground injections of waste into five classes of wells. The rule updates these five classes and adds a sixth classification for carbon capture and sequestration wells.

The rule sets forth criteria and standards which apply to the UIC program. All owners and operators of these wells must be authorized by DEP to make injections. The classes are as follows:

Class 1 wells are for disposal of hazardous wastes below the water table;

Class 2 wells are for injection fluids associated with oil and gas production such as brine water;

Class 3 wells are used to inject fluids to dissolve and extract minerals such as salt mining;

Class 4 wells cover radioactive materials that do not meet the Class 1 criteria. Note: Class 4 wells are no longer allowed under the federal rule, but nationally some are grandfathered for long term closure; and

Class 5 wells are shallow wells above the water table, which are not Class 1 through 4 or Class 6. These include wells such as commercial sewage leach fields.

The new Class 6 wells are for carbon capture and sequestration.

West Virginia currently has primary enforcement authority for the first five classes of wells, but the rule must be updated to maintain this primacy. Currently, federal rules apply to Class 6 wells. Once the rule is updated and approved, DEP intends to seek primacy over Class 6 wells.

Subsection 4.6 describing Class 6 wells is new. Subsection 5.4 is new and describes the area of review for Class 6 wells. Paragraph 6.2.c.5. is new and relates to the mechanical integrity of Class 6 wells.

Section 8 relating to criteria and standards applicable to Class 1 wells has been amended regarding construction requirements, monitoring and closure requirements, and post-closure care.

Section 9 relating to criteria and standards applicable to Class 2 wells has amendments relating to construction, abandonment, operating, monitoring and reporting requirements and information to be considered by the Director prior to issuing a permit.

New Section 13 contains the criteria and standards for Class 6 wells. It contains minimum criteria for siting; construction requirements; abandonment; logging, sampling and testing prior to injection well operation; operating, monitoring and reporting requirements; emergency and remedial response; required permit information; and post injection site care and site closure.

Section 14 relating to the injection well permitting program has been amended to contain requirements relating to loss of mechanical integrity, release of infected wastes into an unauthorized zone, plugging and abandonment, financial responsibility, waiver of requirements by the Director, corrective actions regarding Class 6 wells, and applications for Class 6 permits.

Department of Environmental Protection – Administrative Proceedings and Civil Penalty Assessment, 47 CSR 30B

The rule amends a current legislative rule which was promulgated under the Water Pollution Control Act which governs the discharge and disposal of pollutants into the waters of the state to maintain reasonable standards of quality to ensure public health and enjoyment. Specifically, the rule governs the Administrative Proceedings and Civil Penalty Assessment for operators who may not be in compliance with their permits. This rule establishes the procedure for the resolution of enforcement actions and the assessment of civil penalties in lieu of the institution of civil actions as provided in the code.

The rule addresses these issues to make the West Virginia rule more comparable to the Clean Water Act by addressing the Court's concerns. The rule requires an administrative hearing whether the operator chooses to participate or not, empowers the secretary to unilaterally assess a civil penalty even if an operator does not resolve the issue by voluntary agreement, and deletes the provision allowing an operator to terminate a proceeding at any time for any reason. Finally, the rule also deletes the provision allowing an operator to reject a modification of a proposed consent order made by the secretary which is based on public comments or other information received during a public hearing.

DATE OF PASSAGE: February 11, 2022

EFFECTIVE DATE: February 11, 2022

ACTION BY GOVERNOR: Signed February 21, 2022

Senate Bill 312

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorization for Department of Revenue to promulgate legislative rules.

CODE REFERENCE: §64-7-1 *et seq.* (Amends and Reenacts)

SUMMARY:

This Committee Substitute contains the Department of Revenue rules. It is known as Bundle 7 and contains 17 rules.

Alcohol Beverage Control Commission – Private Club Licensing, 175 CSR 02

The rule amends a current legislative rule to comply with House Bill 2025 which passed during the 2021 Regular Legislative Session. The rule expands on definitions for new licenses, including craft cocktail growler sales, private club delivery, third party delivery, curbside pickup, and creating other private club licenses, such as a private wedding venue, a private caterer, a private farmers market facility, a private multi-vendor fair and festival, private outdoor dining and private outdoor street dining and other new concepts.

The rule sets forth definitions for each of its new licenses to better clarify what will and will not qualify within the definition for a license. The rule also sets forth mechanisms to apply and be eligible for the various licenses that have been created. Most of the fees for new licenses were established in code but some have also been added to the rule for clarity. For areas that require municipal or county approval, like private outdoor dining or private outdoor street dining, the ABCC will assist in making a form available to standardize and streamline approval.

The bill makes several amendments to better consolidate the rules and remove unnecessary duplication with code and makes other technical corrections to add in previously agreed to modifications as passed by the Legislative Rule-Making Review Committee that were mistakenly left out of the filed version. The bill also makes amendments to better define terms like “suitable person” and “good moral character” in line with *R.W.B. of Riverview, Inc. v. Stemple*, 111 F. Supp. 2d 748 (S. D. W. Va. 2000), stating, “These are just the sort of “boundless terms” and manipulable “malleable concepts” our Court of Appeals found constitutionally unacceptable because they clothe a decisionmaker with unfettered discretion.” Finally, the bill amends the entertainment portion relating to outdoor dining or outdoor street dining to permit the Commissioner

to authorize entertainment and in the event entertainment is denied, to require a written explanation for the denial.

Alcohol Beverage Control Commission, Bailment Policies and Procedures, 175 CSR 06

Currently, this rule explains and clarifies the bailment procedures and policies to be utilized by the ABCC in the operation of the ABCC warehouse and the provision of alcoholic liquor to licensed retail stores. Currently the fees can be updated by administrative notice on the behalf of the ABCC. This amendment requires fee updates or any changes to the rule to go through Legislative Rule-Making Review Committee and be authorized prior to becoming effective.

Alcohol Beverage Control Commission – Nonintoxicating Beer Licensing and Operations Procedures, 176 CSR 01

The rule amends a current legislative rule to comply with House Bill 2025 which passed during the 2021 Regular Legislative Session. The rule expands on definitions for new licenses, including growler sales for Class A and Class B licensees, private club delivery, third party delivery, curbside pickup, creates other licenses, such as private outdoor dining and private outdoor street dining, alters the permitted operating hours, authorizes certain floor plan extensions, removes bonding requirements, and permits direct shipping under certain circumstances. The rule sets forth definitions for each of its new licenses to better clarify what will and will not qualify within the definition for a license. The rule also sets forth mechanisms to apply and be eligible for the various licenses that have been created. Most of the fees for new licenses were established in code, but some have also been added to the rule for clarity. For areas that require municipal or county approval, like private outdoor dining or private outdoor street dining, the ABCA will assist in making a form available to standardize and streamline approval.

Another key feature permits businesses to hire additional employees when they are supervised to sell and serve nonintoxicating beer to customers. This was primarily contemplated in grocery stores where the sale is completed without any open containers. However, all licensees must comply with supervision requirements which require a person at least 21 years of age to supervise any transaction.

The bill makes several amendments to better consolidate the rules and remove unnecessary duplication with code and makes other technical corrections to add in previously agreed to modifications as passed by the Legislative Rule-Making Review Committee that were mistakenly left out of the filed version. The bill also makes amendments to better define terms like “suitable person” and “good moral character” in line with *R.W.B. of Riverview, Inc. v. Stemple* stating, “*These are just the sort of “boundless terms” and manipulable “malleable concepts” our Court of Appeals found constitutionally unacceptable because they clothe a decisionmaker with unfettered discretion.*” Finally, the bill amends the entertainment portion relating to outdoor dining or outdoor street dining to permit the Commissioner to authorize entertainment and in the event entertainment is denied, to require a written explanation for the denial.

Insurance Commission – Continuing Education for Individual Insurance Producers and Individual Insurance Adjusters, 114 CSR 42

The rule amends a current legislative rule. The amendment provides for updates to the continuing education requirements for individual insurance producers and adjusters. The bill incorporates changes made by the passage of House Bill 2682 passed during the 2021 Regular Session of the Legislature.

House Bill 2682 was an agency bill and made minor stylistic and technical modifications. More substantively, the bill removed the requirement that individual insurance producers and adjusters receive notice of their license suspension for their failure to timely complete their continuing education requirements by certified mail, return receipt. The new requirements provide for notice via electronic mail or by regular mail if requested by the individual insurance producer or adjuster.

Insurance Commission – Adoption of Evaluation Manual, 114 CSR 98

This rule amends a current legislative rule to extend the sunset date for five years from the effective date of the rule.

Insurance Commission – Pharmacy Auditing Entities and Pharmacy Benefit Managers, 114 CSR 99

The rule amends a current legislative rule that provides a process for licensing and regulating pharmacy benefit managers (PBMs) and pharmacy auditing entities. The changes to the rule are required because of the passage of House Bill 2263 during the 2021 Regular Legislative Session.

Subsection 1.6 has been amended to clarify which PBMs are subject to this rule which includes PBMs in Employment Retirement Income Security Act (ERISA) plans and workers' compensation insurers and self-insured employers.

Subdivision 4.2.17 is new. It requires PBMs to file all methodologies used in connection with reimbursement at initial licensure. If a PBM was initially licensed prior to the time methodologies were required to be filed, it must file them at its first renewal after January 1, 2022.

Subsection 5.7 has been amended to include a definition of the term “other adjustment”.

Section 5.8 adds that it is a discriminatory act if a PBM interferes with a patient’s choice to receive drugs at a 340B entity. This includes adding additional requirements, restrictions, or unnecessary burdens that result in administrative costs and fees to 340B entities that are not placed upon other pharmacies that do not participate in the 340B program.

Sections 5.9 through 5.15 are new. They stipulate how much a PBM is required to reimburse pharmacies and pharmacists, require payment parity, prohibit discrimination in reimbursement, set forth prohibitive practices, require that a health care plan be offered the option of pass-through pricing, specify the method of calculating a person's defined cost sharing for each prescription drug, and specify the method for calculating rebates.

Subsections 6.1 through 6.5 set forth additional reporting requirements.

Section 8 sets forth a formal restitution and reimbursement process.

Section 9 provides for consumer choice when selecting pharmacy benefits and services.

Insurance Commission – Term and Universal Life Insurance Reserve Financing, 114 CSR 102

This rule is new. It codifies the provisions of National Association of Insurance Commissioners' (NAIC) Term and Universal Life Insurance Reserve Financing Model Regulation No. 787 pursuant to amendments made to W. Va. Code 33-4-15a by House Bill 4146 passed during the 2020 Regular Legislative Session, to ensure continued NAIC accreditation of this state's Office of Insurance Commissioner and to preclude possible federal preemption of regulation of these reserve financing matters under a certain agreement between the United States, the European Union and the United Kingdom that governs reserve financing term and universal life insurance.

The rule establishes uniform, national standards governing reserve financing arrangements pertaining to term life insurance policies and universal life insurance policies with secondary guarantees. The primary focus of the bill is providing alternate means for the states to ensure the financial strength of secondary insurers when primary insurers use them to reinsure the term and universal life policies they have issued in this state, even when the secondary insurer is not domiciled in this state.

Insurance Commission – Bail Bondsmen in Criminal Cases, 114 CSR 103

The rule is new pursuant to the passage of House Bill 2758 which passed during the 2021 Regular Legislative Session and transferred licensing authority for bondsmen from the West Virginia Supreme Court to the Insurance Commissioner effective July 1, 2022.

Section 2 defines key terms.

Section 3 sets out licensing requirements for bondsmen or bail bondsmen. It requires submission of an application containing certain specified information and a criminal background check.

This section sets out specific requirements if the applicant is a licensed insurance producer with a property and casualty line of authority, including required deposits to secure the bondsman's obligations. Deposits may be in cash, securities, bond, letter of credit, annuity, or real estate. There are specific requirements for using real estate as the deposit. Applicants that are corporations are also required to provide additional information.

The Commissioner may request any additional necessary data and conduct reasonable inquiries or investigations relative to the determination of the fitness of an applicant. All information is confidential. It sets forth the statutory biennial \$200 licensing fee.

Section 5 sets forth responsibilities and prohibited activities, including: limitations on the bonding fee; a prohibition against accepting money or other things of value from a person for whom he or she posted a bond; a prohibition against giving anything of value in exchange for securing employment for the bondsman; a prohibition against involvement in settlement, dismissal, etc. of a person's case for whom they have executed a bond; a prohibition against securing legal representation for a someone for whom they have executed a bond; a prohibition against a personal relationship with someone for whom they have executed a bond, including a consensual relationship; solicitation of a person with a pending arrest warrant; a prohibition against entering a police precinct, jail, court, etc. for without first being contacted for bonding services; taking a bond that exceeds one-half of the bondsman's maximum amount of bonding authority; a prohibition against impersonation of a law enforcement officer; a limitation on law enforcement officers, attorneys, or court personnel from being surety on a bond; and a prohibition against signing a blank bail bond.

Section 6 relating to qualifications of securities on bail requires that all surety for release of a person on bail be qualified as a professional bondsman or an insurer.

Section 7 requires a bondsman to provide a written receipt for collateral or security received by a bail bondsman. It specifies the information that must be included on the receipt.

Section 8 relates to the financial responsibility of a bondsman. A deposit with the Commissioner is required of at least one-tenth of the value of all bonds undertaken and written is required unless the security is real estate. In no event is the deposit to be less than \$10,000. If real estate is the security the aggregate amount of the bonds written cannot exceed five times the assessed value of the real estate. There are provisions to apply to the Commissioner to increase the limit. The Commissioner also has the authority to decrease the limit if the bondsman has demonstrated financial irresponsibility. Additional provisions provide for joint writing of bonds, a power or attorney to allow the sale or transfer of the security, notice requirements to the Commissioner should the value of the security decrease, a provision to deny a license renewal if a bondsman has not complied with or cured a deficiency, and provisions for return of a license if the bondsman discontinues writing bonds.

Section 9 requires all cash securities be held in trust by the Commissioner in a separate account with the State Treasurer. The Commissioner may use the security to satisfy the liabilities of a professional bondsman on bail bonds.

Section 10 sets out provisions for discontinuance of writing bonds and the ability to provide for a substitute bondsman to perform the duties on outstanding bond obligations. The rule sets out the information that is required in a contract for transfer of the business should a substitute bondsman be retained.

Section 11 provides that a license issued by the Commissioner may be suspended or revoked following notice and a hearing for certain specified circumstances. If a license is suspended or revoked, the bondsman remains liable for any bond outstanding at the time of the suspension or revocation. The Commissioner also has the authority to impose a civil penalty of not more than \$100 per occurrence.

Section 12 requires a bondsman who files for bankruptcy protection to place the Commissioner on notice within five working days. Failure to do so results in an automatic suspension of a license pending an investigation and hearing.

Section 13 states that the Commissioner may visit any bondsman and examine his or her relevant records.

Section 15 requires reporting to the Commissioner on the financial responsibility of a bondsman. An insurer is required to file an annual report listing all surety bondmen. The Commissioner is required to be notified of an insurer who appoints a surety bondsman, as well of any termination of a surety bondsman.

Lottery Commission – West Virginia Lottery State Lottery Rules, 179 CSR 01

This rule amends a current legislative rule through which the State Lottery Commission (“Commission”) and the Lottery Director (“Director”) administer lottery games, such as instant tickets, draw games, Powerball, etc. Many of the amendments in the rule implement the new system of “iLottery” through which the Commission will offer and administer the playing of lottery games over the internet.

Section 2 revises definitions by adding definitions for “Dormant account,” “iLottery,” “Mutli-factor authentication,” “Personally identifiable information,” “Special Licensed Retailer,” and “Vendor of record.” Several other definitions are deleted as no longer necessary.

Section 3 updates the manner in which the bank accounts of agents and retailers that sell lottery products may be swept to include ACH transfers and provides for the payment of lottery prizes by EFT or ACH transfer.

Section 4 permits Special Licensed Retailers providing iLottery sales to engage in business solely as a licensed lottery retailer, removes conviction of a crime “involving moral turpitude” as a disqualifying event for licensees, removes the prohibition against

the credit card sale of lottery tickets, requires the recordation of the transfer of lottery tickets between individual stores in the same chain, allows agents and retailers to set a minimum amount for debit or credit card transactions, but does not allow a single transaction for the purchase of lottery tickets to exceed \$200, and increases license renewal fees from \$5 to \$25.

Section 5, relating to instant games, increases the maximum price of an instant lottery game from \$20 to \$50, allows selected retailers approved by the commission to redeem instant lottery tickets for a prize of \$600 to \$5,000 (other retailers may only redeem instant tickets for \$600 or less), and allows all retailer redemptions to be made by fund transfer or by credit to an established iLottery account, and revises certain validation requirements for a lottery ticket.

Section 6, related to draw games, allows all redemptions of draw game lottery tickets to be made by fund transfer or by credit to an established iLottery account. It removes the requirement that all draw game drawings be broadcast live on television if facilities for the broadcasts are available and operational, removes the requirement that following an error in drawing, the winning combination must be provided to the media for dissemination to the public. It also allows a lottery sales agent to pay prizes not only by check or money order, but also by bank issued credit or debit card or in another manner approved by the Commission.

Section 7 allows winners to claim the prize using their mobile devices.

Section 10 is new and includes provisions that require that gaming systems used by Special Licensed Retailers include a geolocation system in order to prevent unauthorized use of iLottery when a patron is not within the boundaries of the State of West Virginia. It also provides that any amounts in an iLottery account are subject to the Unclaimed Property Act if there is no patron-initiated activity for a period of sixteen months.

An additional change to the rule removes the use of the terms keno, travel, instant ticket, on-line ticket, on-line game, on-line terminal – all these concepts are now subsumed into the concept of “draw games.” The rule also clarifies throughout the rule that all tickets are “lottery tickets.”

Lottery Commission – West Virginia Lottery Limited Video Lottery Rules, 179 CSR 05

The rule amends a current legislative rule through which the State Commission and the Director administer the operation and playing of video lottery games in adult-restricted facilities or rooms, known as “Limited Video Lottery.” Many of them implement recent statutory changes enacted since these rules were last amended in 2017, and update the rule to match industry standards.

Section 2 revises definitions by authorizing social media as an approved platform for advertising. It eliminates the definition of the term “Filed timely personal income tax

returns” which was used for purposes of determining a state resident. A state’s requirement that a licensee meet certain minimum period of state residency to qualify for licensure (“duration of state residency”) was ruled unconstitutional by the US Supreme Court in a case involving licensure in Tennessee. The requirement was removed from West Virginia’s statute by Senate Bill 610 from the 2020 Regular Legislative Session. Finally, the definition of “licensed limited video lottery location approved by the commission” in accordance with statutory changes made by House Bill 4760 in the 2020 Regular Legislative Session to make the standard distance required between video lottery retailer locations consistent with the standard distance between private club licensees and clarifies that authorized truck stops may be authorized locations.

Subsection 3.2, which requires that each operator and licensee must meet certain minimum period of state residency to qualify for licensure has been deleted.

Section 11 increases the maximum single game wager from \$2 to \$5 in accordance with statutory changes made by House Bill 2191 during the 2019 Regular Legislative Session.

Section 16 increases the maximum allowable video lottery terminals per location to ten for all video lottery retailer applicants in accordance with statutory changes made by House Bill 3308 during the 2021 Regular Legislative Session.

Section 17 eliminates requirements that includes the State Auditor in the State Lottery Commission’s permit bidding processes in accordance with statutory changes made by House Bill 4410 during the 2018 Regular Legislative Session. These bidding processes will continue to be administered by the Purchasing Division of the Department of Administration. It also increases the maximum allowable video lottery terminals per location to ten for all video lottery retailer applicants in accordance with statutory changes made by House Bill 3308 during the 2021 Regular Legislative Session.

Section 18 requires the Commission to give a priority preference to allow current permit holders, for all bids conducted after June 30, 2011, to acquire permits which are held by those permit holders at the minimum stated bid price before those permits are made available for bid to other applicants in accordance with statutory changes made by House Bill 4647 during the 2020 Regular Legislative Session.

Section 33 removes the prohibition on conducting advertising by a video lottery terminal operator and modifies limitations on advertising by video lottery retailers, in accordance with House Bill 2507 during the 2021 Regular Legislative Session.

Section 36 provides new language governing permits that are issued prior to, but expire before, July 1, 2031.

Racing Commission – Thoroughbred Racing, 178 CSR 01

The rule amends a current legislative rule that regulates all aspects of thoroughbred racing in West Virginia. Subdivision 10.3.c. has been amended to allow for

purse release agreements which provide for purse distribution after the official end of each race and before post-race tests have cleared with the laboratory or laboratories under certain circumstances and conditions.

Racing Commission – Pari-Mutuel Wagering, 178 CSR 05

The rule adds a 5-year sunset provision.

State Tax Department -- Valuation of Producing and Reserve Oil, Natural Gas Liquids, and Natural Gas for Ad Valorem Property Tax Purposes, 110 CSR 01J

This rule was not authorized by the Legislative Rule-Making Review Committee. It set the method and process for how the Tax Department calculates the property taxes for producing and reserve oil, natural gas liquids, and natural gas.

State Tax Department – West Virginia Tax Credit for Federal Excise Tax Imposed Upon Small Arms and Ammunition Manufacturers, 110 CSR 13KK

This a new rule that implements the provisions of House Bill 2499 which passed during the 2021 Regular Legislative Session.

The rule establishes the amount of the credit pursuant to the limits set forth in the authorizing statute. The credit is permitted to a taxpayer against a portion of state taxes attributable to investing in a new or expanded small arms and ammunition manufacturing facility in West Virginia. That investment must equal or exceed \$2,000,000. This credit must be continuously maintained in every operational year for a 10-year period. The credit amount is capped at 100% of the federal excise tax amount payable to the United State Government.

The credit is first applied to corporate net income taxes. If the corporate net income due by a taxpayer is not solely attributable to an investment in small arms and ammunition manufacturing, then the rule sets out a formula to determine the amount of the credit.

If the taxpayer is a small business corporation, a partnership, a limited liability company treated as a partnership for federal taxation purposes, or a sole proprietorship, then any unused portion of the credit may be applied toward personal income taxes. The credit is allocated among partners and members in the same manner as profits and losses for a taxable year. If the personal income due by a taxpayer is not solely attributable to an investment in small arms and ammunition manufacturing, then the rule sets out a formula to determine the amount of the credit.

If the formulas set out in the rule do not fairly represent the taxes attributable to a qualified investment, then the Tax Commissioner has the ability to request additional information.

Any unused portion of the credit may be carried forward until the expiration of the tenth year. If any credit remains after the tenth year, it is forfeited.

To determine a qualified investment, the rule tracks the statute. It is set as a percentage of the cost of each property purchased or leased of the new, or expansion of an existing, small arms and ammunition manufacturing facility. The percentage is determined by a table set out in the rule.

Useful life is determined as of the date the property is first placed into service. The cost of each property is determined by examining trade-ins, damaged, destroyed, or stolen property, rental property, self-constructed property; and transferred property.

If the property is disposed of or ceases to be used as a small arms and ammunition manufacturing facility or if there is a cessation of operation of a small arms and ammunition manufacturing facility, then any unused portion of the credit is forfeited. There is an exception if the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen. A change in the form of the business or a transfer or sale to a successor are permissible as long the property continues to operate as a small arms and ammunition manufacturing facility. A successor business or new owner may claim any unused portion of the credit.

There are record keeping requirements with specific data elements that a taxpayer must retain to establish that a property qualifies for the credit. The rule provides consequences for not keeping proper records impacting the taxpayer's ability to claim the credit and in which tax year the credit is applicable. There is also a process that places the burden of proof on the taxpayer to prove an investment qualifies for the credit. No credit is allowed until the taxpayer makes a written application for allowance of the credit to the Commissioner.

The Tax Commissioner is required, every five years beginning February 1, 2026, to file a report with the Governor and the presiding officer of both houses of the Legislature to evaluate the cost effectiveness of the credit.

A second report is required from the Department of Commerce in consultation with the Tax Commissioner, the Department of Transportation, and the Department of Environmental Protection on the economic impact of the credit.

Final provisions of the rule provide for administration of the credit by the West Virginia Tax Procedure and Administration Act and crimes and penalties set out in the West Virginia Tax Crimes and Penalties Act are applicable to this credit. There is a severability clause that tracks the statute and an effective date of property placed into service after July 1, 2021.

State Tax Department – Sales Tax Holiday, 110 CSR 15F

This new rule implements the provisions of WV Code §11-15A-9s, newly created in House Bill 206 during the 2019 1st Extraordinary Session, that established a four-day

sales tax holiday each August after July 1, 2021, consisting of “the first Sunday of August, the previous Friday and Saturday and the following Monday.” The act establishes that purchases during these four days of certain clothing with a purchase price of \$125 or less; certain school supplies with a purchase price of \$50 or less; certain school instruction material with a purchase price of \$20 or less; certain laptop and tablet computers that are not purchased for use in a trade or business and with a purchase price of \$500 or less; and certain sports equipment that is not purchased for use in a trade or business and with a purchase price of \$150 or less are exempt from the sales tax.

The first sales tax holiday occurred this year under the guidance of the State Tax Division’s Emergency Rule authorized by the Act. The legislative rule is not substantively different from the emergency rule in effect since June 7, 2021. The rule provides: definitions; language governing items normally sold as a unit; language governing sales of “buy one, get one free or for a reduced price”; language governing exchanges and returns; coupons and discounts; gift certificates; layaway sales; mail, telephone, e-mail, and internet orders and custom orders; rain checks; rebates; repairs and alternations; refunds; shipping and handling charges; record keeping and reporting; and exceptions,

State Tax Department – Exemption for Repair, Remodeling and Maintenance of an Aircraft, 110 CSR 15L

This rule is new. The rule is promulgated to comply with the provisions of Senate Bill 305 which passed during the 2021 Regular Session of the Legislature. That bill authorized both an emergency and a legislative rule. It creates a tax exemption from the Consumer Sales and Service Tax for:

1. Services including aircraft repair, remodeling, and maintenance services for an aircraft;
2. Services including repair, remodeling, and maintenance services for an engine or other component of an aircraft;
3. Sales of tangible personal property that, as part of a repair, remodel, or maintenance, is permanently affixed or attached as a component part of an aircraft; and
4. Sales of machinery or tools used or consumed directly and exclusively for repair, remodeling, and maintenance services for an aircraft or engine or other component of an aircraft.

The rule provides that the Consumer Sales and Service tax and the Use Tax exemption applies to:

1. Machinery, tools, or equipment directly used or consumed exclusively of the repair, remodel, or maintenance of an aircraft, its engine, or other aircraft component.
2. Machinery, tools, or equipment physically incorporated into the finished aircraft, it’s engine or component parts.
3. Machinery, tools, or equipment used exclusively for repairing, remodeling, or maintaining aircraft.

4. Machinery, tools, or equipment used exclusively for repairing, remodeling, or maintaining aircraft that also qualifies for the exemption under West Virginia Code §11-15-9(a)(33). That section contains a similar exemption for aircraft operated by a certified or licensed carrier or a government entity.

There is a process for claiming the exemption set forth in the rule. A taxpayer may pay the vendor and then apply for a refund. The taxpayer would then file a claim for refund or credit on a form provided by the Commissioner. Alternatively, the taxpayer may provide the vendor his or her direct pay permit. The third and final option is for the taxpayer to file a claim and execute a certificate of exemption on a form provided by the Commissioner and deliver this to the vendor. A taxpayer using an exemption certificate must have a valid Business Registration Certificate and complete an exemption certificate.

The rule has provisions for the Commissioner to render an exemption void due to fraud, error, deficient or incomplete records or documentation, failure to retain records, or acceptance or use of an exemption certificate in bad faith. The Commissioner also has investigative powers pursuant to the Procedures and Administration Act set forth in West Virginia Code §11-10-1 *et seq.*

Finally, the rule has record keeping requirements allowing the Commissioner the ability to verify a vendor or retailer's taxable and nontaxable sales in the case of an audit.

State Tax Department – Vendor Absorption or Assumption of Sales and Use Tax, 110 CSR 15M

This rule is new and implements the provisions of Senate Bill 661 during the 2021 Regular Legislative Session. The rule allows retailers to advertise or state to their customers that the sales or use tax or any part of such tax due on a purchase made by the customer will be assumed or absorbed by the retailer, or will not be added to the sales price, or if added, that it will be refunded, if the vendor: (1) separately states the selling price and the full amount of the tax imposed on the sale; and (2) remits the full amount of the tax with the return that covers the period when the sale occurred.

The rule provides requirements for absorbing or assuming the tax during and following a sales transaction; identifies the taxpayers in the transaction; outlines who may apply for refunds of a remitted tax; applies these provisions to the municipal sales and use tax; and the special district excise tax (sales tax increment financing); and does not allow absorbing or assuming the sales tax on motor vehicles or motor fuel.

State Tax Department – On-line Bingo and Raffles, 110 CSR 16A

The rule is new and implements the provisions of Senate Bill 263 during the 2021 Regular Legislative Session. The rule allows state-regulated games of charitable bingo and charitable raffles to be offered over the Internet. Charitable bingo and charitable raffles are otherwise regulated through 110 CSR 16 and 110 CSR 35, respectively, which are not proposed for amendment. This rule addresses the playing of those games over the

Internet, including: definitions, including but not limited to, definitions for “on-line bingo” and “on-line raffle”; licenses for on-line bingo and raffles; requiring any licensee conducting on-line bingo or on-line raffle to use a geolocation system in order to prevent unauthorized use of an on-line gaming system when a patron is not within the boundaries of the State of West Virginia; requiring licensees to have a positive age-verification system to ensure that no individual under the age of eighteen may participate in the playing of any bingo game; addressing sales of bingo cards and raffle tickets; limiting the frequency and duration of bingo occasions; providing restrictions on use of bingo and raffle equipment and on expenses for the conduct of on-line games; limiting the value of bingo prizes awarded, and the types of bingo or raffle prizes; and imposing statutory penalties for violations upon violations of the rule.

State Tax Department – Corporation Net Income Tax, 110 CSR 24

This is a new rule that implements the provisions of House Bill 2026 passed during the 2021 Regular Legislative Session. That bill changes existing law that determines the apportionment of business income earned in more than one state under state corporate net income tax law, all beginning January 1, 2022. Popular descriptions of the specific areas of change proposed by the bill related to this rule are (1) Sales Factor and Elimination of the Throw-Out Rule; and (2) Market-Based Sourcing, each more specifically summarized as follows:

Single Sales Factor

§11-24-7 was amended so that when determining how much of a corporation’s total business activity in all states will be subject to West Virginia corporate net income tax, the corporation’s property and payroll will no longer be considered and the corporation’s sales will no longer be double-weighted. The bill provides that only a portion of a corporation’s sales will be taxed. That portion will be determined using a single-sales ratio of sales in this state over sales in all states, multiplied by the corporation’s federal adjusted taxable income.

Throw-Out Rule Elimination

When determining the portion of the corporation’s sales that will be taxed using a single-sales ratio of sales in this state over sales in all states, multiplied by the corporation’s federal adjusted taxable income, the bill’s elimination of the “throw-out” rule will allow corporations to include in the denominator of the single-sales ratio the corporation’s sales that were not taxed in other states. Current West Virginia law “throws out” these sales that are not taxed in other states, but the bill will reduce the corporation’s taxes by eliminating what is popularly known as the “throw-out” rule.

Market-Based Sourcing

Taxation of a corporation’s sales of services and intangible personal property will be attributed to income derived from where the service or property was delivered, not where the activity that generated the sale occurred, when determining the proportion of the corporation’s sales to be taxed by West Virginia.

The changes amend the existing rule administering corporate income taxation in this state to incorporate the changes made by House Bill 2026. The primary amendments are made in the following sections:

Section 6 provides a new section for “Allocation And Apportionment for Tax Years beginning on and after January 1, 2022.”

Section 6a provides a new section for “Transition Rules for C corporations having a fiscal tax year ending after January 1, 2022, and before December 31, 2022.”

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: July 1, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 330

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing DOT to promulgate legislative rules

CODE REFERENCE: §64-8-1 *et seq.* (Amends and Reenacts)

SUMMARY:

The Committee Substitute for Senate Bill 330 contains the Department of Transportation rules. It is known as Bundle 8 and contains 4 rules.

Division of Motor Vehicles – Examination and Issuance of Driver’s License, 91 CSR 04

This rule is an amendment of a current legislative rule and was last amended effective April of this year. The amendment reflects passage of Senate Bill 356 in 2021 Regular Legislative Session, which authorizes driver’s education instructors to administer the knowledge examination for a driver’s license.

The rule allows a driver’s education instructor to administer a knowledge examination and provides that applicants who successfully complete such an examination are exempt from providing a certificate of current school enrollment. The rule also permits the Division of Motor Vehicles (DMV) to allow driver’s education instructors to administer a road skills examination to be developed by DMV. As with the knowledge examination, applicants completing a road skills examination administered by a driver’s education instructor are exempt from meeting the school enrollment certificate requirement. The DMV may revoke any driver’s education instructors privilege to administer either test for failure to comply with the standards developed by the Division.

The rule also allows individuals transferring an out of state license to a West Virginia license to use the out of state license and the documents used to obtain it to establish the requirements for obtaining the West Virginia license, except when prohibited by federal law.

The DMV requested an amendment to the rule on page 12, subsection 8.2, after the words “valid driver’s license” by inserting the words “expired 36 months or less”. Currently, the holder of a WV license that is expired 36 months or less, does not have to retest to obtain the license. If transferring in from another state, a person must retest if his or her out of state license is expired by just one day. The amendment was adopted and

now clarifies that the ability to renew a license without retesting if it has been expired for 36 months or less does not apply to commercial driver's licenses.

Finally, the rule authorizes online renewal of a driver's license or identification card despite a change of address from that on file with DMV. The rule formerly barred online renewal if the address had changed. The amendment reflects passage of Senate Bill 343 in the 2021 Regular Legislative Session.

Division of Motor Vehicles – Dealer Licensing, 91 CSR 06

The rule amends a current legislative rule which establishes requirements for licensing motor vehicle dealers, wrecker/dismantler/rebuilders, automobile auctions, vehicle leasing and rental companies, transportation network companies, and license services providers, all of whom the Division of Motor Vehicles (DMV) licenses and regulates. The current rule has not been amended since 2006.

The rule reorganizes and consolidates substantially similar language that applies to different types of licenses into a single provision that applies to all or most of the licenses. For example, this section of the rule concerns dealership premises for all classes of dealers. It replaces portions of the former rule that separately dealt with premises for the different types of licenses. Similarly, several separate bonding provisions of the former rule are consolidated into a single phrase in subsection 3.1 of the rule referring to the statutory bonding requirements. Other provisions of the current rule are relocated in the rule for clarity.

The rule adds provisions dealing with temporary registration plates, dealer franchises, transportation network company permits, and licensee behavior on DMV premises and when engaging with DMV employees.

Division of Motor Vehicles – Collection of Tax on the Sale of a Vehicle, 91 CSR 09

The rule amends a current legislative rule which raises the sales tax on the purchase of a new or used vehicle from five percent to six percent, in conformity with the provisions of W. Va. Code §11-15-3c.

Department of Transportation – Employment Procedures, 217 CSR 01

This new rule is promulgated pursuant to House Bill 2720, which passed during the 2021 Regular Legislative Session, and which requires the Department of Transportation (DOT) to establish a merit-based personnel administration system—separate from the Department of Personnel's (DOP) civil service system under W. Va. Code §29-6-1 *et seq.*—to become effective January 1, 2022. Therefore, DOT has also filed

an emergency rule which will be in effect from January 1, 2022 until this legislative rule completes the legislative process and becomes effective.

While this is a new rule, the Department of Highways (DOH) has a separate rule, *Employment Procedures*, 157 CSR 12 which is currently in effect and sunsets on April 13, 2023. However, the DOH rule will be effectively replaced by the new DOT rule.

This rule substantially follows the DOP's 143-01 *Administrative Rule of the West Virginia Division of Personnel*, with certain distinctions.

The provisions of the rule are summarized below:

- §1 – Scope, authority, filing date, effective date, and sunset provision.
- §2 – Defines 80 terms.
- §3 – Requirements for class specifications, classification of positions, position descriptions, reclassification, position reallocation, temporary classification upgrade, and classification plan for classified-exempt service.
- §4 – Purpose and intent of the career classification and compensation plan (CCCP or “pay plan”); requirements for preparation, adoption, and implementation of the pay plan; requirements for pay on promotion, demotion, lateral class change, and reinstatement; requirements for salary advancements; and requirements for annual increment increase.
- §5 – Requirements for examinations and notice of examinations, filing applications, disqualifications of applicants, conduct of examinations, scoring of examinations, rating training and experience, notice of exam results, special examinations, and examination records.
- §6 – Requirements for establishment of registers, their duration, removal of names from registers, and reinstatement to register.
- §7 – Requirements for requests for certification, certification methods, selective certification, and corrections of errors.
- §8 – Requirements for appointments to positions added to the CCCP classified service, original appointments, temporary employment, and posting of job openings.
- §9 – Nature, purpose, and duration of the probationary period; requirements for conditions preliminary to permanent appointment; requirements for transfers during probation; and requirements for dismissal during probation.
- §10 – Method of making promotions, demotions, and transfers.
- §11 – Resignation, dismissal, suspension, and layoffs, like penalties for like offenses in dismissals for cause and other disciplinary actions, and reinstatement.
- §12 – Official holidays, agency work schedules, annual leave, transfer of annual leave, sick leave, transfer of sick leave, suspected misuse of leave, unauthorized leave, overtime work and holiday work, leave of absence without pay, military leave, court, jury, and hearing leave, and other leave.
- §13 – Performance evaluations

- §14 – Prohibition of political activities, application of the federal Hatch Act, and additional prohibition for DOH employees.
- §15 – Employment conflicts including other employment and certain volunteer activity, and nepotism.
- §16 – Payroll.
- §17 – Agency and division records.
- §18 – Confidentiality.
- §19 – Agency and division responsibilities for training and development.
- §20 – Employee representative organization bulletin boards.

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: March 8, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 334

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing miscellaneous agencies and boards to promulgate rules.

CODE REFERENCE: §64-9-1 *et. seq* (Amends and Reenacts)

SUMMARY:

Senate Bill 334 contains 75 rules and is known as bundle 9, the miscellaneous bundle.

Commissioner of Agriculture – Feeding of Untreated Garbage to Swine, 61 CSR 01A

The rule removes the \$5 fee for a swine garbage feeding permit. The fee which was in the statute was removed in Enrolled Committee Substitute for House Bill 2633, which passed during the 2021 Regular Legislative Session.

Commissioner of Agriculture – Commercial Feed, 61 CSR 05

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

§61-5-2. Incorporation by Reference.

This section has been amended to update references to federal regulations that are incorporated by reference into the rule.

§61-5-5. Permits; Registration.

A new subsection 5.3 relating to a commercial feed guarantor permit requires any person whose name appears on the label of commercial feed or customer-formula feed, except for a person who has a Commercial Feed Manufacturing Permit, to complete an application for each manufacturing facility or location distributing feed in or into the state. It specifies information which must be contained in the application.

Subsection 5.4 has been amended to relate specifically to the annual registration of pet food and pet food products as opposed to commercial feed.

§61-5-7. Labeling.

A new paragraph 7.1.b.10. sets forth labeling requirements for commercial feed which consists of raw milk. Neutral Detergent Fiber has been added to the sequence of ingredients listed in the nutritional guarantee.

§61-5-8. Expression of Guarantees.

A new subdivision 8.3.h. allows products labeled with a quantity statement to state vitamin guarantees in milligrams per unit consistent with the quantity statements and direction for use.

Subsection 8.9 is new. It contains requirements for guarantees for dietary starch, sugars, and fructans.

§61-5-10. Ingredients.

A new subsection 10.8 requires that each ingredient be listed in the ingredient statement on the label unless it meets the criteria for an incidental ingredient.

§61-5-11. Directions for Use and Precautionary statements.

A new subsection 11.4. requires raw milk distributed as commercial feed to contain a statement warning that it is not for human consumption, has not been pasteurized, and may contain harmful bacteria.

§61-5-12. Non-Protein Nitrogen.

A new subsection 12.4. provides that feeding or use directions for those feeds in which more than 50% of the protein content is derived from non-protein nitrogen sources should include recommendations regarding adequate supplies of drinking water, sources of energy, forages being fed, minerals, adaptation periods, and stress conditions when necessary.

§61-5-14. Adulteration.

This section defines “poisonous” or “deleterious” substances. Raw leather residue from tanning or leather manufacturing is included within this definition.

§61-5-17. Enforcement Policy.

The rule removes language allowing the Commissioner, for a first or second violation, where a commercial feed sample does not conform to the requirements of the law and the rule, to issue an embargo order for the lot of commercial feed to the custodian

of the lot sampled. Language has also been deleted which required the Commissioner to take additional samples from a different lot.

§61-5-20. Penalties for Violative Samples.

This new section requires the Commissioner to assess a penalty each time a lot of commercial feed is found to be violative in the amount of 10% of the retail value of the lot of commercial feed with the minimum amount of the penalty being \$25. If after 15 days, the penalty has not been paid, the Commissioner is required to assess a late penalty of 10% of the violative penalty fee in addition to that fee.

Department of Agriculture – Enrichment of Flour and Bread Laws Regulations, 61 CSR 07

This rule is repealed. It has not been amended since 1946 and the provisions of the rule have been superseded.

Department of Agriculture – Fruits and Vegetables: Certification of Potatoes for Seedling Purposes, 61 CSR 08C

This rule is repealed. It has not been amended since 1946 and the language of the rule is out of date and has been superseded by multiple amendments to West Virginia seed law.

Department of Agriculture – Fresh Food Act, 61 CSR 10

The rule amends a current legislative rule regarding the Fresh Food Act, which was enacted in 2019. The Act requires state-funded institutions to purchase a minimum of five percent of their food from in-state producers.

The rule modifies definitions of certain terms for consistency and adds a definition of “processing.” It also makes several technical changes.

The rule makes three substantive changes to the existing rule. First, it clarifies that the requirements of the Act may not be satisfied by reselling foods produced or grown out of state that have been minimally processed in West Virginia. Second, it provides the Commissioner of Agriculture with guidance in exercising his or her authority to decide whether specific foods qualify as West Virginia foods under the Act. Finally, the rule expressly allows both state institutions and vendors of food products to seek guidance or assistance from the Department of Agriculture concerning whether certain foods qualify as West Virginia foods, without relieving either of the duty to comply with the Act.

Department of Agriculture - Auctioneers, 61 CSR 11B

The rule amends a current legislative rule. It adds a requirement that licensed auctioneers maintain updated contact information with the department. The rule also mandates that continuing education providers obtain approval of their courses in advance. Prior approval was previously recommended, but not required. It eliminates an exemption from continuing education requirements for auctioneers who have not conducted any auctions in the preceding 12 months.

The rule raises the fee for initial licensure, licensure by reciprocity, and renewal from \$50 to \$100 annually. It also shortens the grace period before a late fee of \$50 applies from 120 days to 60 days, reduces from 180 to 90 days the period before an enhanced late fee of \$75 applies, and adds an additional late fee of \$100 if the renewal is received more than 120 days after license expiration.

Department of Agriculture – Hemp Products, 61 CSR 30

The rule amends a current legislative rule. The rule adds and modifies definitions of terms and alters the registration process for hemp products and for the sale of those products. All hemp products must be registered with the department annually, by January 1. Beginning January 1, 2022, the registration fee will be reduced to \$100 (from \$200) for hemp products grown, harvested, and manufactured in West Virginia. On that same date, the cap on the product registration fee per registrant drops from \$1,000 to \$500 for West Virginia products. The rule also slightly modifies the requirements for registration to sell hemp products in the state, by exempting retailers who sell only generally recognized as safe (GRAS) products.

The rule modifies labeling requirements, most significantly by requiring that any product containing more than 0.3 percent tetrahydrocannabinols declare on the label that the product is not intended for sale to persons under the age of 18.

Specific containment limits for pesticides, toxic metals, and foreign materials are established in the rule. The rule also amends the scope of second and subsequent offense penalties by reducing the window for those offenses to within one year rather than within five years as stated in the current rule.

Department of Agriculture – Livestock Care Standards, 61 CSR 31

The rule is new. The previous rule was repealed by Committee Substitute for House Bill 2219 during the 2017 Regular Legislative Session when it was determined the Commissioner did not have the authority to promulgate the rule. The authority rested with the Livestock Care Standards Board. Committee Substitute for House Bill 2633 which passed during the 2021 Regular Legislative Session gives the Commissioner the

authority, in consultation with the Board, to establish the standards through legislative rule. The following is a section-by-section synopsis of the rule.

§61-31-1. General.

This is the standard general section.

§61-31-2. Definitions.

This section defines the following terms: ambulatory disabled; best management practices; biologicals; bio-security; body condition score; captive cervid farming facility; cattle; cervid; Coggins; Commissioner; Department; distress; emergency situation; Equine; euthanasia; general quarantine; handling; Henneke body score; herd or flock; licensed and accredited veterinarian; livestock; non-ambulatory disabled; pharmaceuticals; poultry; quarantine; responsible party; responsible law enforcement officer; shelter; small ruminants; soring; swine; vaccination; vaccine; valid veterinarian; and veal.

§61-31-3. Addressing complaints regarding inhumane treatment of livestock.

The county sheriff, humane officer, county commission, or other designated county authority is responsible for investigating and taking action in response to a complaint of inhuman treatment of animals or livestock. It allows any law enforcement officer to request assistance from the Department and an opinion from the Commissioner on the application of this rule. Any documentation or communication regarding a complaint or investigation is confidential and exempt from disclosure under the West Virginia Freedom of Information Act.

§61-31-4. Feed, water and ventilation.

This section requires a responsible party to provide its livestock with adequate feed, water, and ventilation appropriate for the age, use, and stage of production of the livestock, and weather conditions. Feed and water may be withheld under specified conditions.

§61-31-5. Space.

A responsible party must have sufficient space for its livestock whether in an enclosure, an outdoor lot or pasture, or an indoor facility.

§61-31-6. Health care.

The responsible party is required to maintain healthy livestock through immunizations, vaccinations, pharmaceuticals, biologicals and prescriptions, and extra-label medications.

§61-31-7. Preparing animals for exhibition.

This section requires the responsible party to train, fit, and restrain livestock for exhibition in a manner that minimizes the risk of injury.

§61-31-8. Livestock handling.

Under this section, the responsible party is required to handle livestock and load or unload livestock in a manner that minimizes the risk to injury to the livestock.

§61-31-9. Transportation.

This section requires that livestock be able to stand in their natural position or resting position and poultry must have sufficient floor space to rest or perch. The livestock must be reasonably protected from the weather. Transporters are required to stop every 28 hours to unload and provide food, water, and rest for at least five consecutive hours, unless the transportation vehicle allows the livestock to lay down and rest and have access to feed and water.

§61-31-10. Handling of disabled livestock.

Under this section the responsible party is required to protect ambulatory disabled, non-ambulatory disabled, and distressed livestock from other animals, predators, and weather extremes. It provides feeding, watering, and handling requirements. It requires a responsible party to euthanize livestock in severe distress with an irreversible condition.

§61-31-11. Bio-security.

This section allows a responsible party to enforce bio-security protocols and limit public access to farms, as well as use animals, devices, or fencing for animal control.

§61-31-12. Exemptions.

This section states that the rule does not apply during emergencies or limit or prevent a veterinarian from providing necessary care to an animal.

§61-31-13. Standards of care for beef cattle, bison and veal.

This section contains requirements for feeding veal calves, body scoring evaluations, space for calving, sheltering systems, and authorized practices.

§61-31-14. Standards of care for dairy cattle.

This section contains requirements for facilities, body scoring, feeding and authorized practices.

§61-31-15. Standards of care for equine.

This section contains requirements for water, feed, weight and body condition, space, and authorized practices. Soring is prohibited.

§61-31-16. Standards of care for small ruminants.

This section contains requirements for body scoring and authorized practices for Ovine, Caprine, and camelids.

§61-31-17. Standards of care concerning swine.

This section contains requirements for body scoring, transportation, and authorized practices.

§61-31-18. Standards of care concerning poultry.

This section contains requirements for stocking densities, euthanasia or depopulation, and authorized practices.

§61-31-19. Standards of care concerning captive cervids.

This section references the Department's rule on captive cervid farming and contains body scoring requirements.

§61-31-20. Animal morbidity and mortality data.

This section states that animal morbidity and mortality data is referenced in the USDA FSA West Virginia Livestock Mortality Rates.

§61-31-21. Penalties.

Persons violating this rule are subject to the penalties in the statute.

Department of Agriculture – Rural Rehabilitation Program, 61 CSR 33

The rule amends a current legislative rule relating to the Rural Rehabilitation Loan Program, which is a loan program administered by the Department of Agriculture to promote the investment in the State’s agricultural industry, primarily assisting farmers.

The rule largely clarifies that the authority to administer the program rests with the commissioner, and not the loan committee. The rule also allows the commissioner to waive the five-year requirement before refinancing a loan in situations where a declared state of emergency has impacted or will likely impact the loan holder’s ability to stay in good standing on the loan.

Department of Agriculture – Farm to Food Bank Tax Credit, 61 CSR 36

The rule amends a current legislative rule that relates to the Farm to Food Bank Tax Credit program. In brief, the program allocates tax credits to farmers who donate edible agricultural products to qualified food banks. The sole amendment to the existing rule is to increase the amount of the tax credit from 10 percent of the value of the donated products to 30 percent of that value. The rule limits the total value of the tax credits allowed to a single taxpayer to no more than \$2,500 during a taxable year. The program itself is capped at \$200,000 in tax credits in a fiscal year.

Department of Agriculture – Farmers Markets, 61 CSR 38

The rule amends a current legislative rule concerning farmers’ markets. The amendments reflect passage of the Farm Bill, House Bill 2633, during 2021 Regular Legislative Session. The amendments to the existing rule mirror the provisions of the Farm Bill relating to farmers’ markets. They update, simplify, and consolidate terms, including eliminating use of the term “cottage foods”. The amendments also reorganize requirements for registration of farmers’ markets, vendor permits, and existing provisions regarding the role of local health departments in regulating farmers’ markets. One of the primary goals of the Farm Bill was to shift regulation of farmers markets to the department rather than to local health departments. To that end, the rule exempts farmers’ markets, except for consignment farmers’ markets, and all farmers’ market vendors from local health department food establishment permitting requirements. Farmers’ markets must instead register with the department and vendors, depending on the type of food they sell, must obtain permits from the department. The rule requires vendors of potentially hazardous foods to obtain a permit from the department; vendors of non-potentially hazardous foods are exempt from the permit requirement.

Local health department inspection and testing is limited by the rule, and even where authorized, is to be made jointly or the results shared with the department.

Enforcement of federal regulations concerning farm and food products sold at farmers' markets lies solely with the department.

Finally, the rule extensively revises the labeling requirements applicable to food products sold directly to consumers.

Department of Agriculture – Seed Certification, 61 CSR 39

The rule amends a current legislative rule. Section 38 related to certification fees has been amended to remove the table setting forth fees specifically related to hemp. Instead, it sets forth the following general fees: Application fee for seed certification - \$35, with a \$50 late fee; inspection and sampling fee - \$35 per hour plus mileage; and a production fee, including tagging - \$0.15 per tag with a \$15 minimum. A fee has been added for the winter test for seed potatoes of \$50 per lot.

Section 45 which currently relates to certification standards for all other crops has been amended to relate to seed potato certification standards. It defines terms and provides for seed classification. It sets forth requirements for seed stock eligibility, land field isolation, field inspection, post-harvesting testing, Potato Virus X testing, Bacterial Ring Rot testing, pre-nuclear class production, nuclear class production, storage facilities, and grade.

State Auditor – Procedure for Local Levying Bodies to Apply for Permission to Extend Time to Meet as Levying Body, 155 CSR 08

The rule extends its sunset date to August 1, 2027.

State Auditor – Accountability Requirements for State Funds and Grants, 155 CSR 09

The rule is new. It implements the provisions of Enrolled Committee Substitute for House Bill 2573, which passed April 10, 2021. The following is a synopsis of the substantive amendments in the rule.

§155-9-2. Definitions.

For the most part, this section contains the definitions set forth in the Code. The Code definitions for the terms “Report” and “State Grant” have been expanded. Definitions, not in the Code, have been added for “Agreed upon procedures engagement”, “Examination engagement”, and “Receipts”.

§155-9-3. Reports of the Disbursement of State Grants.

This section contains the statutory requirement for the filing of reports by a grantee who receives \$50,000 or more in the aggregate in a fiscal year. It also provides for the

contents of the reports, the procedures for filing when a grantee receives more than one grant, the filing procedure where the fiscal year of the grantee is different than State's fiscal year, reports submitted prior to the effective date of the rule, and inclusion of the reports with the grantee's annual financial statements.

§155-9-4. Audit Reports for Funds.

This section authorizes a grantee, in lieu of a report, to file an audit performed by an independent CPA in accordance with Office of Management and Budget (OMB) standards which includes a schedule of state grant receipts and expenditures, as well as an auditor's opinion on whether the schedule is fairly stated in relation to the financial statements taken as a whole or an audit complying with OMB standards which includes a schedule of state grant receipts and expenditures, as well as an auditor's opinion on whether the schedule is fairly stated in relation to the financial statements taken as a whole. The CPA performing an audit must maintain all audit work papers for five years following the date of issuance of the audit report.

§155-9-5. Sworn Statements of Expenditures Made Under Grants.

Under this section, any grantee who: receives state grants in the aggregate amount of less than \$50,000; is not required to file a report because an audit, meeting certain standards, has been conducted by a certified public accountant and a copy is available for public inspection; and is not required to file a report because an audit complying with OMB standards is substituted for the report, is to file a sworn notarized statement of expenditures for all applicable grants with the grantor and the State Auditor. It sets forth the minimum requirements for the sworn statement, including the form.

A senior representative of the grantee must sign the statement and swear or affirm that the amounts of the disbursements were expended as prescribed by statute. Any sworn statement submitted before the effective date of the rule is acceptable if it complies with the Code.

§155-9-6. Debarment.

The Code provides that any grantee who fails to file a required report or sworn statement of expenditures for state grants within the required time is barred from subsequently receiving further state grants until the grantee comes into compliance with requirements of the rule. Under this section, the grantor is primarily responsible for making this determination and the State Auditor is responsible for administering the process. This section also has provisions regarding notice to the grantee, disputes regarding a proposed debarment, updating of the debarment list, and applications by a debarred grantee for federal funding assistance or other types of funding.

§155-9-7. Grantor Reporting Requirements.

This section contains grantor reporting requirements. It requires a grantor to provide the information required by the Code and to notify each grantee of the reporting requirements contained in this section. It requires reporting requirements to be

contained in a clause within the formal grant agreement, contractual document or grant award notification letter, or in certain cases an ancillary communication. A grantor is required to provide notice to the State Auditor if a grantee fails to meet reporting requirements. The grantor must provide a copy of any report or sworn statement of expenditures containing deficiencies, violations, illegal acts, etc. to the State Auditor within 30 days of receipt.

§155-9-8. Verification Process.

Under this section, a grantor, before awarding a state grant, is required to verify the person seeking the state grant is not barred from receiving the grant. It sets forth the verification process.

§155-9-9. Stop Payment Procedures.

The Code requires that grantor agencies or the State Auditor are to issue stop payment orders for failure of a grantee to file required reports or keep appropriate records. This section sets forth the procedure for issuing stop payment orders, the information which must be contained on the order, the method of notifying the grantee, the circumstances under which an order may be temporarily or permanently lifted, and the manner of contesting the order.

§155-9-10. Grant Funds Recovery Procedure.

This section contains the provisions of the statute regarding the recovery of any grant funds which have been misspent or are being improperly withheld.

§155-9-11. Prohibited Political Activity.

This section contains the provisions of the statute regarding the use of grant funds for prohibited political activity.

§155-9-12. Chief Accountability Officer.

This section contains the provisions of the statute regarding the requirement that each state grantor agency designate a chief accountability officer.

§155-9-13. Conflict of Interest Provisions.

The statute requires the State Auditor to develop rules regarding conflict of interest. This section requires each state grantor agency to develop conflict of interest policies which are to be filed in writing with the State Auditor.

§155-9-14. Legislative Reporting.

This section contains the provisions of the statute regarding required reporting by the State Auditor to the Joint Committee on Government and Finance.

West Virginia Board of Chiropractic Examiners – Chiropractic Telehealth Practice, 4 CSR 09

The rule is new. It applies to chiropractors licensed to practice in other jurisdictions who seek to provide limited interstate telehealth services in West Virginia.

The rule provides definitions for the terms Board, Health care practitioner, interstate telehealth, registration, and telehealth services.

The rule requires an applicant to submit registration on a board approved form, pay the appropriate fee, hold licenses in good standing in all states and, not be or subject to an administrative complaint.

The rule provides that the registration expires on June 30th. It references the standard of care for licensure and incorporates the same. It states that registration does not authorize a physical office. A health care professional must notify the board of any restrictions immediately. Failure to comply with the rule is grounds for disciplinary action.

West Virginia Contractor Licensing Board – Contractor Licensing Act, 28 CSR 02

House Bill 2006, which became effective June 15, 2021, made the Contractor Licensing Board independent of the Division of Labor and moved the Contractor Licensing Act from chapter 21 of the West Virginia Code to a new article in chapter 30 of the code, W. Va. Code §30-42-1 *et seq.* The rule changes citations to code throughout to reflect the Act's relocation to chapter 30.

The rule revises various definitions and adds several others. It removes definitions for certain specialty contractor classifications for which separate testing is no longer required, including asphalt contractors, drywall contractors, landscaping contractors, low voltage systems contractor, residential pools contractors, roofing contractors, and siding contractors. It eliminates definitions in the rule for contractor classifications that are defined in code.

Finally, several provisions in the rule, such as those relating to disciplinary powers of the Board, are now in the Code and therefore deleted from the rule.

West Virginia Board of Examiners in Counseling – Licensing Rule, 27 CSR 01

The rule amends a current legislative rule. It has been amended to: allow payment of application fees by credit card; remove reference to similar degrees containing the word counseling as being an acceptable degree for licensure; and add a new section 17 relating

to inactive status. Section 17 sets forth the documents which a licensee must submit to the Board when applying for inactive status, prohibits a licensee with an inactive license from practicing, exempts the licensee from the need for continuing education requirements, and requires 35 hours of continuing education in the two years preceding the licensee's application to return to active status.

West Virginia Board of Examiners in Counseling – Licensed Professional Counselors Fees Rule, 27 CSR 02

The rule amends a current legislative rule. It deletes the fees for a name change or duplicate license. It adds an Inactive Status application fee of \$50 and an Inactive Status renewal fee of \$25.

West Virginia Board of Examiners in Counseling – Marriage and Family Therapist Licensing Rule, 27 CSR 08

The rule amends a current legislative rule. It has been amended to allow payment of application fees by credit card and to add a new Section 16 relating to inactive status. Section 16 sets forth the documents which a licensee must submit to the Board when applying for inactive status, prohibits a licensee with an inactive license from practicing, exempts the licensee from the need for continuing education requirements, and requires 35 hours of continuing education in the 2 years preceding the licensee's application to return to active status.

West Virginia Board of Examiners in Counseling – Marriage and Family Therapist Fee Rule, 27 CSR 09

The rule amends a current legislative rule. It adds an Inactive Status application fee of \$50 and an Inactive Status renewal fee of \$25.

Dangerous Wild Animal Board – Dangerous Wild Animals, 74 CSR 01

The rule adds a 10-year sunset provision.

West Virginia Board of Dentistry – Rule for the West Virginia Board of Dentistry, 5 CSR 01

The rule amends a current legislative rule. The amendments allow the Board to issue a teaching permit to a person who is not licensed in this state who is a participant in a dental residency program located in this state.

The rule allows the Board to issue a dental intern permit, dental resident permit, or teaching permit to a foreign trained dentist who has been offered a position in an approved dental program in this state. It also allows the Board to issue a dental license to an applicant trained in a foreign dental school who possesses a certification of a two year or more advanced general dentistry program from a U.S. or Canadian dental school

accredited by the Commission on Dental Accreditation. Finally, it allows the Board to issue a dental license to an applicant trained in a foreign dental school who possesses a certification of a two year or more dental specialty advanced education training program from a dental school accredited by the Commission on Dental Accreditation. The applicant must apply for a general and specialty license and may only practice in the specialty in which he or she is licensed.

Language has been added to provide that the Board may revoke any permit for cause and that any permit expires at the end of one year or the date the teaching appointment ends, whichever comes first.

West Virginia Board of Dentistry – Formation and Approval of Professional Limited Liability Companies, 5 CSR 02

The rule amends a current legislative rule. It requires the Board to notify the Secretary of State when a professional limited liability company's certificate of authorization is no longer valid due to noncompliance or expiration of the certificate. It provides for reinstatement of a certificate that has been expired for more than 60 days or where the PLLC was in noncompliance. Finally, it states that the Board may file a complaint or take disciplinary action against a PLLC that does not comply with the law or the rule.

West Virginia Board of Dentistry – Formation and Approval of Dental Corporation and Dental Practice Ownership, 5 CSR 06

The rule amends a current legislative rule. It has been amended to require the Board to notify the Secretary of State when a dental corporation's certificate of authorization is no longer valid due to noncompliance or expiration of the certificate. It provides for reinstatement of a certificate that has been expired for more than 60 days or where the dental corporation was in noncompliance. Finally, it states that the Board may file a complaint or take disciplinary action against a dental corporation that does not comply with the law or the rule.

West Virginia Board of Dentistry Continuing Education Requirements, 5 CSR 11

The rule amends a current legislative rule. It provides that the Board may allow a licensee who does not provide proof of completion of the required continuing education to make up for the deficiency and allows the Board to assess a late fee.

A new Section 5 relates to continuing education requirements for a tele-dentistry registrant. It requires a dentist to complete the continuing education required by the state he or she is licensed in as well as three hours on drug diversion every two years. It requires a dental hygienist to complete the continuing education required by the state he or she is licensed in. The Board may randomly audit the continuing education records. A false

statement on a renewal form or continuing education form is unprofessional conduct and subject the registrant to disciplinary action.

West Virginia Board of Dentistry – Administration of Anesthesia by Dentists, 5 CSR 12

The rule amends a current legislative rule. It requires a dentist applying for the permit to consent to an initial inspection of his or her facility, as well as re-inspections, and requires the annual renewal of permits.

A new Section 8 relating to inspection and evaluation failures requires the Board to notify a dentist if his or her facility fails the initial or a subsequent inspection. After 30 days from receipt of the notice, the dentist may request a new inspection or a reevaluation. If the Board grants the request, the new inspection or reevaluation must be scheduled within 90 days of receipt of the request and completed within 150 days of receipt of the request. A second failure results in the dentist's loss of the ability to administer any level of sedation requiring a permit for one year. The Board may recommend the dentist receive remedial training or complete continuing education prior to any future inspections or reevaluations. Finally, the Board has the authority to issue cease and desist orders.

West Virginia Board of Dentistry – Expanded Duties of Dental Hygienists and Dental Assistants, 5 CSR 13

The rule amends a current legislative rule. Section 4 relating to the expanded duties of dental assistants was amended to state that all duties requiring a board-approved course and examination require a certificate issued by the Board to perform those duties. The dental assistant must apply to the Board for the certificate and pay the required fee.

Section 5 related to expanded duties of dental hygienists has been amended to allow a hygienist to use a laser with a wavelength of no more than 1064 nanometers for certain specified procedures. Language that was added requires the hygienist to apply for a certificate to use a laser as well as for the administration of infiltration and block anesthesia and to pay the required fee. The amendments prohibit any person from using lasers under general supervision or a public health practice permit.

West Virginia Board of Dentistry – Tele-dentistry, 5 CSR 16

This is a new rule. The rule does the following: defines terms; sets forth registration requirements, provides for annual renewal and provides for reinstatement of an expired license; requires a dentist or dental hygienist to be licensed in this state; requires a bona fide practitioner-patient relationship between the dentist and the patient and sets forth the requirements for the existence of that relationship; requires a dentist to have written or electronic protocols and specifies what those protocols must include;

sets forth information which the dentist or dental hygienist must obtain from the patient or provide to the patient; requires the dentist or dental hygienist to obtain the patient's informed consent for the tele-dentistry and specifies requirements for the informed consent; requires that the dentist or dental hygienist ensure that any electronic or digital communication is secure to maintain patient confidentiality; requires the dentist or dental hygienist to maintain a patient dental record and specifies the contents of that record; prohibits a dentist from prescribing Schedule II drugs through tele-dentistry; and sets forth prohibitions.

West Virginia Board of Funeral Service Examiners – Fee Schedule, 6 CSR 07

The rule amends a current legislative rule. It increases the following initial fees:

Main funeral home - \$500 to \$700;
Branch funeral home - \$350 to \$550;
Crematory - \$350 to \$500;
Funeral Service licensee - \$160 to \$300;
Apprentice license - \$175 to \$300;
Crematory operator - \$120 to \$300;
Courtesy card - \$300 to \$500; and
Mortuary service - \$400 to \$700

It increases the following biennial renewal fees:

Main funeral home - \$400 to \$600;
Branch funeral home - \$275 to \$475;
Crematory - \$350 to \$500;
Funeral Service licensee - \$200 to \$400;
Apprentice license - \$175 to \$250;
Crematory operator - \$100 to \$300;
Courtesy card - \$300 to \$500; and
Mortuary service - \$400 to \$550.

The fee for late renewal - \$150 to \$250 plus renewal fee.
A reinstatement fee of \$350 plus renewal fee has been added.

It increases the following reinspection fees:

Out of compliance inspection fee \$250 to \$350;
Missed appointment inspection fee (first occurrence) - \$250 to \$350;
Missed appointment inspection fee (subsequent occurrences) - \$300 to \$400;
Facility after undergoing renovations - \$250 to \$350;

Newly constructed or new owner - \$250 to \$350; and
Failure to renew license before reinstatement - \$300 to \$400.

It increases or adds the following other fees:

Reactivation of Inactive license - \$10 to \$25;
State law examination - \$250 to \$300;
Law examination study packet - \$75 to \$100;
Apprentice handbook replacement - \$75 to \$100;
Reinstatement of crematory training provider - \$200 to \$300;
Reissuance of pocket card - \$25 to \$40;
Reciprocal license background check - \$25 to \$40;
List of licensees - \$150; and
License verification - \$30.

West Virginia Massage Therapy Licensure Board - General Provisions, 194 CSR 01

The rule sets a 10-year sunset date. The current rule requires a client to provide voluntary consent prior to a breast massage. The rule requires the client to provide a written medical directive to the massage therapist before the massage is performed. The massage therapist is required to place the directive in the client file and must also obtain written consent from the client prior to performing the massage. The massage is to be performed in accordance with the medical directive.

West Virginia Board of Medicine – Licensing and Disciplinary Procedures: Physicians, Podiatric Physicians and Surgeons, 11 CSR 01A

The rule amends a current legislative rule relating to licensure requirements and application requirements for allopathic physicians and podiatric physicians by the WV Board of Medicine.

The rule incorporates new definitions for licensee, practice credential or credential, and website. It updates the current rule in accordance with Senate Bill 372, which passed during 2021 Regular Legislative Session for approved types of postgraduate clinical training for graduates of medical schools located in Canada, the United States and Puerto Rico, and for graduates of international medical schools.

The eliminates a reference to a discontinued portion of the United States Medical Licensing Examination SMLE licensing examination and incorporates new tests attempt limits imposed by the USMLE Composite Committee, the examination body for physicians. This eliminates the discrepancy between the Board's rule and the forthcoming four attempt limit set by the administering body.

Section 9 brings the rule into alignment with Senate Bill 372 with respect to temporary licensure, which clarifies that a temporary permit includes full prescriptive authority.

Section 11 includes modifications which clarify that the confidentiality provisions of the complaint and investigation process apply to all credential holders who are authorized to practice by the Board.

Section 12 includes modifications which clarify that the grounds for discipline and the types of disciplinary actions the Board may impose apply to all practitioners authorized by the Board. It provides that it is professional misconduct for a practitioner not only to exercise influence within the provider-patient relationship for purpose of engaging a patient in sexual activity, but that it is also professional misconduct to engage in sexual activity with a patient, or to sexually harass or exploit a patient. This section also allows the Board to require a practitioner to participate in a Board designated physician health program for drug or alcohol abuse as a condition of probation.

Section 13 adds that insurers shall report to the board whether credential holders also have professional liability insurance, not just licensees.

West Virginia Board of Medicine – Licensure, Practice Requirements, Disciplinary and Complaint Procedures, Continuing Education, Physicians, 11 CSR 01B

The rule amends a current legislative rule relating to physician assistants and to their licensing, practice, complaint procedures and professional discipline, and continuing education. During the 2021 session, the Legislature enacted Senate Bill 714 which updated the Physician Assistants Practice Act.

The rule provides a regulatory framework for the licensure, regulation, and discipline of physician assistants practicing in West Virginia who are licensed by the West Virginia Board of Medicine (WVBOM). It include qualifications for licensure as a physician assistant; requirements for licensure, renewal, reinstatement and reactivation of expired licenses; requirements for practice, including practice notifications and related fees; the extent to which physician assistants may practice in this state in collaboration with physicians; the responsibilities of collaborating practitioners; physician assistant prescriptive authority; continuing education requirements; professional conduct requirements for physician assistants; complaint, investigation, audit and disciplinary procedures; and denial of licensure and disciplinary penalties.

The rule updates the drug diversion training to include additional information developed by the Governor's Council on Substance Abuse Prevention and Treatment; allows the practice notification to include prescribing, dispensing, and administering of

controlled substances, prescription drugs, or medical devices; allows a physician assistant to prescribe Schedule II drugs for no more than a three day supply with no refills; and removes the requirement that the physician assistant have certification from the National Commission on Certification of Physician Assistants, but clarifies which title a certified PA may use.

With respect to practice requirements, new requirements are included that state the physician assistant may provide only those medical service for which they have been prepared by their education, training and experience and are competent to perform, consistent with sound medical practice and that will protect the health and safety of the patient. This may occur in any health care setting.

The rule provides that the physician assistant may not practice independent of a collaborating physician; must comply with applicable federal and state law governing the practice of physician assistants; and may practice in collaboration upon executing a practice notification.

The scope of practice is amended to reflect that the physician assistant can perform medical actions for which they have been trained and these acts include prescribing, dispensing, and administering controlled substances, prescription drugs, or medical devices.

West Virginia Board of Medicine – Board of Medicine Rules for Dispensing of Prescription Drugs by Practitioners, 11 CSR 05

The rule amends a current legislative rule which establishes the Board’s standards related to the office-based dispensing of prescription drugs by licensees of the Board. The amendments provide clarity, uniformity, and general clean-up. The reference to a practice agreement is removed. The rule also requires that an active practice notification be on file with the Board for the proposed controlled substance dispensing location.

West Virginia Board of Medicine – Continuing Education for Physicians and Podiatric Physicians, 11 CSR 06

The rule amends a current legislative rule that establishes the minimum continuing education requirements satisfactory to the Board for physicians and podiatric physicians.

The rule adds a requirement that information related to substance use disorder treatment referral be included in all drug diversion training and best practice prescribing of controlled substance training. Additionally, it also requires training on the impacts of stigma on treatment effectiveness, including the concept of addiction as a chronic disease

Finally, the rule permits podiatric physicians to satisfy continuing education requirements, except for the drug diversion training and best practice prescribing of controlled substances training requirement, by sitting for and passing a certification or recertification examination of the American Board of Podiatric Medicine or the American Board of Foot and Ankle Surgery during the relevant period.

West Virginia Board of Medicine – Practitioner Requirements for Accessing the West Virginia Controlled Substances Monitoring Program Database, 11 CSR 10

The rule amends a current legislative rule which sets requirements for the licensees and registrants of the Board regarding obtaining and maintaining access to the West Virginia Controlled Substances Monitoring Program database. It eliminates obsolete definitions, updates and modifies existing definitions and adds a definition for benzodiazepine.

A new section 3 requires practitioners who prescribe certain controlled substances to obtain and maintain online or other electronic access to the database and to certify compliance to the Board at renewal.

Section 6 is amended to incorporate current administrative penalties as set forth in W. Va. Code §60A-9-5a.

West Virginia Board of Medicine – Establishment and Regulation of Limited License to Practice Medicine and Surgery at Certain State Veterans Nursing Home Facilities, 11 CSR 11

The rule amends a current legislative rule which establishes the qualifications and application process for a limited license to practice at a designated state veterans nursing home facility. It updates the rule in accordance with Senate Bill 372, which passed during the 2021 Regular Legislative Session regarding approved types of postgraduate clinical training for graduates of medical schools located in Canada, the United States and Puerto Rico and for graduates of international medical schools.

West Virginia Board of Medicine - Registration to Practice During Declared State of Emergency, 11 CSR 14

The rule amends a current legislative rule which establishes a registration process to allow out of state physicians or physician assistants to practice in WV during a declared state of emergency.

An emergency registration that is issued to an out-of-state or a state retired, or inactive physician or physician assistant, expires sixty days after issuance or five days after a declared state of emergency terminates, whichever is sooner. Thereafter, the

emergency registrant must hold an active status West Virginia medical license or an interstate telehealth registration to practice medicine to West Virginia patients.

West Virginia Board of Medicine – Telehealth and Interstate Telehealth Registration for Physicians, Podiatric Physicians and Physician Assistants, 11 CSR 15

The rule is new. It establishes the scope of the practice for the provision of medical services via telehealth technologies and the process for physicians, podiatric physicians, and physicians' assistants to obtain an interstate telehealth registration with the Board. During the 2021 Regular Session, the Legislature enacted House Bill 2024 which created an interstate telehealth registration process for physicians and physician assistants who want to provide telehealth services in this state.

To obtain a registration an applicant must have an active license in good standing in another state and provide specified information. The physician registration fee is \$150, and the physician assistant registration fee is \$50. The registration is valid for one year.

The rule specifies the ways in which to establishes the patient provider relationship. Provider-patient relationships may not be established through text-based communications such as emails, internet questionnaires, text-based messaging, or other written forms of communication.

Once a provider-patient relationship has been established, providers may use any telemedicine technology that meets the standard of care and is appropriate for the patient presentation. The rule does not prohibit the use of text-based communications for responding to calls for existing patients and for a provider who has established a provider-patient relationship with the patient through an in-person encounter or in a medical emergency.

Telehealth providers must practice in a manner consistent with the practice of the provider's scope as well with the standards set forth in their profession. The standard of care for telehealth services is the same for in-person health care services.

For continued treatment of a patient solely via telemedicine technologies the standard of care requires a provider to verify that a patient has visited in-person within twelve months. This however does not apply to acute inpatient care, post-operative follow-up checks, behavioral medicine, addiction medicine, or palliative care. This service may be suspended on a case-by-case basis. If suspended, the provider must document the reason for suspending the in-person visit requirement in the patient medical record. Telehealth providers must verify the identity and location of the patient.

Providers must determine if the patient's specific health issue is appropriate for telehealth technologies. They must obtain the consent of the patient to conduct telehealth

services. Providers must conduct all appropriate evaluations and history of the patient consistent with the standard of care as well as create and maintain health care records for the patient.

When prescribing via telemedicine a provider must remain within the prescriptive authority of the providers profession. Telehealth providers are prohibited from prescribing a Schedule II controlled substance via telemedicine technologies unless they are an established patient of the prescribing telehealth provider's practice or the provider submits an order to dispense Schedule II controlled substance to a hospital patient, other than in the emergency department, for immediate administration in a hospital or if a provider is treating patients who are minors, or if 18 years of age or older, who are enrolled in a primary or secondary education program and are diagnosed with intellectual or developmental disabilities, neurological disease, Attention Deficit Disorder, Autism or a traumatic brain injury in accordance with guidelines as set forth by organizations.

Telehealth provider who prescribes Schedule II through V drugs must obtain online or other electronic access to the CSMP. Telehealth providers may not, based solely upon a telemedicine encounter, prescribe any drug with the intent of causing an abortion.

West Virginia Board of Osteopathic Medicine - Licensing Procedures for Osteopathic Physicians, 24 CSR 01

The rule amends a current legislative rule which establishes the operation of the Board and the regulation and licensing of osteopathic physicians. This filing makes changes to the drug diversion training and best practice prescribing of controlled substances training by requiring that the training also have elements on the administration of an opioid antagonist, information related to substance use disorder treatment referral, and recordation of attendance.

The amendments also add the ability of applicants to provide certain licensure documents to the board through the Federation of State Medical Boards Credential Verification Service.

West Virginia Board of Osteopathic Medicine – Osteopathic Physician Assistants, 24 CSR 02

The rule amends a current legislative rule which relates to physician assistants and their licensing, practice, complaint procedures and professional discipline, and continuing education. During the 2021 legislative session, the Legislature enacted Senate Bill 714 which updated the Physician Assistants Practice Act.

The rule eliminates the practice agreement between a physician assistant and the physician. The practice agreement was a document that was approved by the licensing

board. In lieu of the practice agreement there is a practice notification which may be kept on file at the practice.

The practice notification may include prescribing, dispensing, and administering of controlled substances, prescription drugs, or medical devices. A Physician Assistant may prescribe a three-day supply of Schedule II drugs with no refills.

The rule removes the requirement that the physician assistant have certification from the National Commission on Certification of Physician Assistants but clarifies which title a certified Physician Assistant may use.

The physician assistant may not practice independent of a collaborating physician and may practice in collaboration upon executing a practice notification.

The scope of practice is amended to reflect that the physician assistant can perform medical actions for which they have been trained and these acts include prescribing, dispensing, and administering controlled substances, prescription drugs, or medical devices.

West Virginia Board of Osteopathic Medicine – Practitioner Requirements for Controlled Substances Licensure and Accessing the West Virginia Controlled Substances Monitoring Program Database, 24 CSR 07

The rule amends a current legislative rule which establishes the requirements for licensees and registrants of the West Virginia Board of Osteopathic Medicine regarding controlled substances licensure and accessing the West Virginia Controlled Substances Monitoring Act, W. Va. §60A-9. The purpose of the rule is to conform the rule changes made to the statute. The changes to the rule include adding the requirement that all practitioners who prescribe or dispense Schedule II, III, IV, or V controlled substances shall register with the Controlled Substance Monitoring Program (CSMP) and obtain and maintain online or other electronic access to the program database.

West Virginia Board of Osteopathic Medicine - Telehealth and Interstate Telehealth Registration for Osteopathic Physicians and Physician Assistants, 24 CSR 10

This new rule establishes the scope of the practice for the provision of medical services via telehealth technologies and the process for osteopathic physicians and osteopathic physicians' assistants to obtain an interstate telehealth registration with the Board. During the 2021 Regular Session, the Legislature enacted House Bill 2024 which created an interstate telehealth registration process for physicians and physician assistants who want to provide telehealth services in this state.

To obtain a registration an applicant must have an active license in good standing in another state and provide specified information. The osteopathic physician registration fee is \$150 and the osteopathic physician's assistant registration fee is \$50. The registration is valid for 1 year.

The rule specifies the ways in which to establish the patient provider relationship. Provider-patient relationships may not be established through text-based communications such as emails, internet questionnaires, text-based messaging, or other written forms of communication.

Once a provider-patient relationship has been established, providers may use any telemedicine technology that meets the standard of care and is appropriate for the patient presentation. The rule does not prohibit the use of text-based communications for responding to calls for existing patients and for a provider who has established a provider-patient relationship with the patient through an in-person encounter or in a medical emergency.

Telehealth providers must practice in a manner consistent with the practice of the provider's scope as well with the standards set forth in their profession. The standard of care for telehealth services is the same for in-person health care services.

For continued treatment of a patient solely via telemedicine technologies the standard of care requires a provider to verify that a patient has visited in-person within twelve months. This however does not apply to acute inpatient care, post-operative follow-up checks, behavioral medicine, addiction medicine, or palliative care. This service may be suspended on a case-by-case basis. If suspended, the provider must document the reason for suspending the in-person visit requirement in the patient medical record. Telehealth providers must verify the identity and location of the patient.

Providers must determine if the patient's specific health issue is appropriate for telehealth technologies. They must obtain the consent of the patient to conduct telehealth services. Providers must conduct all appropriate evaluations and history of the patient consistent with the standard of care as well as create and maintain health care records for the patient.

When prescribing via telemedicine a provider must remain within the prescriptive authority of the providers profession. Telehealth providers are prohibited from prescribing a Schedule II controlled substance via telemedicine technologies unless they are an established patient of the prescribing telehealth provider's practice or the provider submits an order to dispense Schedule II controlled substance to a hospital patient, other than in the emergency department, for immediate administration in a hospital or if a provider is treating patients who are minors, or if 18 years of age or older, who are enrolled in a primary or secondary education program and are diagnosed with intellectual or developmental disabilities, neurological disease, Attention Deficit Disorder, Autism or a traumatic brain injury in accordance with guidelines as set forth by organizations.

Telehealth provider who prescribes Schedule II through V drugs must obtain online or other electronic access to the CSMP. Telehealth providers may not, based solely upon a telemedicine encounter, prescribe any drug with the intent of causing an abortion.

Board of Pharmacy- Licensure and Practice of Pharmacy, 15 CSR 1

The rule amends a current legislative rule which governs the licensure and the practice of pharmacist care in West Virginia. The amendment removes the requirement a pharmacist wears a white coat and makes it optional.

Board of Pharmacy – Controlled Substances Monitoring Program, 15 CSR 8

The rule amends a current legislative rule which establishes requirements for the controlled substance monitoring database. The amendments implement the changes required by House Bill 2262 from the 2021 legislative rule, which requires pharmacists to check the Controlled Substance Monitoring Program when dispensing any Schedule II substance, opioid, or any benzodiazepine to a patient who is not suffering from a chronic illness. It also requires them to annually check the database if still dispensing the controlled substance.

Board of Pharmacy – Regulations Governing Pharmacists, 15 CSR 16

The rule amends a current legislative rule by cutting the biennial renewal fee for pharmacists 65 and older from \$100 to \$50.

Public Service Commission – Rules Governing the Occupancy of Customer-Provided Conduit, 150 CSR 37

The rule amends a current legislative rule by extending the sunset date for one year from August 1, 2022, to August 1, 2023.

Real Estate Appraiser Licensing and Certification Board – Requirements for Licensure and Certification, 190 CSR 02

The rule amends a current legislative rule. Subdivision 5.2.a. has been amended to require an applicant for licensure as a licensed residential appraiser to demonstrate the ability to develop all three approaches to value. Subsection 6.2, relating to experience, has been amended to delete certain specified experience for certified general or certified residential appraisers. Section 7 relating to the procedure for calculation of experience by the Board has been amended to delete language setting forth the maximum experience credits the Board may award. This section is also amended to redefine a complex appraisal. Finally, Section 11, which relates to apprentices, is amended to authorize the Board to periodically require supervisors to submit an apprentice's experience logs for review. The Board may randomly select a work product for review and may withdraw or revoke a certificate where a supervisor fails to meet the supervisor certification standards.

Real Estate Appraiser Licensing and Certification Board – Renewal of Licensure or Certification, 190 CSR 03

The rule amends a current legislative rule, primarily for clarification. The amendments allow for online renewals and authorize the Board to perform random audits of renewals.

Real Estate Appraiser Licensing and Certification Board – Requirements for Registration and Renewal of Appraisal Management Companies, 190 CSR 05

The rule amends a current legislative rule. It deletes subsections 8.2 and 8.3 of the current rule which required an appraisal management company to require an appraiser being added to its appraiser panel to certify in writing his or her areas of geographic competency, the types of property he or she is competent to appraise, and the methodologies he or she is competent to perform. The information was to be updated annually.

West Virginia Board of Examiners for Registered Professional Nurses – Limited Prescriptive Authority for Nurses in Advanced Practice, 19 CSR 08

The rule amends a current legislative rule by extending the sunset date five years.

West Virginia Board of Examiners for Registered Professional Nurses – Telehealth Practices, 19 CSR 16

This new rule sets forth the standards for the practice of telehealth by a registered nurse or advanced practice registered nurse. During the 2021 Regular Session, the Legislature enacted House Bill 2024 which created an interstate telehealth registration process for registered professional nurses and advanced practice registered nurses who want to provide telehealth services in this state.

To obtain a registration, an applicant must have an active license in good standing in another state and provide specified information. The registration fee is \$100. The registration is valid for one year.

The rule specifies the ways in which to establishes the patient provider relationship. Provider-patient relationships may not be established through text-based communications such as emails, internet questionnaires, text-based messaging, or other written forms of communication.

Once a provider-patient relationship has been established, providers may use any telemedicine technology that meets the standard of care and is appropriate for the patient presentation. The rule does not prohibit the use of text-based communications for responding to calls for existing patients and for a provider who has established a provider-patient relationship with the patient through an in-person encounter or in a medical emergency.

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Providers must determine if the patient's specific health issue is appropriate for telehealth technologies. They must obtain the consent of the patient to conduct telehealth services. Providers must conduct all appropriate evaluations and history of the patient consistent with the standard of care as well as create and maintain health care records for the patient.

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Telehealth provider who prescribes Schedule II through V drugs must obtain online or other electronic access to the CSMP.

Secretary of State – Voter Registration at the Division of Motor Vehicles, 153 CSR 03

The rule amends a current legislative rule by providing for a sunset extension until August 1, 2027.

Secretary of State – Voter Registration List Maintenance by the Secretary of State, 153 CSR 05

The rule amends a current legislative rule by providing for a sunset extension until August 1, 2027.

Secretary of State – Combined Voter Registration and Driver Licensing Fund, 153 CSR 25

The rule amends a current legislative rule to make updates regarding funding of the Secretary of State's subscription to a National Change of Address (NCOA) service. The rule the following substantive changes:

- Consolidates provisions under §4.4.1 and §4.4.2 regarding NCOA service.
- Deletes language setting minimum and maximum amounts from the Combined Voter Registration and Driver Licensing Fund to pay for the NCOA service and the requirement for participating counties to reimburse the Fund for the balance.
- Deletes language providing for receipt of bids from authorized vendors of the NCOA service, determination of percentage of costs which can be made from the Fund, and notification of participating counties regarding reimbursement amount; amended language will require SOS to pay for NCOA service from the Fund from revenues of the current fiscal year.
- Adds language in new §4.6 requiring any balance exceeding \$100,000 on June 30 of each year to be transferred to the General Revenue Fund pursuant to W. Va. Code §3-2-12(c).

Secretary of State – Use of Digital Signatures, 153 CSR 30

The rule amends a current legislative rule which was last amended in 2008 and provides requirements for the use of electronic signatures by state agencies. That the amendments remove outdated standards and procedures, and simplify standards and procedures for ensuring adequate integrity, security, confidentiality, and auditability of records signed electronically. The rule includes the following substantive changes:

- Defines the following new terms in §2: “Electronic record” and “Electronic signature”.
- Updates process for agencies to apply to use electronic records and electronic signatures in §3.
- Requirements for Acceptance of Digital Signatures §5 recognizes the Office of Technology as state certification authority for registration and issuance of certificates to subscribers for the use of digital signatures, requiring agencies to use Office of Technology technology for accepting digital signatures, and
- Deletes “Requirements for Acceptance of Digital Signatures” provisions from §6 and reserves this section.
- Deletes “Authorization of Electronic Postmark” provisions from §8 and replaces with updated “Compliance Audit” provisions (previously in §19), authorizing SOS and OT to conduct compliance audits, authorizing SOS to require reports, and authorizing SOS to suspend or revoke an agency's approval to use electronic signatures if audit issues are not timely corrected.
- Deletes the following sections: §9 (Selection of State Authority; Eligibility Requirements for Registration and Certificate Authority), §10 (Requirements for State Certificate Authority Practice), §11 (Requirements for State Repository

Practice), §12 (Requirements for Issuance of Certificates), §13 (Subscribers; Duties Upon Acceptance of Certificate), §14 (Suspension of Certificate), §15 (Revocation of Certificate), §16 (Expiration of Certificate), §17 (Form of Certificates), §18 (Record Keeping and Retention), §19 (Compliance Audit), §20 (Procedure on Discontinuance of Business of State Certificate Authority or State Repository), and §21 (Fees for Issuance of Certificates).

Secretary of State – Regulation of Political Party Headquarters Finances, 153 CSR 43

This rule amends a current legislative rule to include county political party campaign headquarters financing pursuant to House Bill 2688 passed during the 2021 Regular Legislative Session. The rule includes the following substantive changes:

- Inserts a sunset date provision (currently none specified in rule).
- Updates deadlines for quarterly financial report filings in definition of “filing period”.
- Inserts definition of “Party headquarters committee” into existing definition of “Committee”.

Secretary of State – Standards and Guidelines for Electronic Notarization, Remote Online Notarization and Remote Ink Notarization, 153 CSR 45

This rule amends a current legislative rule which provides requirements for electronic notarization. Pursuant to Senate Bill 469 passed during the 2021 Regular Legislative Session, this rule is being amended to include two new methods of notarization (remote online notarization and remote ink notarization). The rule includes the following substantive changes:

- Updates rule title to include remote online notarization and remote ink notarization.
- Extends sunset date to August 1, 2027.
- Amends definitions of “electronic notarial act” and “electronic notarization” to specify that the official act is performed in the presence of an electronic notary public.
- Adds definitions for the following two new terms: “remote online notarial act” and “remote ink notarial act”.
- Adds “remote online notarial acts” and “remote ink notarial acts” to notary registration requirement in §3.1
- Adds “witnessing” to registration requirement upon recommissioning before an electronic notary may notarize or witness electronically.
- Excludes remote ink notarial acts from requirement of §12.1 for the notary to attach a registered electronic signature and registered electronic notary seal, or registered single element to an electronic notarial certificate.

- Deletes almost all provisions of §27 regarding remote notarization authorized during a state of emergency in certain circumstances, and amends §27.1 to require remote online notarial acts performed for a remotely located individual to be in conformity with Code.
- Adds new §28 requiring remote ink notarial acts performed for a remotely located individual to be in conformity with Code.

Secretary of State – Real Property Electronic Recording Standards and Regulations, 153 CSR 48

This rule is new and is being promulgated pursuant to House Bill 2086 passed during the 2020 Regular Legislative Session. The rule establishes real property electronic recording standards and practices for implementation by West Virginia county clerks. The rule consists of 8 sections summarized below:

- §1: Establishes scope, authority, filing date, effective date, and sunset provision (August 1, 2027).
- §2: Defines the following terms: Delivery Agent, Document, Electronic, Electronic Document, Electronic Document Delivery System, Electronic Recording, Electronic Signature, Land Records, Land Records Management System, Land Records Management System Vendor, Participating Clerk, Paper Document, PDF or Portable Document Format, Person, PRIA, Recording Information, Submitter, State, TIFF or Tagged Image File Format, and XML or Extensible Markup Language.
- §3: Requires electronic document recording to meet certain Property Records Industry Association (PRIA) standards, specifies where such standards are available, requires transmittal and storage of electronic documents to meet certain International Organization for Standardization (ISO) standards, and authorizes participating county clerks to adopt a standardized property record document format.
- §4: Requires documents certified using electronic means to meet applicable Code provisions.
- §5: Provides for electronic recording processing including required notice of confirmation or rejection of an electronic recording to be provided by a participating clerk to a submitter, contact prior to notice of confirmation or rejection, and determination of “first-to-file priority” of recordings, including a requirement for participating clerks to develop a local processing policy and requirements for determining chronological order of in-person, mail-in, and electronic submissions.
- §6: Establishes security requirements for electronic delivery systems, recording and maintaining electronic documents, accepting documents via electronic document delivery system, system and security failures, data back-ups, disaster

recovery, audit trail mechanisms, unauthorized parties, security breaches, and electronic transmissions.

- §7: Requires real property records maintenance to comply with applicable Code provisions and rules.
- §8: Establishes requirements for agreements between delivery agents and participating clerks for electronic document recording within the county.

Board of Social Work Examiners – Qualifications for the Profession of Social Work, 25 CSR 01

The rule amends a current legislative rule in response to Enrolled Committee Substitute for House Bill 2024, which passed during the 2021 Regular Legislative Session. The rule defines terms related to telehealth and added two new sections. Section 5 relating to telehealth services sets forth licensing requirements, requires the social worker to be competent in the technology and skills necessary for providing telehealth, requires the social worker to follow agency procedures or develop and follow certain specified procedures and allows a social worker to provide telehealth when appropriate and in an ethical manner. Section 6 relates to interstate registration as a telehealth provider. It sets forth requirements for registration and biennial renewal, as well as the standard of care for the provision of telehealth services.

The rule also deletes subdivision 3.3.1, which provides that individuals seeking employment with Department of Health and Human Resources may be eligible for a provisional license with a degree in fields other than social work or social work-related fields. Enrolled Committee Substitute for Senate Bill 312, which passed in 2020, created a registration process for service workers within the Bureau for Children and Families.

Board of Social Work Examiners – Continuing Education for Social Workers and Providers, 25 CSR 05

The rule amends a current legislative rule. The rule adds definitions for the terms “asynchronous training” and “synchronous training”. It reduces the number of continuing education hours required biennially for licensure renewal from 40 to 30. It requires that at least 10 hours be in a synchronous format and states that no more than 10 hours may be obtained online using an asynchronous format.

West Virginia Board of Examiners for Speech Pathology and Audiology – Licensure of Speech Pathology and Audiology, 29 CSR 01

The rule is a current legislative rule which was amended in response to Enrolled Committee Substitute for House Bill 2024 which passed during the 2021 Regular Legislative Session. Where appropriate, reference is made to interstate tele-practice, including the addition of a \$175 renewal fee for registration. A new Section 16 relates to the registration, renewal standards of care and standards of conduct of an interstate tele-practice practitioner. That section defines terms, sets forth eligibility requirements for registration as a tele-practice practitioner, sets forth renewal requirements for

registration, and sets forth standards of care for the provision of services.

State Treasurers Office – Substitute Checks – Exceptional Items Found, 112 CSR 02

The rule amends a current legislative rule to update the rule issuing substitute checks in compliance with statutory authority. The rule was last updated in 1979 and is amended to modernize and conform with current rulemaking standards. The rule includes definitions and specific categories that may trigger the Treasurer and Auditor to reissue a substitute check. If the payee of a check alleges that a check has been forged, the payee must provide an affidavit to the Treasurer and the Treasurer is authorized to pursue claims relating to theft or forgery.

State Treasurers Office – Procedures for Deposit of Monies with the State Treasurer’s Office by State Agencies, 112 CSR 04

The rule amends a current legislative rule to extend the sunset provision to June 1, 2027.

State Treasurers Office – Selection of State Depositories for Disbursement Accounts through Competitive Bidding, 112 CSR 06

The rule amends a current legislative rule to extend the sunset provision to June 1, 2027.

State Treasurers Office – Selection of State Depositories for Receipt Accounts, 112 CSR 07

The rule amends a current legislative rule to extend the sunset provision to June 1, 2027.

State Treasurers Office – Procedures for Processing Payments from the State Treasury, 112 CSR 08

The rule amends a current legislative rule to extend the sunset provision to June 1, 2027.

State Treasurers Office – Reporting Debt, 112 CSR 10

The rule amends a current legislative rule relating to reporting debt by modernizing the rule to conform with drafting standards. The rule updates the definition of a lease to conform with the Government Accounting Standards Board definition of a lease.

State Treasurers Office – Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment, 112 CSR 12

The rule amends a current legislative rule to extend the sunset provision to June 1, 2027.

State Treasurers Office – Procedures for Providing Services to Political Subdivisions, 112 CSR 13

The rule amends a current legislative rule to reflect Senate Bill 280, which passed during the 2021 Regular Legislative Session, and requires political subdivisions to offer a system for the public to pay the political subdivision online.

It allows a political subdivision to apply for an exemption to offering online payments. For a political subdivision to receive an exemption, it must submit a written exemption request that includes: 1) the types and annual totals of state revenue collected, 2) the types and annual totals of other revenue collected, and 3) information about business operations. The Treasurer will evaluate the exemption request and approve or deny the exemption. Exemptions may be withdrawn or requested based on significant changes as reported by the political subdivision.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: March 12, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 427

INTRODUCED

SHORT TITLE: Permitting WV Board of Medicine investigators to carry concealed weapon.

CODE REFERENCE: §30-3-19 (New)

SUMMARY:

This bill allows investigators and contractors for the Board of Medicine to carry a concealed firearm in the performance of their duties and establishes the criteria and procedures for such carry. These criteria include obtaining approval by a majority vote of the board, not being prohibited from possessing a firearm under state or federal law, obtaining and maintaining a concealed handgun license, and successfully completing a firearms training and certification program equivalent to that provided to officers attending an entry level law-enforcement certification course provided at the West Virginia State Police Academy.

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: June 6, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 434

COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Updating authority to airports for current operations

CODE REFERENCE: §8-28-5, §8-29-1, §8-29-3, §8-29-8, §8-29-9, §8-29-12, §8-29-17, and §8-29-20, §8-29B-2, §8-29B-3, and §8-29B-5 (Amends and Reenacts); §8-29-8a (New)

SUMMARY:

This bill increases the range of fines for vehicular and pedestrian violations from existing law of \$2 to \$10 to a range of \$10 to \$30. It expands the definition of airport to include, “any airport, heliport, helistop, vertiport, glider port, seaplane base, ultralight flight park, manned balloon launching facility, or other aircraft landing or takeoff area”. It also adds definitions for abandoned and derelict aircrafts as well as adds the term “international airport” to various portions of the code.

It creates a notification process, requirements, and timeline for ultimately securing a lien against abandoned and derelict aircrafts, and gives the airport the ability to use, trade, sell, or remove aircraft if it hasn’t been removed within 30 calendars of giving the owner notice. It provides an exception for the 30-day notice rule for situations where the aircraft poses a health or safety threat.

It establishes requirements for an airport to perfect a lien on aircraft and provides that if the aircraft is sold, the airport is permitted to satisfy its lien as well as its reasonable expenses. The owner can claim the balance of proceeds of the sale, if any, and if no person claims the balance of the proceeds within 12 months of the sale, the airport authority gets to retain the funds.

Airport authorities are given the power to: (1) acquire, receive, and hold property within or without the corporate limits of any authorizing subdivision and to use, manage and develop the property; (2) construct or acquire buildings, structures, and facilities (including roadway access) and to lease those properties; and (3) enter into agreements with a county, city, or town for the management by the authority of the airport.

The bill clarifies police jurisdiction and gives a regional airport authority police power: (1) in any area where a regional airport is authorized to operate an airport; (2) on any property leased, operated, managed, utilized, or controlled by a regional airport authority; and (3) in an area where the regional airport authority facilitates training activities pursuant to a written agreement.

The range on the fine for misdemeanors occurring on airport property is increased from the existing law of \$5 to \$100 to a range of \$50 to \$100.

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 435

INTRODUCED

SHORT TITLE: Awarding service weapon to retiree from Division of Protective Services.

CODE REFERENCE: §15-2D-8 (New)

SUMMARY:

This bill allows for retirees from the Division of Protective Services to be awarded their service weapon under certain conditions. In order to qualify, a retiree must be retiring honorably with a minimum of 10 years of service or be retiring due to being totally physically disabled as a result as his or her service.

No member of the Division of Protective Services may be awarded a weapon if they are prohibited from possessing a firearm by state or federal law, if the Division of Protective Services member is believed to be mentally incapacity, or if the Division of Protective Services believes the retiring member constitutes a danger to any person of the community.

The bill also allows for service weapons taken out of service due to routine wear to be purchased at fair market value by active or retired members of the Division of Protective Services. The proceeds of such sales may be used to offset the costs of new service weapons.

DATE OF PASSAGE: February 7, 2022

EFFECTIVE DATE: February 7, 2022

ACTION BY GOVERNOR: Signed February 16, 2022

Senate Bill 437

COMMITTEE SUBSTITUTE

SHORT TITLE: Providing for early discharge of parolees.

CODE REFERENCE: §62-12-18 (Amends and Reenacts)

SUMMARY:

This bill provides for the early discharge of parolees who have served a minimum of one year on parole and have not violated the conditions for parole. It authorizes the Commissioner of the Division of Corrections and Rehabilitation, or his or her designee, to request the early discharge of a parolee. The bill also authorizes the chairperson of the Parole Board to grant early parole rather than convene a panel of three members of the Parole Board.

DATE OF PASSAGE: February 7, 2022

EFFECTIVE DATE: February 7, 2022

ACTION BY GOVERNOR: Signed February 16, 2022

Senate Bill 440

INTRODUCED

SHORT TITLE: Establishing Uniform Commercial Real Estate Receivership Act.

CODE REFERENCE: §55-20-1, §55-20-2, §55-20-3, §55-20-4, §55-20-5, §55-20-6, §55-20-7, §55-20-8, §55-20-9, §55-20-10, §55-20-11, §55-20-12, §55-20-13, §55-20-14, §55-20-15, §55-20-16, §55-20-17, §55-20-18, §55-20-19, §55-20-20, §55-20-21, §55-20-22, §55-20-23, §55-20-24, §55-20-25, §55-20-26, §55-20-27, and §55-20-28 (New)

SUMMARY:

The Act applies to receiverships for real property as well as personal property that is related to the real property or used in its operation. It does not govern a receivership for an interest in real property improved by one to four dwelling units, unless (1) the interest is used for agricultural, commercial, industrial, or mineral extraction purposes, other than incidental uses by an owner occupying the property as the owner's residence; (2) the interest secures an obligation incurred when the property was used or planned for use for agricultural, commercial, industrial or mineral extraction purposes; (3) the owner planned or is planning to develop the property with one or more dwelling units to be sold or leased in the ordinary course of the owner's business; or (4) the owner collects rents or other income from an unrelated tenant or other occupier. The Act does not provide the exclusive method for appointment.

The state court's general equity jurisdiction has exclusive jurisdiction of the receivership process.

The bill establishes standards under which a court may appoint a receiver in the exercise of its equitable jurisdiction. It also establishes standards under which a petitioning mortgage lienholder is entitled to appointment of a receiver, either as a matter of right or as a matter of the court's discretion. Where the court appoints a receiver *ex parte*, the court may require the party seeking appointment to post security for any damages, attorney's fees, and costs incurred by a person injured by an appointment later determined to be unjustified.

Because a receiver holds receivership property for the benefit of all interested parties, the bill requires that the receiver provide sworn evidence of the receiver's independence, subject to an exception to prevent disqualification based on certain pre-existing relationships that are de minimus in nature. While a party seeking the appointment of a receiver may nominate a person to serve as a receiver, the nomination is non-binding on the court.

On appointment, a receiver has the status and priority of a lien creditor with respect to receivership property. Appointment of a receiver does not affect the validity of a pre-receivership security interest in receivership property, and property required after appointment is subject to any pre-receivership security agreement to the same extent as if no receiver had been appointed. On appointment, persons having possession, custody and control of receivership property must turn the property over to the receiver, and persons owing debts that constitute receivership property must pay those debts to the receiver. Entry of the order of appointment effects a stay, applicable to all persons, of an act to obtain possession of, exercise control over, or enforce a judgment against receivership property, as well as an act to enforce a lien against receivership property. In appropriate situations, the court can expand the scope of the stay, and grant relief of the stay. However, certain actions are outside the scope of the stay. The Act also addresses the consequences of a violation of the stay.

The bill sets forth the receiver's presumptive powers, as well as those that the receiver may exercise only with court approval. It also sets forth the duties of the receiver and the duties of the owner of receivership property.

The Act authorizes the receiver to engage and pay professionals to assist in the administration of the receivership following court approval.

With Court approval, the bill permits the receiver to use, sell, lease, license, exchange, or otherwise transfer, receivership property other than in the ordinary course of business. Unless the agreement of transfer provides otherwise, the transfer is free and clear of rights of redemption and liens, other than liens that are senior to the lien of the person who obtained the receiver's appointment. Liens extinguished by the receiver's sale attach to the proceeds with the same validity, perfection, and priority as they had with respect to the property sold. The sale may be conducted as a private sale, and creditors with valid secured claims may credit bid. The bill also provides a safe harbor for purchasers, in case a party objects to the sale but fails to get a stay of the order approving the sale. Secured creditors are entitled to the proceeds of the collateral according to the priority rules established by law other than this Act, although the court may award the receiver the reasonable and necessary fees and expenses for carrying out the receiver's duties.

With court approval, a receiver may adopt or reject an executory contract of the owner relating to receivership property. The bill covers the mechanics for adoption or rejection of executory contracts. The receiver may also assign an adopted executory contract to the extent permitted by the contract and applicable law other than this Act. The bill specifies the consequences of a receiver's rejection of an executory contract. It contains protections for purchasers in possession of real property or real property time share interests that are analogous to those contained in the Bankruptcy Code. The bill also limits the receiver's ability to reject the unexpired lease of a tenant, permitting rejection of the lease only in a very limited situation.

Consistent with the receiver's status as an officer of the court, the bill provides the receiver with immunity for acts or omissions within the scope of the receiver's

appointment. Further, the bill incorporates the Barton doctrine and provides that a receiver cannot be sued personally for an act or omission in administering receivership property except with the approval of the appointing court.

The bill requires the receiver to notify creditors of the appointment of the receiver unless the court orders otherwise and requires creditors to file claims with the receiver as a precondition to obtaining any distribution from receivership property or the proceeds of such property. It permits the receiver to recommend disallowance of claims. The bill also authorizes the court to forgo the filing of unsecured claims where the receivership property is likely to be insufficient to satisfy secured claims against the property.

The receiver must file interim reports as directed by the court and, on completion of the receivers' duties, a final report.

Where a receiver has been appointed by another state, the bill authorizes the court to appoint that person or its designee as an ancillary receiver for the purpose of obtaining possession, custody, and control of receivership property located within the state. The bill also permits the court to enter any order necessary to effectuate an order of a court in another state appointing or directing a receiver.

The bill makes clear that the appointment of a receiver required by a mortgagee or assignee of rents, and actions taken by the receiver: do not make the mortgagee or assignee of rents a "mortgagee in possession"; do not constitute an election of remedies or make the secured obligation unenforceable; and do not constitute an "action" within the meaning of the state's "one-action" rule. In a state with anti-deficiency rules, where a receiver conducts a sale of receivership property free and clear of a lien, the state's anti-deficiency rules will apply to any person that held a lien extinguished by the sale to the same extent those rules would have applied after a foreclosure sale not governed by the bill.

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: June 7, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 441

COMMITTEE SUBSTITUTE

SHORT TITLE: Providing confidentiality of video and other records of correctional juvenile facilities.

CODE REFERENCE: §15A-4-8a (New)

SUMMARY:

The purpose of this bill is to clarify that security records and facility video of the Division of Corrections and Rehabilitation is confidential, and to create exceptions to that confidentiality for official use of such video. The bill authorizes the Commissioner of the Division of Correction and Rehabilitation to disclose facility video, incident reports, and investigation reports to law enforcement if necessary for the investigation, prevention, or prosecution of a crime. It also requires law enforcement agencies to treat records relating to a juvenile as confidential.

In addition, the bill authorizes disclosure of facility video, incident reports, and investigation reports to be made in a civil or administrative proceeding pursuant to an appropriate order but requires records relating to grievances be made in accordance with §49-5-101. The bill also authorizes the Commissioner to disclose, but not release, records to attorneys representing persons with a claim against the division. Additionally, the bill clarifies that persons in receipt of such records must treat the same as confidential.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 449

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to Nonviolent Offense Parole Program.

CODE REFERENCE: §62-12-13c (Amends and Reenacts)

SUMMARY:

This bill relates to the Division of Corrections and Rehabilitations Nonviolent Offense Parole Program. An individual is ineligible to participate if the sentence from which parole is being considered is aggregated, concurrently or consecutively, with an offense determined disqualifying under this subdivision. It further clarifies that to qualify for the program, an inmate has not previously been released on parole from the same sentence.

DATE OF PASSAGE: February 7, 2022

EFFECTIVE DATE: March 7, 2022

ACTION BY GOVERNOR: Signed February 16, 2022

Senate Bill 452

COMMITTEE SUBSTITUTE

SHORT TITLE: Permitting civil remedies for unauthorized disclosure of intimate images.

CODE REFERENCE: §55-20-1, §55-20-2, §55-20-3, §55-20-4, §55-20-5, §55-20-6, §55-20-7, §55-20-8, §55-20-9, and §55-20-10 (New)

SUMMARY:

The bill creates a new article in the Code and creates a civil cause of action for the unauthorized disclosure of intimate images.

The bill provides that a depicted individual, who is identifiable and who suffers harm from a person's intentional disclosure or threatened disclosure of an intimate image that was private without the depicted individual's consent, has a cause of action against the person if the person knew or acted with reckless disregard for whether the person: did not consent to the disclosure, the intimate image was private; and the individual was identifiable.

There are exceptions to liability: if the person provides the disclosure of or threat to disclose was made in good faith in law enforcement; a legal proceeding; or medical education or treatment. If it was made in good faith in the reporting or investigation of unlawful conduct or unsolicited or unwelcome conduct. If it was related to a matter of public concern or public interest or reasonably related to assist the depicted individual. A defendant who is a parent, legal guardian or individual with legal custody is not liable for a disclosure or threatened disclosure of an intimate image. If a defendant proves the exception was prohibited or made for sexual purposes, then the parent, legal guardian, or person with legal custody may not qualify for the exception.

The bill permits a plaintiff to file a motion to seal with the initial pleading or other motion as necessary to protect privacy or identity.

The remedies for violations are the greater of: (1) Economic and noneconomic damages proximately caused by the defendant's disclosure or threatened disclosure, including damages for emotional distress, whether or not accompanied by other damages, or (2) statutory damages not to exceed \$10,000 against each defendant found liable for all disclosures and threatened disclosures by the defendant of which the plaintiff knew or reasonably should have known when filing or which became known.

In determining the statutory amount, consideration shall be given to the age of the parties at the time of the disclosure or threatened disclosure, the number of disclosures or threatened disclosures, the breadth of distribution, and other exacerbating or mitigating factors. An amount equal to monetary gain made by the defendant from disclosure and punitive damages as allowed under the law. The bill permits an award of attorney's fees, costs, and injunctive relief.

The action may not be brought later than four years from the date the disclosure was discovered or should have been discovered with the exercise of reasonable diligence. A threat to disclose may not be brought later than four years from the date of the threat to disclose.

DATE OF PASSAGE: February 25, 2022

EFFECTIVE DATE: May 26, 2022

ACTION BY GOVERNOR: Signed March 8, 2022

Senate Bill 463

COMMITTEE SUBSTITUTE

SHORT TITLE: Best Interests of Child Protection Act of 2022.

CODE REFERENCE: §48-9-102, §48-9-203, §48-9-204, §48-9-205, §48-9-206, §48-9-207, §48-9-208, §48-9-209, §48-9-401, §48-9-402, §48-9-602, and §48-9-603 (Amends and Reenacts); §48-9-102a (New)

SUMMARY:

The bill creates the “2022 Best Interest of the Child Act” to address perceived deficiencies in the current methods of legal custody and parenting time in the family court system. The bill establishes collaborative parenting or a goal of the process.

It creates a rebuttable presumption in the absence of parental agreement, that equal (“50-50”) custodial time is in a child’s best interest. The bill requires the court to undertake an analysis as to the viability of “50-50” parenting and have specific findings if “50-50” parenting is not ordered. It authorizes interlocutory appeals where a parent seeks “50-50” parenting and it is not granted at the temporary hearing. The bill sets forth factors to be considered in the creation of a temporary parenting plan.

Additionally, the bill ensures permanent parenting plans include provisions for financial support of the child or children. It adds the allocation of “significant decision-making responsibility” to one or both parents in accordance with the child’s best interest and, in light of the ability or inability of the parents, based on the evidence before the court, to work collaboratively and in cooperation with each other in decision-making on behalf of the child.

The bill also allows the court to designate which parent is entitled to tax deductions and exemptions year-to-year on an equitable basis. It also makes clear that the provisions are prospective in nature and prior orders remain in full force and effect.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 466

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to limitations on civil actions or appeals brought by inmates.

CODE REFERENCE: §25-1A-9 (New)

SUMMARY:

This bill prohibits an inmate housed in a West Virginia correctional facility from bringing a civil action *in forma pauperis* (without prepayment of a fee) if the inmate has had three or more occasions where an action or appeal was dismissed on the grounds that they were frivolous, malicious, or failed to state a claim. This bill exempts cases from the three-strike rule where the circuit court makes a preliminary filing that the case is not frivolous, the inmate alleges with particularity that they are under imminent danger of serious physical injury, and in cases where the inmate seeks solely habeas relief related to their custody. In those instances, the inmate could proceed *in forma pauperis*.

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: June 6, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 470

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to health care decisions.

CODE REFERENCE: §16-30-3, §16-30-4, §16-30-5, §16-30-10, §16-30-13, §16-30-19, §16-30-21, §16-30-25, and §16-30C-5 (Amends and Reenacts)

SUMMARY:

Senate Bill 470 modifies eight sections within the West Virginia Health Care Decisions Act and one section within the Do Not Resuscitate Act.

In §16-30-3, the bill removes the definition of the term “persistent vegetative state”. It also removes this term from the definition of “life-prolonging intervention” and from the statutory forms for a living will and combined medical power of attorney and living will provided in §16-30-4. It also removes this term from provisions governing a physician’s duty with respect to a patient who has executed a living will or combined medical power of attorney and living will in §16-30-19.

In §16-30-3, the bill renames the defined term “physician orders for scope of treatment (POST) form” as “portable orders for scope of treatment (POST) form” and adds advanced practice registered nurses (APRNs) and physician assistants (PAs) to this definition as providers who may issue the orders contained in the POST form. It also updates references to this term and to APRNs and PAs throughout the bill.

The bill adds “combined medical power of attorney and living will” to other references to living wills and medical powers of attorney throughout. This includes adding “combined medical power of attorney and living will” to the definition of the term “principal” in §16-30-3 and extending existing authority and prohibitions applicable to executing a living will and medical power of attorney to a combined medical power of attorney and living will in §16-30-4.

The bill adds language to the statutory form for a living will and combined medical power of attorney and living will in §16-30-4 which provides an express acknowledgment by the principal that he or she is agreeing to the removal or refusal of CPR, ventilator, dialysis, and medically administered food and fluids. It also expressly permits oral food and fluids to be offered as desired and can be tolerated.

The bill modifies the special directives or limitations available on the statutory form for a living will, power of attorney, and combined medical power attorney and living

will in §16-30-4. It also adds space for the address of the principal to be provided beneath his or her signature.

The bill adds language in the statutory form for combined medical power of attorney and living will in §16-30-4 which separates living will provisions applicable when the principal is in a terminal condition, and medical power of attorney provisions applicable when he or she is not in a terminal condition, and any special directives or limitations that the principal wishes to have on either of those powers.

The bill includes a new subsection (j) to §16-30-4 clarifying that living will, medical power of attorney, and combined medical power of attorney and living will documents executed prior to the effective date of these amendments remain effective and that the amendments apply to documents executed, amended, or adjusted on or after January 1, 2023. It further requires health care facilities and health care providers which utilize these documents must update their forms on or before this date.

In §16-30-19(c), the bill updates an existing requirement for inpatient health care facilities to develop a system to visibly identify a person's chart which contains a living will or medical power of attorney, so that the requirement also includes a combined medical power of attorney and living will and POST forms.

In §16-30-21, the bill adds mental health advance directives, medical orders (portable orders for scope of treatment or do-not-resuscitate cards), and similar advance directives and medical orders forms to the list of documents executed in another state which are subject to reciprocity provisions under the West Virginia Health Care Decisions Act.

The bill recognizes the authority of APRNs and PAs with respect to the provisions governing POST forms in §16-03-25.

Lastly, the bill adds a reference to combined medical power of attorney and living will and removes a reference to persistent vegetative state in §16-30C-5 (Do Not Resuscitate Act) in line with the above.

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: June 7, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 520

COMMITTEE SUBSTITUTE

SHORT TITLE: Increasing financial penalties for ransomware attacks.

CODE REFERENCE: §61-3C-8 (Amends and Reenacts)

SUMMARY:

This bill creates a felony offense of disrupting or degrading, causing the disruption or degradation, or threatening the disruption or degradation of computer services of another with the intent to obtain money or any other thing of value. This bill establishes as criminal penalties a fine up to 1 million dollars, incarceration of up to 20 years, or both fined and incarcerated.

DATE OF PASSAGE: March 4, 2022

EFFECTIVE DATE: June 2, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 535

COMMITTEE SUBSTITUTE

SHORT TITLE: Providing for revocation of school personnel certification or licensure in certain circumstances.

CODE REFERENCE: §18A-3-6 (Amends and Reenacts)

SUMMARY:

Senate Bill 535 modifies provisions governing suspension and revocation of teaching certificates and other certificates issued by the State Superintendent.

In subsection (b), the bill enumerates five circumstances in which the State Superintendent may automatically suspend a certificate. In subsection (c), the bill requires the certificate to be reinstated upon dismissal of the charge or indictment, acquittal of the charge, or dismissal of the petition alleging child abuse which resulted in automatic suspension, unless otherwise prohibited by law.

In subsection (d), the bill similarly enumerates five circumstances in which the State Superintendent must automatically revoke a certificate. The bill expands the application of the automatic revocation provisions to include other individuals with certificates issued by the State Superintendent in addition to teachers. It also adds adjudication by a court of competent jurisdiction that the teacher or certificate holder has committed abuse of a child as an additional circumstance in which a certificate is automatically revoked. In subsection (e), the bill requires the certificate to be reinstated upon a court overturning the conviction or adjudication of abuse of a child which resulted in the automatic revocation unless otherwise prohibited by law.

Finally, the bill replaces references to “licenses” with “certificates” throughout for consistency.

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: June 7, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 536

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to controlled substance criminal offenses.

CODE REFERENCE: §60A-4-415 (Repeals); §60A-4-401 and §60A-4-409 (Amends and Reenacts); §60A-4-418 (New)

SUMMARY:

This bill provides additional penalties for possession with the intent to deliver known fentanyl alone or in combination with another substance. It creates a new offense for a person to knowingly or intentionally: (1) adulterate another controlled substance with fentanyl; (2) create a counterfeit substance or imitation controlled substance using fentanyl; or (3) cause the adulteration or counterfeiting or imitation of another controlled substance using fentanyl. The penalty for these offenses is three to 15 years in a state correctional facility, fined not more than \$50,000, or both fined and confined.

The bill defines the term “adulterated” and cross-references the definitions of counterfeit substances and imitation controlled substances. In addition, the bill enhances the penalty for transporting fentanyl into the state and repeals the specific code section on the unlawful manufacture, delivery, transport into the state, or possession of fentanyl.

The bill also creates a new crime for anyone over the age of 21 to use a minor to commit a felony drug offense. This is a felony and is punishable by a fine of not more than \$10,000, confined in a state correctional facility for not more than five years, or both fined and confined.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 552

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to tax sale process

CODE REFERENCE: §11A-2-18, §11A-3-5, §11A-3-5a, §11A-3-5b, §11A-3-6, §11A-3-7, §11A-3-14, §11A-3-15, §11A-3-16, §11A-3-17, §11A-3-18, §11A-3-19, §11A-3-20, §11A-3-21, §11A-3-22, §11A-3-23, §11A-3-24, §11A-3-25, §11A-3-26, §11A-3-27, §11A-3-28, and §11A-3-29, §11A-3-30, and §11A-3-31 (Repeals); §11A-1-8, §11A-2-14, §11A-3-1, §11A-3-2, §11A-3-4, §11A-3-8, §11A-3-9, §11A-3-10, §11A-3-11, §11A-3-12, §11A-3-13, §11A-3-32, §11A-3-39, §11A-3-42, §11A-3-44, §11A-3-45, §11A-3-46, §11A-3-48, §11A-3-50, §11A-3-52, §11A-3-53, §11A-3-54, §11A-3-55, §11A-3-56, §11A-3-66, §11A-3-69, §11A-4-3, §11A-4-4, §16-18-3, §22-15A-30, §31-18E-9, and §31-21-11 (Amends and Reenacts)

SUMMARY:

This bill modifies and modernizes the process for a tax sale. It transfers the current procedure for selling tax delinquent properties and for redeeming property sold for delinquent taxes from the sheriff's office to the State Auditor.

Timelines throughout the entire process essentially remain the same. Under current law, there is a period of approximately two years and nine months from the time a taxpayer receives a tax ticket (July 1 of each year) to the time the Auditor issues a tax deed to a purchaser at a tax sale. During this period, a list of delinquent properties is published, posted, and the list is certified to the Auditor by the county commission. A second publication of the delinquency list occurs with the tax sale occurring approximately nine months after taxes were due. Over the next 17 months, if the delinquent taxpayer fails to redeem the property, a tax deed is issued by the Auditor with opportunity for taxpayer to redeem.

Under the new procedure, the timeline is approximately two years and seven months from the time a taxpayer receives a tax ticket to the time a tax deed is issued by the Auditor. During this period, the sheriff publishes two delinquency notices, a notice of delinquent properties is certified to the Auditor, the Auditor certifies list of delinquent properties to each county, the list is published, and the Auditor holds a sale. Thereafter, the county reports sales to the Auditor and the period of redemption begins and notice to redeem is issued to appropriate parties.

New language creates a preference list for buyers of property at the deputy commissioner annual auction. First priority is to adjacent landowners, then to a municipality if the land is located within the municipality. Next in priority is the county commission if the land is located within the county. If both do not place the deputy

commission on notice of their intent to acquire, the next person in priority is the West Virginia Land Stewardship Corporation, urban renewal authorities, municipal land banks, or land reuse authorities. The purchase is contingent upon the deputy commissioner and the entity agreeing upon a purchase price. If none of these entities exercise their priority, the land is sold to the highest bidder.

Additionally, a provision has been added that if property is the purchaser's primary residence, a purchaser may petition the Auditor to redeem the property in three incremental assignments. There is also a procedure to redeem properties sold at a tax sale or to set aside a deed where a deed was obtained improperly or where a person entitled to receive notice of a tax deed was not notified as required by the new law.

The bill also authorizes the Department of Environmental Protection (DEP) to assist local governments, urban renewal authorities, municipal land banks, and land reuse agencies to remediate abandoned, blighted, and dilapidated structures. The DEP is further authorized to use an existing fund, the Reclamation of Abandoned and Dilapidated Properties Program Fund, to assist the local governments, authorities and agencies to remediate structures by demolishing, deconstructing, and redeveloping rehabilitation, together with pre-development expenses for distressed properties acquired by local governments, the West Virginia Land Stewardship Corporation, and certain agencies and authorities. The DEP is required to consult with the State Fire Marshall, Insurance Commissioner, State Auditor, Secretary of Revenue, and the Legislative Auditor on the needs of slum clearance by local governments, agencies, and authorities. The agency is also required to submit a report to the Joint Committee on Government and Finance regarding steps that need to be implemented to develop and redevelop abandoned and dilapidated structures and properties. The DEP is also given contract authority to assist local governments and agencies and authorities with slum clearance.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 573

COMMITTEE SUBSTITUTE

SHORT TITLE: Providing system where magistrates shall preside in certain instances outside normal court hours.

CODE REFERENCE: §50-1-13 (Amends and Reenacts)

SUMMARY:

This bill requests that the West Virginia Supreme Court of Appeals establish a court system for coverage of courts during non-court hours around the state by assigning magistrates on a circuit or regional basis to be appointed to sit outside the county of their election. The bill also repeals the provision regarding pay differentials if a magistrate is assigned to a county with a higher salary schedule. The matters before the court would be limited to initial appearance, petitions for domestic violence, emergency protective orders, emergency mental health petitions, emergency juvenile delinquency petitions, and search warrant applications.

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Vetoed March 30, 2022

Senate Bill 575

COMMITTEE SUBSTITUTE

SHORT TITLE: Ensuring that imposition of certain sexual offenses apply to persons working in juvenile facilities.

CODE REFERENCE: §61-8B-10 (Amends and Reenacts)

SUMMARY:

This bill adds juveniles under supervision, and juvenile facilities of the Division of Corrections and Rehabilitation, where imposition of sexual acts is specifically prohibited. It adds juvenile residents to the category of person against whom sexual acts may not be imposed. The bill also specifies that the person may also be acting under the authority of a municipality. In addition, the bill specifies that the prohibitions apply to persons under home incarceration. The bill also adds language about persons “detained” and clarifies that authorized pat downs, strip searches, and similar actions do not constitute sexual contact.

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: June 6, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 591

INTRODUCED

SHORT TITLE: Relating to process for filling vacancies in state Legislature.

CODE REFERENCE: §3-10-5 (Amends and Reenacts)

SUMMARY:

Senate Bill 591 modifies provisions within the state Election Code which govern the process for filling a vacancy in the House of Delegates or the Senate.

Prior to amendment, subsections (b) and (c) required a list of qualified persons to be submitted to the Governor by the party executive committee of the district in which the vacating member resided at the time of election or appointment, without reference to whether the district is a multi-county district or a single-county district.

The bill amends these provisions to provide that this process will continue to apply when there is a vacancy in a multi-county district, and further clarifies that, for a vacancy in a single-county district, the list must be submitted by the county executive committee in which the vacating member resided at the time of election or appointment.

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: June 7, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 593

COMMITTEE SUBSTITUTE

SHORT TITLE: Allowing Marshall University’s Forensic Analysis Laboratory access and participation in WV DNA database for certain purposes.

CODE REFERENCE: §15-2B-3 (Amends and Reenacts)

SUMMARY:

This bill amends, in §15-2B-3(3), the definition of “criminal justice agency” to include the Forensic Analysis Laboratory of the Marshall University Forensic Science Center. By including this in the definition, the Marshall University DNA lab now has access to the West Virginia DNA Database as it relates to missing persons, relatives of missing persons and unidentified human remains databases components of the Federal Missing Persons, Relatives of Missing Persons, and Unidentified Human Remains “NamUs” databases.

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: March 8, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 595

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to Dangerousness Assessment Advisory Board.

CODE REFERENCE: §27-6A-13 (Amends and Reenacts)

SUMMARY:

This bill provides that individual board members are not subject to subpoena to appear at a judicial hearing due to being a member of the Dangerousness Assessment Advisory Board or fulfilling their duties. However, upon request, the bill provides that the Board shall make all documents, reports, and other materials used in making its report available to the court or a party in the judicial proceeding regarding placement in redacted form upon the court's request.

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: March 9, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 606

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to WV Medical Practice Act.

CODE REFERENCE: §30-3-14 (Amends and Reenacts)

SUMMARY:

Senate Bill 606 modifies provisions of the West Virginia Medical Practice Act which govern professional discipline of physicians and podiatrists.

The bill adds a new reporting requirement to subsection (b)(5), imposing a duty on a healthcare provider licensed or authorized by the Board of Medicine to submit a written report to the Board if he or she reasonably believes a provider has engaged in certain conduct. The bill specifies five categories of provider conduct which are reportable under this provision. The bill requires the report to be submitted within 30 days of the incident itself or the provider's subsequent knowledge of same. It establishes failure to report as unprofessional conduct which is grounds for disciplinary action. The bill provides an exception to this reporting requirement for physicians who obtain otherwise reportable information exclusively while functioning as an executive director or employee of a board-approved professional health program.

The bill provides immunity from civil liability for a person who submit any report under subsection (b) in good faith and without fraud or malice. It establishes bad faith, fraudulent, or malicious reporting as unprofessional conduct and grounds for disciplinary action.

The bill expands the reasons the Board may deny a license application or discipline a provider under subsection (c) to include engaging in other sexual misconduct and failing to comply with a reporting requirement under subsection (b).

Lastly, in new subsection (u), the bill provides rulemaking authority to the Board to define sexual misconduct and identify prohibited professional misconduct, including sexual misconduct, for purposes of denying an application or disciplining a provider.

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 610

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to duties, powers and responsibilities of DOT Secretary.

CODE REFERENCE: §17-2-1 and §17-2-2 (New)

SUMMARY:

This bill sets forth the duties, powers and responsibilities of the Department of Transportation (DOT) Secretary and defines terms. More specifically, the bill provides that the DOT Secretary is the administrative head of the department, has the power and authority set forth in West Virginia Code §5F-2-2, and may employ professional staff and other employees, fixing their compensation and prescribing their powers and duties.

Additionally, the bill allows the DOT Secretary to designate any administrator or employee of the DOT as the Secretary's designee on any board, authority, or commission on which the Secretary serves, with such designee having the same powers, duties, authority, and responsibility as the Secretary. It also allows the Secretary to arrange for any of the DOT's agencies to utilize the services of the DOT or any other agency within the DOT and authorize interagency agreements which may be executed among the DOT's agencies, or between one or more agencies and the department.

The bill requires the DOT Secretary to ensure that the DOT and its agencies carry out functions in a manner that supplements, complements, and complies with policies, programs, and federal funding requirements. In addition, it provides that the DOT Secretary may, on behalf of the DOT, sign in the name of the state any contract or agreement with any division, agency, or other unit of federal, state, or local government, any legal entity, or any individual, within powers granted to the Secretary by the Legislature to the DOT or the various agencies of the DOT.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 616

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to confidentiality of court files and law-enforcement records of certain enumerated offenses.

CODE REFERENCE: §61-8B-19 (New)

SUMMARY:

This bill provides that records containing identifying information of victims in an arrest, investigation, or complaint in the following crimes are confidential except when required by law, when necessary for law enforcement purposes, or pursuant to an order of the Court:

1. Crimes involving obscene matter and minors;
2. Crimes of sexual offenses;
3. Crimes involving filming sexually explicit conduct of minors;
4. Human trafficking; Female genital mutilation;
5. Sexual abuse by a parent, guardian, custodian, or person in a position of trust; and
6. Sending explicit material involving a child by a parent, guardian, custodian, or person in a position of trust.

This bill applies to Courts, law enforcement agencies, and any political subdivision of the state. It provides for an order permitting examination or copying of file contents from a circuit court and states that it must include specific findings of why the best interests of justice necessitate the disclosure. The bill also provides for a waiver of confidentiality and a mechanism to subpoena such records. The bill codifies the current practice of the West Virginia Supreme Court of Appeals to identify certain victims of sensitive crimes by their initials in rulings of the Court and requests the Court promulgate rules to comply with this section.

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: June 7, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 647

COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Prohibiting discrimination in organ donation process.

CODE REFERENCE: §[16-65-1 et seq (New)

SUMMARY:

This bill creates a new article which is entitled “Nondiscrimination Relating To Access to Organ Transplantation”. It sets forth legislative intent and defines terms. It prohibits a covered entity from doing the following, based on a qualified individuals mental or physical disability:

- (1) Determining the qualified individual ineligible to receive an anatomical gift or organ transplant;
- (2) Denying a qualified individual medical and related services, relating to organ transplantation;
- (3) Refusing to refer the qualified individual to a transplant center or other related specialist for the purpose of evaluation or receipt of an organ transplant;
- (4) Refusing to place a qualified individual on an organ transplant waiting list or placing him or her at a lower-priority position on the list than he or she would have been placed if not for his or her disability; or
- (5) Declining insurance coverage to any qualified individual for any procedure associated with the receipt of an anatomical gift, including post-transplantation care.

This bill also provides that an individual’s disability may be considered in certain circumstances, requires covered entities to make necessary reasonable modifications to their policies, practices, or procedures, and requires covered entities to take the steps necessary to ensure a qualified individual is not denied services because of the absence of auxiliary aids and services except in certain circumstances.

Lastly, the bill states that the remedy for violation of this article are the same as those under the Americans with Disabilities Act. It also states that a court should accord priority on its calendar expeditiously for an action to enforce compliance of the article.

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 21, 2022

Senate Bill 693

INTRODUCED

SHORT TITLE: Clarifying meeting voting requirements for political party executive committees.

CODE REFERENCE: §3-1-9 (Amends and Reenacts)

SUMMARY:

Senate Bill 693 modifies provisions of the state Election Code which govern the composition and organization of political party committees.

Subsection (h) eliminates the requirement that all official actions of a political party executive committee must be made by voice vote.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 726

ORIGINATING

SHORT TITLE: Relating to pre-trial diversion agreements and deferred prosecution agreements.

CODE REFERENCE: §61-11-22 and §61-11-22a (Amends and Reenacts)

SUMMARY:

This bill sets forth what offenses make an individual ineligible for pre-trial diversion and deferred adjudication. The bill also sets forth certain crimes where a person may be eligible for deferred adjudication, but the charges are not dismissed. In addition, the bill sets conditions for when a person charged with a first offense domestic assault or battery, or first offense assault or battery where the victim is a family or household member, may be eligible for deferred adjudication.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: March 12, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 2177

COMMITTEE SUBSTITUTE

SHORT TITLE: Permitting the issuance of a state issued identification card without a photo on the card under certain conditions.

CODE REFERENCE: §17B-2-1 (Amends and Reenacts)

SUMMARY:

The bill allows persons whose religion prohibits or discourages being photographed the ability to obtain a State ID without a photograph. The bill also directs the Division of Motor Vehicles to develop an application form and sets forth the contents required to be in the form.

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: March 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 2300

INTRODUCED

SHORT TITLE: Including Family Court Judges in the Judges' Retirement System.

CODE REFERENCE: §51-9-1a (Amends and Reenacts)

SUMMARY:

This bill allows family court judges to participate in the second tier of the Judges' Retirement System. It does so by adding family court judges to the definition of judges.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Vetoed March 30, 2022

House Bill 2631

INTRODUCED

SHORT TITLE: Short Provide for WVDNR officers to be able to work “off duty”

CODE REFERENCE: §20-7-1e (Amends and Reenacts)

SUMMARY:

This bill amends the Division of Natural Resources (DNR) law enforcement article to allow Natural Resources Police Officers (NRPO) to contract with private employers to provide security services during off-duty hours. The only limitation is that the private employment cannot conflict with or violate existing law or rules of the DNR regarding location or nature of the security services. Current law prohibits NRPOs from working private security jobs.

The bill also allows the chief NRPO to contract with “quasi-public” entities to provide extraordinary law enforcement or security services. This is in addition to existing law which allows the chief NRPO to contract with other public and private entities for extraordinary law enforcement or security services.

Finally, the bill provides that the state, DNR, and NRPOs must be held harmless and indemnified from any liability arising out contracts for extraordinary law enforcement or security services.

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 2838

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorize the ordering of restitution to the state for reimbursement of costs incurred for misuse of public funds, and to create the State Auditor’s Public Integrity and Fraud Fund for use of said funds.

CODE REFERENCE: §6-9-8, §11-6-26, §11-6-27, and §11A-3-36 (Amends and Reenacts)

SUMMARY:

This bill pertains to restitution to the State Auditor by a public officer or employee. It allows a court to order reimbursement for the actual costs of auditing, investigation, or prosecution. The bill specifically does the following:

§6-9-8 creates a new fund administered by the Auditor. More specifically, it adds the “State Auditor’s Public Integrity and Fraud Fund.” Its purpose is to “enhance fraud detection, prevention, transparency and enforcement efforts for the purposes of carrying out the duties under W. Va. Code 6-9-1, *et seq.* (Auditor as supervisor of local governments) and §12-4A-3 (Auditor as recipient of reports of suspected fraud, misappropriation, mismanagement or waste of state funds). It will be funded using court-ordered “reimbursement to the State Auditor for the actual costs of auditing, investigating, or prosecuting a violation” in a case where a defendant is “convicted of a felony or misdemeanor based upon any audit, examination, or investigation by the State Auditor, which discloses misfeasance, malfeasance, or nonfeasance in the office on the part of any public officer or employee.”

§11-6-26 is amended to change the disposition of year end balances for a previously created special revenue fund, described in the statute as a “special operating fund” (the Public Utilities Operating Fund in W. Va. Code §11-6-27) administered by the State Auditor to receive and disburse funds relating to the duties of the Auditor’s Public Utilities Division. Under current law, any balance on July 31 in excess of “one percent of gross revenues plus \$50,000” are transferred to the General Revenue Fund. The bill requires any balance at the end of each fiscal year in excess of “20 percent of the gross revenues from the special operating fund operations” be transferred to the General Revenue Fund.

§11-6-27 is amended to change provisions for a previously created special revenue fund administered by the State Auditor as Chief Inspector of Public Offices, known as the “Public Utilities Tax Loss Restoration Fund,” from which its proceeds are “distributed quarterly on a proportional basis to counties, districts and municipalities that have lost assessed value from the prior year’s assessment.” The bill adds new language to allow the Auditor, through the State Treasurer, to invest the balance of this fund, and may use “the

additional earning from investments” to “support any W. Va. Code Section administered by the Auditor related to local government oversight or the general operations of the office.”

§11A-3-36 is amended to change the disposition of year end balances for a previously created special revenue fund, described in the statute as a “special operating fund” administered by the State Auditor to receive and disburse funds relating to the duties of the Auditor’s Land Department. Under current law, any balance at the end of each fiscal year in excess of \$100,000 would be transferred to the General School Fund. The bill changes that. It mandates that any balance at the end of each fiscal year in excess of “20 percent of the gross revenues from the special operating fund operations” is to be transferred to the General School Fund.

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 2910

COMMITTEE SUBSTITUTE

SHORT TITLE: To modify the allowable number of magistrate judges per county.

CODE REFERENCE: §50-1-2, §50-1-2a, and §50-1-13 (Amends and Reenacts)

SUMMARY:

The bill instructs the West Virginia Supreme Court of Appeals to conduct a caseload study of the state magistrate courts to determine how many magistrates are needed in each county, provided that there be a maximum of 170 magistrates in the state. The bill requires an administrative order to be reported to the Legislature and the West Virginia Secretary of State detailing the Supreme Court of Appeals' proposed allocations of magistrates, provided that the number of magistrates may not be reduced in any county. The bill also gives the Legislature discretion to reject the Supreme Court of Appeals' recommendations and to allocate the magistrates as they see fit.

The bill also adds an additional magistrate to Berkeley County effective July 1, 2022. The bill allows the Supreme Court of Appeals to direct magistrates to serve on a temporary basis outside of their county. In addition, the bill requests the Supreme Court of Appeals develop a program for after hours coverage of magistrate courts on a circuit or regional basis. The matters before the court would be limited to initial appearance, petitions for domestic violence, emergency mental health petitions, emergency juvenile delinquency petitions and search warrant applications.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 3303

INTRODUCED

SHORT TITLE: Relating to clarifying the process of filling vacancies on ballots.

CODE REFERENCE: §3-5-11 and §3-5-19 (Amends and Reenacts)

SUMMARY:

House Bill 3303 modifies provisions of the state Election Code which govern the filling of vacancies on the ballot for primary and general elections, respectively.

In §3-5-11(d), the bill authorizes a county executive committee for a delegate or senatorial district situated entirely within a single county to fill vacancies on the primary election ballot and to certify candidates accordingly. The bill also authorizes the chairperson of a committee to fill such vacancies if the committee fails to act. The bill prohibits the Secretary of State from refusing to certify for the 2022 primary election ballot any candidate who is appointed to an intra-county district by the county executive committee for that district pursuant to the required process and deadline if the reason for refusal would be that the appointment was made by the county executive committee for an intra-county district. The bill clarifies that that a vacancy may not be filled after the primary election except as provided in §3-5-19. In new subsection (e), the bill provides that these amendments are retrospective to January 30, 2022.

In §3-5-19(a)(1), the bill authorizes a county executive committee for a delegate or senatorial district situated entirely within a single county to fill vacancies on the general election ballot and to certify candidates accordingly. The bill also authorizes the chairperson of a committee to fill such vacancies if the committee fails to act. The bill clarifies in subsection (a)(4) that a vacancy in nomination caused by failure of a candidate to file for office or withdrawal of a candidate no later than the third Tuesday following the close of candidate filing may not be filled after the primary election. Lastly, in new subsection (d), the bill provides that these amendments are retrospective to January 30, 2022.

DATE OF PASSAGE: February 25, 2022

EFFECTIVE DATE: February 25, 2022

ACTION BY GOVERNOR: Signed March 2, 2022

House Bill 4012

COMMITTEE SUBSTITUTE

SHORT TITLE: Prohibiting the showing of proof of a COVID-19 vaccination.

CODE REFERENCE: §16-3-4b (Amends and Reenacts); §16-3-4c (New)

SUMMARY:

The bill addresses exemptions from compulsory COVID-19 vaccinations. It adds a requirement that religious beliefs must be “sincerely held”. It excludes from the definition of “covered employer” any Medicare or Medicaid certified facilities which are subject to enforceable federal regulations contrary to the requirements of §16-3-4b.

The new section created in this bill, §16-3-4c, provides that no state or local governmental official, entity, or agency may require proof of vaccination as a condition of entering the premises of a state or local government entity or utilizing services provided by a state or local government entity. There is an exception that states if any federal law or regulation requires proof of vaccination as a condition of entering, the provisions of this section do not apply. This provision also does not apply to a private entity where the local governmental unit primarily serves as a property owner receiving rental payments. It also provides that no hospital or state institution of higher learning may require proof of vaccination as a condition of entering the premises. Provided, that when federal law or regulation requires proof of vaccination as a condition of entering or participation in a course of study requires vaccination, the provisions of this section are inapplicable.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: March 12, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4048

INTRODUCED

SHORT TITLE: WV Keep, Bear and Drive with Arms Act.

CODE REFERENCE: §20-2-5 (Amends and Reenacts)

SUMMARY:

This bill removes previous provisions of the code that prohibited carrying or operating a vehicle with a loaded or uncased long gun, cross bow, or bow.

DATE OF PASSAGE: February 23, 2022

EFFECTIVE DATE: May 24, 2022

ACTION BY GOVERNOR: Signed March 9, 2022

House Bill 4097

INTRODUCED

SHORT TITLE: To prohibit nonpublic funding sources for election administration and related expenses without prior written approval by the State Election Commission.

CODE REFERENCE: §3-1A-9 (New)

SUMMARY:

The bill creates a new section within the state Election Code to govern the handling of non-public monies and anything of value for election administration and related expenses.

Subsection (a) of the bill prohibits public officials and bodies with responsibility over elections in West Virginia from directly receiving or accepting non-public money or anything of value for election administration and related expenses.

All such monetary gifts must be placed into a new special revenue revolving fund account, called the Nonpublic Funding for Election Administration Fund, which is to be administered by the Secretary of State with the approval of the State Election Commission. Subsection (b) through (e) specify requirements for the fund.

All such gifts of tangible property or other non-monetary gifts of value must also be accepted, distributed, and utilized by the Secretary of State with approval of the State Election Commission pursuant to subsection (f).

The bill authorizes the Secretary of State to promulgate legislative rules for administration of the fund (subsection (e)) and handling of non-monetary gifts (subsection (f)) covered by the amendment.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4098

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to Geothermal Energy Development

CODE REFERENCE: §22-33-1, §22-33-2, §22-33-3, §22-33-4, §22-33-5, §22-33-6, §22-33-7, §22-33-8, and §22-33-9, §22-33-10, §22-33-11, and §22-33-12 (New)

SUMMARY:

House Bill 4098 establishes a new regulatory program for the exploration, development, and production of geothermal resources to be administered by the Department of Environmental Protection (DEP). Geothermal resources are underground reservoirs of hot water at varying temperatures and depths below the Earth's surface. Wells are drilled into the reservoirs to tap steam and extremely hot water that can be brought to the surface to be used in a variety of ways, including generation of electricity, direct use, and heating and cooling.

The bill directs the secretary of the DEP to propose a legislative rule to implement the regulatory program. Residential and farm buildings using geothermal heating and cooling heat pump systems would be excluded from regulation. Geothermal systems regulated pursuant to the Bureau of Public Health legislative rule for Water Well Design Standards, 64 CSR 46, or any horizontal system with a depth of less than 30 feet, would also be excluded from regulation.

A permit would be required before commencing work to develop and produce a geothermal resources well. At a minimum, the regulatory program would establish minimum temperature levels and flow rates for determining jurisdiction; standards for well site development, reclamation, and disposal of certain geothermal fluids and other wastewater fluids; and to civil penalties and injunctive relief. The bill also directs the DEP to develop a procedure for permit applications, renewals and permit modifications, public review and comment, administrative, and judicial review of permitting decisions, and suspension or revocation of a permit.

Finally, the geothermal resources statute acknowledges the common law doctrine that the owner of any geothermal resource is the surface owner of the property overlying the geothermal resource. The statute further provides that it does not divest any person or the state of ownership rights to any geothermal resource, and that no mineral or water estate includes geothermal resources unless clearly reserved in instruments conveying or reserving mineral or water estates.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4114

COMMITTEE SUBSTITUTE

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

CODE REFERENCE: §64-2-1 et seq. (Amends and Reenacts)

SUMMARY:

This bill is the Department of Administration bundle. It contains 4 rules.

Ethics Commission – Use of Office for Private Gain, Including Nepotism, 158 CSR 06

This rule amends a current legislative rule. The rule updates the sunset provision, defines the terms “supervise” or “supervision” as they apply to nepotism, states that nepotism constitutes improper use of office for private gain, prohibits a public official or public employee from participating in decisions relating to a relative or person with whom he or she resides unless an independent third party is involved in the process, prohibits using a subordinate as the independent third party, deletes a provision to exercise best objective judgment in making such decisions and replaces it with a requirement that the public official or public employee remove himself or herself from the decisions to the extent possible, and removes after work hours limitation on prohibition against public officials and public employees using subordinate employees for private gain or a subordinate to perform private work or personal services as an implied or express condition to their continued employment.

Department of Personnel – Administrative Rule of the West Virginia Department of Personnel, 143 CSR 01

The is amends a current legislative rule to make necessary updates and to bring it into compliance with Enrolled Committee Substitute for House Bill No. 2011, which passed during the 2021 Regular Legislative Session. The bill exempted temporary employees and temporary employees of state forests, parks and recreational areas from classified service and removed the cap on hours the employees may work in a year.

The rule adds new definitions for multiple terms, authorizes the appointment of a new employees at a rate above market rate for certain jobs, allows incremental increases under certain circumstances, and allows employees to receive compensation above the maximum as a result of legislative mandates or other exceptions approved by the Board

and allows incremental increases for a permanent classified employee making a lateral class change under certain circumstances.

The rule also allows for online examinations and removes the cap for temporary employment.

This rule was amended to remove the exceptions to the need for a conference in the case of a dismissal, provide for reduction in tenure during a disciplinary suspension even when the employee works additional hours during the same work period as the suspension, remove the exceptions to the need for a conference in the case of a disciplinary suspension, and remove the requirement that an employee applying for reinstatement have previously worked in the occupational grouping of the job class.

This rule provides that annual and sick leave accrued at agencies with an authorized work period of more than the standard work week may accrue for hours beyond 40 in a standard work week but may not exceed the monthly specified rates for annual leave or 1.5 days per month for sick leave.

In the case of exposure to a contagious disease, a personal leave of absence without pay is to be granted upon exhaustion of annual and sick leave.

This section has been amended to clarify that, in the case of medical leave, the leave runs concurrently with FMLA.

Finally, language is added to provide that members of the organized militia in the active service of the state are entitled to the same reemployment rights granted to members of the Armed Forces Reserves.

Office of Technology – Chief Information Officer Review, 163 CSR 02

This rule is new and promulgated in response to Senate Bill 486, which passed during the 2021 Regular Legislative Session. The rule relates to the review and management of technology products by the Chief Information Officer within the Office of Technology. It requires the Chief Information Officer to assign technology projects that have been submitted for approval and review to the Project Management Office which will then make a recommendation to the Chief Information Officer for approval.

The rule states that the Chief Information Officer may create steering committees for approved technology projects, delineates committee membership, and sets forth the duties of the steering committees.

Under statute, agencies are required to submit technology investments to the Chief Information Officer for approval. The rule states that the Chief Information Officer's review is to focus on the cost and its suitability with the overall environment of both the

agency and the state as a whole in relation to integration and communications within existing systems. The Chief Information Officer is to set the threshold for the value of technology investments to be reviewed. The Secretary of Administration may grant exceptions to the review process.

Office of Technology – Cyber Reporting, 163 CSR 03

This rule is new and is in response to Enrolled Committee Substitute for House Bill 2763 which passed during the 2021 Regular Legislative Session. The rule defines terms; sets forth the statutory requirement that required entities report a cybersecurity incident within 10 days of the incident; prohibits inclusion in the report of any personally identifiable information, protected health information, passwords or login information; and requires any executive agency to report a cyber incident immediately to the cybersecurity office in certain circumstances.

DATE OF PASSAGE: February 18, 2022

EFFECTIVE DATE: February 18, 2022

ACTION BY GOVERNOR: Signed March 2, 2022

House Bill 4126

COMMITTEE SUBSTITUTE

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

CODE REFERENCE: §64-5-1 *et. seq.* (Amends and Reenacts)

SUMMARY:

This Committee Substitute contains the Department of Health rules. It is known as Bundle 5 and contains 15 rules.

Department of Health and Human Resources – Methods and Standards for Chemical Tests for Intoxication, 64 CSR 10

The rule amends an existing legislative rule. The rule establishes methods and standards relating to implied consent for a chemical test for intoxication. The rule is applicable to all law enforcement agencies and personnel engaging in breath, blood, urine and/or drug analysis in this state, and to those persons suspected of driving under the influence of alcohol or drugs or both.

Under this rule, the definitions for “evidential test sequence” and “simulator solution” have been amended. Definitions have been added for the terms “Alveolar solution” and “secondary breath analysis”

In subsection 5.3. the word “solely”, which previously restricted the use of the preliminary alcohol breath test to being used for the purpose of guiding the officer in deciding whether an arrest should be made, is struck. Language is added permitting usage of this test to also include “to determine if alcohol is the cause for impairment.”

Section 9 relating to urine analysis has been deleted, as well as any reference to urine analysis in the rule.

Department of Health and Human Resources – Hospital Licensure, 64 CSR 12

The rule amends a current legislative rule. The rule establishes the standards and procedures for the licensing of hospitals and extended care facilities operated in connection with a hospital. It applies to any person, partnership, association, corporation, state, or local government unit, political subdivision, division, department, board, or

agency that establishes, maintains, or operates a hospital or an extended care unit in connection with a hospital as defined in statute.

Subdivision 7.3.11 was changed requiring that all therapeutic diets be recommended by a qualified dietician. Currently, they must be prescribed by the attending practitioner.

Subsection 8.7. references the anesthesia department. Duplicative language is removed and language is added stating that anesthesia may be administered by a licensed practitioner permitted by state law to administer “anesthesia, a certified registered nurse anesthetist as permitted by state law, or other professionals as permitted by the medical staff and state law.”

Department of Health and Human Resources – Child Lead Screening, 64 CSR 42

The rule amends a current legislative rule. The rule establishes and implements a statewide childhood lead poisoning screening and identification program. It applies to physicians, hospitals, health care facilities, and health care providers who conduct or oversee medical examinations of children under the age of six years.

Subsection 4.1 removes qualifying language resulting in the requirement that all children before the age of six shall have a screening test.

Subdivision 4.1.b. adds language requiring the Office of Maternal, Child and Family Health to ensure the laboratory results are incorporated in the Immunization Registry within the lead module provided by the BPH for health care provider reference.

Subdivision 4.1.d. states that if a child is determined to be at-risk for lead poisoning the health care provider shall perform or authorize a blood test has been deleted.

Section 5 reduces the lead levels in the confirmatory blood tests. In subdivision 5.3.a., children with a blood level of greater than or equal to five, rather than the existing ten micrograms per deciliter, must be referred to an “appropriate” program “based upon on age and concern”. Subdivision 5.3.b. lowers the blood levels from greater than or equal to eight micrograms per deciliter, rather than the existing 15 micrograms per deciliter, in children with two consecutive blood lead levels and removes references that “all children with blood lead levels of greater than or equal to 20 micrograms per deciliter” be referred to environmental assessments and “nurse home visits”. As a result of these edits, children with two consecutive blood lead levels of greater than or equal to 8 micrograms per deciliter must be referred to environmental assessments within two days of confirmation.

Subdivision 5.3.c. requires that all children with an elevated blood level greater than or equal to five micrograms per deciliter, rather than the existing ten micrograms

per deciliter, have a follow up blood level screening test within three months rather than every three months.

Subsection 7.1 provides that capillary blood samples may be analyzed using an approved Clinical Laboratory improvements amendments waived lead testing point of care system.

Subsection 7.3 requires laboratories processing blood lead samples to electronically submit data to the Office of Maternal, Child and Family Health.

Department of Health and Human Resources – Food Manufacturing Facilities, 64 CSR 43

The rule amends a current legislative rule that establishes the minimum requirements for the design, construction, management, and operation of food manufacturing facilities. It applies to food manufacturing facilities engaged in wholesale operations, except food manufacturing facilities under the jurisdiction of the West Virginia Department of Agriculture.

Section 3 addresses incorporation by reference of the federal code of regulations. This section amends the references to the applicable federal code and removes the applicable date of the reference.

Subdivision 4.2.2. has an added requirement for labels and requires that a label comply with the food labeling requirements of 21 CFR 101 for products sold in interstate commerce. Subsection 4.3 has an added requirement that facilities comply with the CFR regarding better process control schools, process control individual training, and appropriate food safety training. Requirements regarding refrigeration temperature have been deleted.

Section 6, this section addresses inspections. It requires the Commissioner to perform one or more preproduction inspections to verify that a food manufacturing facility is constructed and equipped in accordance with the plans and modifications as approved by the commissioner

Department of Health and Human Resources – Sewage Treatment and Collection System Design Standard, 64 CSR 47

The rule amends a current legislative rule setting standards for the construction or operation of sewage or collection systems requiring approval by the Bureau for Public Health.

Senate Bill 240 which passed during the 2020 Regular Session of the Legislature required hotels and restaurants to secure manhole covers, provided methods for securing

manhole covers, and authorized the Commissioner of the Bureau for Public Health to specify methods of limiting access to the manhole.

Section 10 relates to grease traps. Subsections 10.7 through 10.9 are new. They require that grease traps with manhole covers be designed to withstand expected loads and prevent access by children. The manhole cover must be secured by a bolt or locking mechanism and be constructed of round or cast iron or similar construction with sufficient weight to prevent unauthorized access. The Commissioner may specify either method of limiting access to the manhole. A hotel or restaurant must ensure that a grease trap manhole is closed and secured or locked, if applicable, at all times, except when accessed for pumping or maintenance.

Finally, Table 64-46B-B, Table 64-47-G, and 64-47-H have been amended by adding language regarding BOD₅ and stating that it's the appropriate scientific method of accurately measuring dissolved oxygen consumption, by comparison of dissolved oxygen in a sample at the beginning and at the end of a five-day period in reference to biochemical oxygen demand.

Department of Health and Human Resources – Emergency Medical Services, 64 CSR 48

The rule amends a current legislative rule. It ensures adequate provision of medical services to the residents of West Virginia and provides clear direction to emergency medical service personnel and agencies in West Virginia. It applies to emergency medical service personnel and agencies and to all other persons engaging in the provision of emergency medical services in West Virginia.

Paragraph 4.5.9.c. is modified to reflect that a fire department certified by the West Virginia State Fire Commission is not subject to licensure under this rule if it only provides basic life support services pursuant to an agreement with an EMS agency that addresses medical direction, training, quality assurance, and liability insurance.

Subdivision 6.2.15. relating to the Governor's State of Emergency declared March 16, 2020, has been removed.

Department of Health and Human Resources – Clinical Laboratory Practitioner Licensure and Certification, 64 CSR 57

The rule amends a current legislative rule and sets forth procedures for the licensing of clinical laboratory practitioners and to establish practices for the use of unlicensed persons to perform the work of clinical laboratory practitioners by health care facilities. This rule applies more broadly to clinical laboratory practitioners who perform non-waived clinical laboratory tests as defined in the Clinical Laboratory Improvement Amendments (CLIA). This includes clinical laboratory consultants, directors, supervisors,

or testing personnel who perform non-waived testing or manipulate, and report data obtained from laboratories.

Section 1 which defines the scope of the rule is amended to remove laboratory technicians and medical laboratory scientists from the scope of the rule.

Subdivision 1.6.c. was amended to increase the exemptions to the rule to include: an individual employed in a federal clinical laboratory; a medical doctor, doctor of osteopathy, or podiatrist licensed to practice in West Virginia; a doctor of philosophy performing laboratory testing within the scope of his or her board certification; an individual performing laboratory testing for a CLIA-exempt laboratory; an individual solely performing forensic laboratory testing; and an individual solely performing during testing for a laboratory certified by the Substance Abuse and Mental Health Administration.

Subsection 2.1. has been amended by adding numerous boards under the definition of “Certifying agency. The definition of clinical laboratory practitioner was amended to include medical laboratory technicians, histologists, pathologist assistants and trainees and the exclusions from the definition were removed. New definitions were added for the terms “grossing”, “histologist” and “pathology assistant”.

Section 3 was amended to update references to federal regulations.

Subsection 4.3 that prohibited a clinical laboratory practitioner from performing laboratory testing as a trainee for more than one year was deleted. A provision was added stating that a trainee license may only be issued to an applicant that is verified to be employed or offered employment in a clinical laboratory testing facility or that is enrolled in a laboratory training program.

With respect to section 5, this section addresses licensure requirements, duration, and renewal. Subsection 5.1 removes language referencing specific types of practitioners. Subdivision 5.1.a. is removed and 5.1.b is re-numbered. The specific qualifications set forth in subdivision 5.1.b are removed and a general reference to “qualifying education” is used to replace the specific qualifications. A new subdivision 5.1.b. is created requiring an applicant submit a job description or education for which certification is sought.

Subsection 5.2. addresses the application process for licensure as a clinical laboratory practitioner-medical laboratory scientist. It provides that unless the applicant provides verification that he or she has met one of the substitute criteria permitted by CLIA for testing, then he or she shall provide the documentation specified in this subsection. Subdivision 5.2.a. specifies that an applicant must earn his or her bachelor’s degree from a NAACLS accredited program. Additional criteria that an applicant must satisfy has been added to Subdivision 5.2.b. including: that the applicant was previously certified as a medical laboratory technician by a certifying agency, obtained a bachelor’s

degree from an accredited institution, and has passed a national certification examination administered by a certifying agency. Subdivision 5.2.c. incorporates by reference the skills required by CLIA and deletes the specific skills from the subdivision.

Subsection 5.3 addresses the application process for a clinical laboratory technician-cytotechnologist to become licensed. It provides that unless the applicant provides verification that he or she has met one of the substitute criteria permitted by CLIA for testing, then he or she shall provide the documentation specified in this subsection. Subdivision 5.2.a. specifies that an applicant must earn his or her associate degree from a NAACLS accredited program. It incorporates by reference the skills required by CLIA and deletes the specific skills from the subdivision.

Subsection 5.5. addresses the criteria for licensure of a clinical laboratory practitioner-pathologist assistant. This section specifies that unless the applicant provides verification that they have met one of the substitute criteria permitted by CLIA for testing, then he or she shall provide the documentation required in this section. The criteria that must be demonstrated are new criteria and include the following: graduating from a pathologist assistant program accredited by NAACLS; and certification by a certifying agency.

Subsection 5.6 addresses the criteria for licensure of a clinical laboratory practitioner-histologist. This section specifies that unless the applicant provides verification that they have met one of the substitute criteria permitted by CLIA for testing, then he or she must provide the documentation required in this section. The criteria that must be demonstrated include that the applicant meets the requirements of CLIA for high complexity testing personnel and has passed a national histotechnologist or histotechnician certification examination administered by a certifying agency, or has at least one year of pertinent full-time experience or training in the gross examination of human tissue specimens performed under the supervision of a pathologist.

Subsection 5.7 addresses the licensure for a point of care technician and removes references to general language at the beginning of the rule and also removes the skills requirements. The skills requirements for the technician are incorporated by reference in subdivision 5.7.c.

Subsection 5.8 sets forth new criteria for licensure of a clinical laboratory practitioner-trainee. The trainee shall document that he or she: is employed in a clinical laboratory which holds a CLIA certificate other than a waiver certificate; has earned an associate degree from an accredited institution in medical technology/medical laboratory science but has not met requirements for national certification. The rule proposes various educational alternatives to medical technology/medical laboratory science as a means for licensure and requires written verification by the laboratory director or program director to provide the skills required by CLIA. The rule provides that a trainee may qualify for full licensure upon completion of one year of training/experience and submission of the

“verification of competency” document to be completed by the laboratory director. The rule provides that trainees licensed under specific provisions are expected to obtain the required national certification within one year of obtaining the trainee license and any application for renewal without national certification shall provide documented attempts to become certified. The rule provides that the trainee may be certified no more than twice and may not be licensed as a trainee from more than three years.

Subdivision 5.11.h. adds a fee of \$35 for payments returned for non-sufficient funds.

Subsection 8.3 adds as grounds for revocation that a person has been found to have intentionally falsified laboratory results or to have engaged in negligent practices.

Department of Health and Human Resources – Clandestine Drug Laboratory Remediation, 64 CSR 92

The rule amends a current legislative rule and sets forth procedures and standards for the licensure and training of persons who engage in activities related to the remediation of clandestine drug laboratories. It also identifies the responsibilities of residential property owners and law enforcement with regard to the identification and remediation of clandestine drug laboratories. This rule applies to all owners of residential properties which have been used as clandestine drug laboratories; all persons who perform the work of clandestine drug laboratory remediation, including technicians, contractors, training providers; and law enforcement investigating clandestine drug laboratories.

Subsection 2.10 revises the definition of “discrete sample” to require that the individual “100 square centimeters” samples are taken at “individual and specific” locations.

Section 4 of the rule addresses licensed contractor duties. Subdivision 4.1.2. prohibits a contractor from beginning remediation until all required testing has been completed and a Plan Review is submitted. The rule provides that a contractor shall not begin a clandestine drug laboratory remediation project until a preliminary plan is submitted to and a notice to proceed is issued by the department. Subdivision 4.1.6 sets a new timeframe for submission of the final remediation report which is now due within 10 days of receipt of final third-party analytical test results. Under the current rule, this report was previously due based upon completion of remediation as documented on the Plan Review. Section 4.1.7. requires that a licensed contractor supervise demolition of residential property by licensed and certified contractors. Subdivision 4.1.8. is new and requires that the licensed contractor submit all positive analytical test results to the commissioner.

Section 5 addresses licensed technician duties. Subsection 5.3 requires composite sampling for final clearance. Subsection 5.4 is amended to require that personal property that cannot be remediated be disposed of in accordance with applicable federal, state and local laws. Section 5.5 requires vehicle testing to be a composite of four discrete samplings and two of which shall be taken as close as possible to the ventilation system.

Section 6 addresses the responsibilities of law enforcement agencies. Subdivision 6.1.3 is new and requires law enforcement to secure the clandestine drug laboratory, any controlled substances and immediate precursors from public access. Section 6.1.4 contains new language that requires the vehicle be secured until the initial or post remediation test results are at or below $0.1 \mu\text{g}/100 \text{ cm}^2$ or the vehicle is demolished.

Section 7 addresses responsibility of residential property owners. The property owner is responsible for ensuring that the property remains unoccupied until testing results indicate a level of contamination at or below $0.1 \mu\text{g}/100 \text{ cm}^2$ and the property complies with the department's asbestos rule. Subdivision 7.1.3. requires a multi-unit building be secured, vacated, and tested. A new exemption permits adjoining units to remain occupied in a multi-unit building if separated by a fire break wall, pending testing and remediation. Subdivision 7.1.4. has been amended to require a residential property owner whose property has an initial analytical testing of greater than $0.1 \mu\text{g}/100 \text{ cm}^2$ to engage within 60 days a licensed clandestine drug remediation contractor to either remediate or demolish the residential property. Subsection 7.3. includes new language requiring the residential property owner or his or her agent to disclose information regarding the identification of a clandestine drug laboratory on the residential property to any potential purchaser or occupant.

Section 9 addresses a newly added initial assessment report. Paragraph 9.1.2.e. contains a new requirement that GPS coordinates accompany a physical description of the property. Paragraph 9.1.2.j. has been amended to require that a licensed and certified asbestos inspector verify the presence or absence of asbestos containing materials prior to remediation. The subsection relating to a work plan has been deleted.

Section 10, which is new, addresses the preliminary remediation plan. It requires submission of the plan to the Commissioner and specifies the criteria to be included in the plan including but not limited to a general listing to items to be removed; methods used to wash hard surfaces; the sequence of work activities; items requiring special handling; asbestos project design; any obvious safety hazards; the methods used to handle cleaning effluents generated during remediation; timeframes; the identification of contractors and subcontractors; and identification of waste disposal sites.

Section 11 addresses the final remediation report. It has been amended to require that copies of asbestos certificates for all asbestos contractors, workers, supervisors, and designers that performed any asbestos remediation, and a copy of the final remediation checklist, be submitted to the Commissioner.

Section 12 addresses training accreditation. Subsection 12.5 is amended to remove the requirement that a training provider verify that a class participant has completed a training course within the three previous years and replaces it with training within the previous year for both initial training and refresher training. Subsection 12.12 requires that initial training and refresher training be taught independent of one another.

The fee for a technician's license has been raised from \$50 to \$100.

Department of Health and Human Resources – Maternal Risk Screening, 64 CSR 97

The rule amends a current legislative rule which implements the Uniform Maternal Screening Act. Senate Bill 746 which passed during the 2020 Regular Session of the Legislature permitted the department's contracted managed care companies to be provided Medicaid and CHIP data from the screening tool regarding their own members.

Subsection 6.1 has been amended to state that Medicaid and CHIP member's data may be provided to the Bureau for Medical Services which may provide the data to the patient's contracted care managed care organizations to facilitate case management for at-risk and high-risk pregnancies in a timely manner. Language has also been added regarding the confidentiality of data.

Department of Health and Human Resources – Expedited Partner Therapy, 64 CSR 103

The rule amends a current legislative rule to extend the sunset date to August 1, 2027

Health Care Authority – Certificate of Need Rule, 65 CSR 32

The rule amends a current legislative rule which implements the provisions of the Certificate of Need (CON) program.

Subsection 4.1 of the rule was amended to reflect that an application received after 4:30 pm, Eastern Standard Time, rather than the existing 5:00 pm Eastern Standard Time, is considered received on the next business day.

Subsection 8.7 states that if an applicant fails to respond to a request for additional information within 45 days, rather than the existing 90 days, the application is considered withdrawn.

Senate Bill 4 which passed during the 2021 Regular Session of the Legislature affects the appellate and judicial review provisions of this rule. Accordingly, sections 11 and 12 of the rule have been amended to reflect that decisions issued before June 30,

2022, shall be appealed to the Office of Judges. Decisions issued after June 30, 2022, shall be appealed to the West Virginia Intermediate Court of Appeals and be filed with the Clerk of the Supreme Court.

The House amended the rule on page 4, by striking out all of paragraph 2.1.j.9. This amends the definition of “proposed new health service” by removing reference to the expansion of open-heart surgery rooms, cardiac catheterization laboratories, radiation therapy equipment, magnetic resonance equipment (MRI) or PET scanners whether or not the expansion is associated with a capital expenditure.

Department of Health and Human Resources – Medication-Assisted Treatment – Opioid Treatment Programs, 69 CSR 11

The rule extends the sunset date to August 1, 2027.

Department of Health and Human Resources – Syringe Services Program Licensure, 69 CSR 17

The rule is new and establishes standards and procedures for the licensure and regulation of syringe services in the state of West Virginia. This rule applies to any person, partnership, association, or corporation that operates a syringe services program as part of a harm reduction program.

The rule defines terms and sets forth the procedures for the issuance of a license. A license is valid for the location and persons named. Each fixed or mobile site requires a separate license and the license is not transferrable or assignable. The Director of the Syringe Services Program, or his or her designee, may enter the premises of any practice, office, or facility if the Director has reason to believe that it is being operated and maintained without a license.

Any existing syringe services program, as of the effective date of W.Va. Code §16-64-1, which does not offer the full array of harm reduction services, must cease and desist from offering all syringe services and operating as a syringe service program. These syringe services programs may continue in operation for the sole purpose of referring current participants to other syringe services programs.

Any new syringe services program shall apply for an initial license not less than 30 days and not more than 60 days before the syringe services program begins operation as part of a harm reduction program. The rule sets forth the contents of the application. An initial license for a syringe services program and renewal licenses are valid for one year. The initial license fee is \$250, and the renewal license fee is \$50.

The rule sets forth circumstances for which a license may be denied and requires the Director shall notify the applicant in writing of the denial and the basis for the

decision. Following the denial, the syringe services program must follow closure procedures.

The rule provides for unannounced inspections of a syringe services program for cause if the Director has received a complaint about the program, requires a written report of the results of the investigation, and provides for the correction of deficiencies. The Director may assess a civil monetary penalty, suspend, limit, or revoke a license or take other actions to address any violations or deficiencies. In the event the Director determines that the continued operation of the syringe services program is a threat to health, welfare, and safety of its participant, the Director may issue an order immediately closing a syringe services program pursuant to applicable administrative procedures.

The rule contains provisions regarding emergency planning and response, service environment and operation including a sharps disposal plan, data collection, a community relations program, staff training and credentialing of staff, participant rights, the provision of services, required harm reduction services, and components of a harm reduction program including: HIV, hepatitis, and sexually transmitted diseases screening, vaccinations, birth control and long-term birth control, behavioral health services, overdose prevention supplies and education, syringe collection and sharps disposal, educational services related to disease transmission, assistance or referral of a participant to a substance use disorder treatment program, and referral to a health care practitioner for treatment of medical conditions. The program must have guidelines regarding sharps disposal, staff training, data collection, program evaluation, and community relations.

The rule also has provisions relating to the provision of syringe services, a syringe disposal plan, reports and records, statistical reports and records, incident reporting and adverse events, quality assurance and performance improvement, infection control, license denial, suspension, or revocation, and penalties and equitable relief. The rule states that any person, partnership, association, or corporation that establishes, conducts, manages, or operates a syringe services program without first obtaining a license is subject to a civil monetary penalty. Each day of continuing violation after notification is a separate violation. If the syringe services program fails to timely report, the Director may impose a civil monetary penalty not to exceed \$500 per day. If the syringe services program administrator knowingly and intentionally misrepresents actions taken to correct a violation, the Director may impose a civil monetary penalty not to exceed \$5,000. If an owner of a syringe services program concurrently operates an unlicensed syringe services program, the Director may impose a civil monetary penalty not to exceed \$2,500 per day. If the owner fails to file for a new license upon change of ownership, the Director may impose a civil monetary penalty not to exceed \$2,500. If a syringe services program operates, owns, or manages a syringe services program that is required to be registered and obtains a license through misrepresentation or fraud; procures or attempts to procure a license from any other person by making or causing to be made any false

representation, the Director may assess a civil monetary penalty of not more than \$10,000. The rule sets forth the factors for the Director to consider in assessing the fee.

Finally, the rule contains provisions on administrative due process and administrative appeals and judicial review.

Department of Health and Human Resources – All-Payer Claims Database – Data Submission Requirements, 114A CSR 01

The rule amends a current legislative rule and establishes an all-payer claims database for the collection, management, and release of medical claims data submitted by health care payers.

Senate Bill 390 which passed during the 2021 Regular Session of the Legislature included modifications to the all-payer claims database, including the elimination of the memorandum of understanding process to develop the database. It also provided that the Secretary of DHHR has primary responsibility for the collection, retention, and dissemination of the data in the database. The Insurance Commissioner is charged with enforcement.

The rule requires the Secretary in conformity to develop and maintain an APCD Submission Manual with the National Association for Health Data Organizations. References to previous standards such as “ANSI, ASC, X12, and NCPDP were all removed. The submission manual would be submitted as a procedural rule.

The rule requires the Secretary to inform the insurance commissioner of any health plan that fails to submit data. The rule also requires the Submission Manual to be a legislative rule.

Section 9 is new. It addresses data collection privacy and security requirements. These provisions are included in this rule and the separate rule is being repealed. The transmission from each data submitter must be by a method that prevents unauthorized access and ensures authenticity, confidentiality, and integrity. The transmission must conform to HIPAA and be encrypted. With respect to data retention, the data must be retained in a secure manner that prevents unauthorized access and ensures the confidentiality, integrity, and availability of all data and levels required by HIPAA and be encrypted.

Department of Health and Human Resources – All-Payer Claims Database – Privacy and Security Requirements, 114A CSR 02

This rule is being repealed since the provisions of this rule are being incorporated into the previous rule.

DATE OF PASSAGE: March 3, 2022

EFFECTIVE DATE: March 3, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4141

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing the Governor’s Committee on Crime, Delinquency and Corrections to promulgate a legislative rule relating to Law Enforcement Training and Certification Standards.

CODE REFERENCE: §64-6-1 *et. seq* (Amends and Reenacts)

SUMMARY:

This Committee Substitute contains the Department of Homeland Security rules. It is known as Bundle 6 and contains 10 rules.

Governor’s Committee on Crime, Delinquency and Correction – Law Enforcement Training and Certification Standards, 149 CSR 02

This rule amends a current legislative rule. Section 13, relating to the certification of law enforcement officers, is the only section that was amended. It now requires that an officer who has successfully completed an entry-level training program demonstrate to the Subcommittee the successful passage of the entry level law enforcement examination required under the rule. It also requires the Director of an approved academy to report the names of officers and their agencies who pass or fail the examination. This section sets forth the components of the examination and requires a 75% score to pass. An officer may take the examination up to three times.

Fire Commission – Fire Code, 87 CSR 01

This rule amends a current legislative rule. Under the current rule, farm structures are exempt from the State Fire Code. The rule expands the exemption to structures used primarily for agriculture purposes, including agritourism purposes. The reference to the National Fire Protection Association’s The National Fire Codes is updated to the 2021 edition.

Section 17 relates to appeals from an order or written decision by the State Fire Marshal. It was amended through-out to state that appeals are to the Office of Administrative Hearings, as opposed to the State Fire Commission. It also allows for hearings to be recorded by electronic means.

A new section 18 relates to the exemption for agricultural purposes. It provides that the Commissioner of Agriculture determines the eligibility of a property owner or other responsible party for the agriculture purposes exemption. It specifies the

information which the property owner or responsible party must submit to the Commissioner. After the Commissioner decides eligibility, he or she is required to provide a copy of that determination to the property owner or responsible party and to the entity which adopted and is enforcing the Fire Code.

Appendix A, which is new, lists all adopted national standards.

Fire Commission – State Building Code, 87 CSR 04

This rule amends a current legislative rule. Under the current rule, farm structures are exempt from the State Building Code. The rule expands the exemption to structures used primarily for agriculture purposes, including agritourism purposes.

The rule updates references to the various national codes to the most recent edition. Additional language is added to the 2018 edition of the International Mechanical Code by the rule. The additional language has requirements for cooling towers, pool and spa heaters, forced air furnaces, heat pumps, factory-built equipment and appliances, and refrigeration systems. A testing exception has been added the 2015 International Energy Conservation Code. New language is added regarding using building energy benchmarking in all commercial structures for the ANSI/ASHRAE/IESNA Standard 90.1 2013 edition for commercial buildings. Language regarding central furnaces is added to the 2018 edition of the International Residential Code for One- and Two-Family Dwellings. An exception has been added to the 2020 edition of the National Electrical Code stating that GFCI protection is not required on all new mini-split HVAC equipment and other HVAC units employing power conversion equipment as a means to control compressor speed until January 1, 2023.

A new section 9 relates to the exemption for agricultural purposes. It provides that the Commissioner of Agriculture determines the eligibility of a property owner or other responsible party for the agriculture purposes exemption. It specifies the information which the property owner or responsible party must submit to the Commissioner. After the Commissioner makes a determination of eligibility, he or she is required to provide a copy of that determination to the property owner or responsible party and to the entity which adopted and is enforcing the Building Code.

Fire Commission – Volunteer Fire Department Equipment and Training Grant Funding Disbursement, 87 CSR 10

This rule is new. It establishes the Fire Service Equipment and Training Grant Funding program for volunteer fire departments and authorizes the State Fire Commission to establish and administer a grant funding program.

Section 3 outlines procedures to be used by departments applying for grants from the program, allows the Fire Commission to limit applying departments based upon funds available, and provides limitations on use of grants.

Section 4 sets forth the criteria which may be used by the Fire Commission in determining which departments should receive the grants sought, specifies application components, sets forth deadlines, provides for emergency grant requests, explains the method of disbursement, and provides for the notification of the disbursement to the relevant department.

Section 5 sets forth the procedures to be followed by departments in accounting for any grants they receive, including the requirement to provide a sworn statement attesting to the use of the funds, audit powers, and providing criminal penalties for filing a fraudulent statement.

Fire Commission – Specialized Membership, 87 CSR 11

This rule is new and is in response to House Bill 2621, which passed during the 2021 Regular Legislative Session. It establishes the parameters for specialized, non-fire fighter, membership of a fire department.

The rule sets forth information a department must submit to the commission, requires a department to maintain a listing of its specialized membership, limits specialized members to service in their area of specialization, and spells out the procedures to be used by the Fire Commission in reviewing a department's application to hire a specialized member.

Fire Commission – Junior Firefighters, 87 CSR 12

This rule is new. It establishes the parameters for junior-fire fighter membership of a fire department.

The rule states that it supplements but does not supersede the Division of Labor's Child Labor Rule. It defines terms, sets forth limitations on the service of a junior firefighter depending upon level of training completed by junior firefighter, allows only junior firefighters who have completed first aid and CPR training to render first aid, provides that a junior firefighter may only perform roles for which he or she has been actually trained under the direct supervision of a firefighter over the age of 18, and bars minors under the age of 16 from any activity regulated under the rule, except they may ride on apparatus when it is not in service, such as in a parade.

Fire Commission – Certification of Fire Chiefs, 87 CSR 13

The rule is new and is in response to Enrolled Committee Substitute for House Bill No. 2621 which passed during the 2021 Regular Legislative Session. It establishes the parameters for certification of fire chiefs.

The rule sets forth the certification process, including the required documentation, the review of the package by the Fire Commission, appeal of an adverse determination, review of past issues with applicants and temporary certification for applicants. It also provides the process of reviewing complaints against a fire chief which may result in the

denial, suspension, or revocation of a certification, provides for appeals to Office of Administrative Hearings, and references the Administrative Procedures Act for appeals from orders of the Office of Administrative Hearings.

Fire Commission – Use of Aqueous Film-Forming Foam (AFFF) for Fire Training Program Purposes, 87 CSR 14

This rule is new. It establishes the standards for the use of Aqueous Film-Forming Foam (AFFF) for fire training program purposes.

The rule provides for the approval of training programs by the State Fire Marshal, requires the entity providing the training to maintain records, provides a detailed series of guidelines for hazardous material training and certification by WV fire departments and personnel, including incorporation of the statutory requirements concerning class B fire-fighting foam that contains intentionally added polyfluoroalkyl substances (PFAS), and defines relevant terms.

Fire Marshal – Regulation of Fireworks and Related Explosive Materials, 103 CSR 04

This rule amends a current legislative rule by updating the relevant safety codes to the most current edition as follows: the Explosive Materials Code is updated from the 2013 to the 2018 Edition, the Code for Fireworks display from the 2014 to the 2018 Edition and the “Standard for the Use of Pyrotechnics Before a Proximate Audience” from the 2011 to the 2021 Edition.

State Police – Career Progression, 81 CSR 03

The rule amends a current legislative rule to bring it into compliance with Enrolled Committee Substitute for Senate Bill 613 which passed during the 2021 Regular Legislative Session. The bill provides for the reclassification of certain civilian employees of the WV State Police Forensic Laboratory currently classified as criminalists to Evidence Custodians, Forensic Technicians, Forensic Scientists, and Forensic Scientist Supervisors.

The rule replaces the Criminalist Classification System with the West Virginia State Police Forensic Laboratory Classification System. It adds a sunset date of August 1, 2032,

Section 7 is new. It sets forth eligibility requirements, the various classes (which include Evidence Custodians, Forensic Technicians, Forensic Scientists and Forensic Scientist Supervisors) and their categories, specifies how movement between classifications is determined, creates the WVSPFL Reclassification Board, and sets forth the Board’s duties.

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: March 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4242

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing the Division of Labor to promulgate a legislative rule relating to Child Labor.

CODE REFERENCE: §64-10-1 *et. seq* (Amended and Reenacted)

SUMMARY:

This Committee Substitute contains the Department of Commerce rules. It is known as Bundle 10 and contains 10 rules.

Division of Labor – Child Labor Rule, 42 CSR 09

This rule amends a current legislative rule to bring it into compliance with Senate Bill 435 which passed during the 2021 Regular Legislative Session. The bill expands the class of persons with authority to issue child labor work permits. The following sections are the substantive changes in the rule.

§42-9-5. Application for and Issuance of a Work Permit for a 14- or 15-Year-old Minor.

The rule allows an administrator to perform this duty and exempts the completion of Part C in the case of a homeschooled student exempt from compulsory school attendance.

This section has also been changed to allow an authorized person or issuing administrator as well as a county superintendent to review the information provided and to issue, modify, or reject the work permit. They must retain the original work permit, provide the Division a copy within four days, and furnish copies to the minor's parent and employer.

§42-9-8. Application for and Issuance of an Age Certificate for a 16- or 17-year-old Minor.

This section has been changed to allow an authorized person or issuing administrator, as well as a county superintendent, to issue an age certificate to an employer. They must retain the original age certificate, provide the Division a copy, and furnish copies to the minor's parent and employer.

§42-9-11. Revocation of a Work Permit, Age Certificate, Supervision Permit, or Blanket Work Permit.

This section has been updated to require notification of a revocation be given to the county superintendent, authorized person, or issuing administrator and if applicable the employer, as opposed to the State Superintendent.

Office of Miners' Health, Safety and Training – Rule Governing the Safety of Those Employed In and Around Surface Mines in West Virginia, 56 CSR 03

The rule amends a current legislative rule. The Office of Miners' Health, Safety and Training, in consultation with the Board of Coal Mine Health and Safety has updated the electrical safety rules found in 56 CSR 3, concerning lock-out, tag-out procedures; troubleshooting procedures; and the use of electrically insulated gloves on surface mines. These changes correspond with the electrical safety rule changes the Board made to Electrical Provisions for Underground Mining 36 CSR 12, which became effective on February 11, 2021.

§56-3-37. Electricity.

The amendments to this section:

- (1) Specify when equipment must be locked-out and tagged-out, by whom, and who should keep the keys;
- (2) Require the use of electrically insulated gloves and specify standards and testing requirements for gloves;
- (3) Require hot sticks to be tested every 12 months;
- (4) Require the overload protection for transformers and conductors to be in accordance with the National Electric Code in effect at the time of installation;
- (5) Replace "Certified electrician" with "qualified person" under the maintenance and repair section;
- (6) Removes the requirement that circuits to be deenergized on idle days and shifts;
- (7) Requires ground fault interrupters on portable hand-held tools;
- (8) Alters the minimum distances from overhead powerlines where machinery may be operated by adding a table; and
- (9) Adds a new section governing low and medium voltage for portable equipment with grounding requirements and circuit breaker requirements.

Office of Miners' Health, Safety and Training – Rules Governing First-Aid Training of Shaft and Slope Employees, 56 CSR 11

This rule repeals a current legislative rule. The first-aid training requirements for shaft and slope employees has been moved to the Board of Coal Mine Health and Safety's

rule, Shaft and/or Slope Operations in the State of West Virginia 36 CSR 1, which went into effect March 27, 2021.

Office of Miners' Health, Safety and Training – Substance Abuse Screening Standards and Procedures, 56 CSR 19

The rule amends a current legislative rule. The Office of Miners' Health, Safety and Training (Office) has found that coal miners who fail a drug test for THC are now claiming that their failed drug test is because of their use of over-the-counter CBD products. The Office believes that when medical marijuana becomes available for use by West Virginia residents, coal miners will begin to use that as a defense also. The Office believes that THC in any form should be a prohibited substance in the interest of mine safety. This rule prohibits THC in any form.

The Office is also seeing an increase in the reluctance of coal operators, drug testing collectors, laboratories, and medical review officers to participate in permanent revocation hearings and contested case hearings in front of the Board of Appeals. Without having the necessary witnesses available to testify at a hearing, the Office has difficulty proving that the coal miner did, in fact, fail a drug test. If the Office of Miners' Health, Safety and Training is unable to prove that coal miners failed the drug test, the entire coal mine drug program could be jeopardized. The rule removes defenses to any individual failing a drug test for THC because of medical marijuana, CBD products, and the procedural failure of the employer to notify the Director within seven days after a failed drug test.

This rule requires drug testing vendors to become registered drug testing contractors who have agreed ahead of time to appear and provide the needed evidence. A drug testing contractor must register with the Office as a contractor and pay the \$100 annual registration fee. Drug testing contractors are subject to assessments if they fail to follow the requirements of this rule.

The rule requires employers to ensure that all breath alcohol tests and drug tests are performed by drug testing contractors and that the drug testing contractors comply with Subsections 7.1. and 7.2. of the rule.

Under the current rule an individual who refuses a drug test, possesses, or submits an adulterated or substituted sample must complete 18 months of counseling and 18 monthly random drug tests. The requirement in the updated rule is six months of counseling and six monthly random drug and alcohol tests. The individual's suspension time remains 18 months.

Division of Natural Resources – Revocation of Hunting and Fishing Licenses, 58 CSR 23

The rule amends a current legislative rule.

Subsection 6.2. has been amended to clarify that artificial light or night vision technology includes any image intensification, thermal imaging, or active illumination.

Subsection 9.1. has been amended to state that if a person’s license is revoked they are not eligible for a refund.

Division of Natural Resources – Special Motorboating Regulations, 58 CSR 27

This rule reflects a change requested by the City of Charleston, WV, to implement a no wake zone on the Elk River MM 0.25 to 0.40 between the Quarrier Street and Lee Street bridges.

Division of Natural Resources – Public Shooting Ranges, 58 CSR 38

This is a new rule which governs public use of Division managed shooting ranges and as such, applies to public shooting ranges located on state wildlife management areas, state forests, and on other locations of private or governmental entities in which the Division holds a cooperative management agreement.

The rule defines terms, prohibits property damage, makes it illegal to discharge a weapon in established safety zones in wildlife management areas, requires posting of hours of operation, specifies the types of targets which may be used, provides for clean-up of the shooting range, prohibits flying clay targets with certain exceptions, and prohibits the use of explosive and incendiary targets.

The rule also: (1) prohibits using public ranges while using alcohol, controlled substances, or other drugs; (2) prohibits persons age 16 years or under from using public ranges unless supervised by a person 18 year old or they hold a hunting license; (3) prohibits the use of incendiary, explosive, or tracer ammunition on public ranges; and (4) prohibits solicitation and loitering.

The rule also contains provisions regarding the use of weapons and provides penalties for violations.

Division of Natural Resources – General Hunting, 58 CSR 49

The rule amends a current legislative rule to reflect the passage of Senate Bill 416 during the 2021 Regular Legislative session which changes the definition of firearm to match federal code.

Division of Natural Resources – Commercial Sale of Wildlife, 58 CSR 63

The rule amends a current legislative rule. It removes language relating to disease testing which is no longer needed because the captive cervid rules have now been placed under the authority of the WV Department of Agriculture.

Division of Natural Resources – Lifetime Hunting, Trapping and Fishing Licenses, 58 CSR 67

The rule amends a current legislative rule to reflect the passage of Senate Bill 502 during the 2021 Regular Legislative session. Prior to the passage of Senate Bill 502, the law provided that resident lifetime licenses could be issued to residents under the age of two at half the price of an adult license; and, that lifetime licenses could be issued to legally adopted residents under the age of 12 at half the price of an adult license as long as the license is issued within two years of the adoption. License fees were set by legislative rule by the Director of the Division of Natural Resources.

Senate Bill 502 authorized a reduced rate for lifetime licenses for residents under the age of 15 as follows:

- (1) Residents under the age of 1 at 40% of the price of an adult license;
- (2) Residents between the ages of 1 and 5 at 55% of the price of an adult license;
- (3) Residents between the ages of 5 and 10 at 75% of the price of an adult license;
and
- (4) Residents between the ages of 10 and 15 at 90% of the price of an adult license.

The bill also changed the fees for adopted residents under the age of 15, allowing the fee to be based upon the date of adoption and allowing the date of adoption to be substituted for birth date to calculate the “age” of the resident for determining the fee. The bill provided for the same calculation of fees for residents who are foster children under the age of 15.

New section 3.3.2. was added which allows a child’s parent or legal guardian who is a member of the Armed Forces and meets the definition of resident pursuant to W. Va. Code §20-1-2 *et seq.*, to make application for a resident lifetime license for their child who has not reached his or her 18th birthday.

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: March 8, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4296

INTRODUCED

SHORT TITLE: To revise outdated provisions within Chapter 23 of the West Virginia Code, which pertains to workers' compensation.

CODE REFERENCE: §23-1-1c, §23-1-1d, §23-1-1e, §23-1-1g, §23-1-3, §23-1-4a, §23-1-6, §23-1-7, §23-1-20, §23-2-1b, §23-2-4, §23-2-5c, §23-5-5d, §23-2-14, §23-2-15, §23-2-16, §23-2B-1, §23-2B-2, §23-2B-3, §23-2C-3a, §23-2C-4, §23-2C-11, §23-2C-13, §23-2C-14, §23-2C-23, §23-2C-24, §23-2D-1, §23-2D-2, §23-2D-3, §23-2D-4, §23-2D-5, §23-2D-5a, §23-2D-6, §23-2D-7, §23-2D-8, §23-2D-9, §23-2D-10, §23-3-1, §23-3-1a, §23-3-2, §23-3-3, §23-3-4, §23-3-5, §23-3-6, §23-4A-2, §23-4A-3, §23-4A-4, §23-4A-5, §23-4A-6, §23-4A-8, §23-4A-9, §23-4B-6, §23-4B-8, §23-4B-8a, §23-4B-8b, §23-4C-1, §23-4C-2, §23-4C-3, §23-4C-4, §23-4C-5, and §23-4C-6 (Repeals); §23-1-1, §23-1-1b, §23-1-1f, §23-1-2, §23-1-4, §23-1-5, §23-1-8, §23-1-9, §23-1-10, §23-1-11, §23-1-12, §23-1-13, §23-1-14, §23-1-15, §23-1-18, §23-1-19, §23-2-1, §23-2-1c, §23-2-1d, §23-2-2, §23-2-3, §23-2-5, §23-2-5a, §23-2-6, §23-2-7, §23-2-8, §23-2-9, §23-2-11, §23-2-13, §23-2-17, §23-2A-1, §23-2C-1, §23-2C-2, §23-2C-3, §23-2C-6, §23-2C-7, §23-2C-8, §23-2C-12, §23-2C-15, §23-2C-16, §23-2C-16, §23-2C-18, §23-2C-19, §23-2C-20, §23-2C-21, §23-4A-1, §23-4B-2, §23-4B-4, §23-4B-5, §23-4B-7, and §23-4B-9 (Amends And Reenacts); §23-1-21 (New)

SUMMARY:

Chapter 23 of the West Virginia Code is known as the West Virginia Workers' Compensation Act and it governs employer compliance, employee benefits, claim adjudication, and the responsibilities of the Insurance Commission. This bill does not make substantive changes to the Workers Compensation Act and only removes or updates outdated and obsolete provisions in the Code. Much of the bill addresses technical changes necessitated from the 2005 transition when the workers compensation system was privatized. The only added section of Code is W. Va. Code §23-1-21, which was moved from Article 3 of Chapter 23 and allowed for the repeal of Article 3 in its entirety.

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4297

COMMITTEE SUBSTITUTE

SHORT TITLE: To facilitate the sharing of information between the Department of Health and Human Resources and the State Auditor's office in order to investigate reports of financial abuse and neglect of a vulnerable adult.

CODE REFERENCE: §9-6-8 (Amends and Reenacts)

SUMMARY:

This bill facilitates the sharing of information between the Department of Health and Human Resources (DHHR) and the State Auditor's Office in order to investigate reports of financial abuse and neglect of a vulnerable adult.

The Securities Commission (a division of the State Auditor's Office) is required to investigate alleged financial exploitation of vulnerable adults. Under existing law, this division only receives a summary of a report from the Adult Protective Services (APS) division of the DHHR. The bill clarifies that APS is authorized to share all records, including substantiated and unsubstantiated referral documentation of financial exploitation of a vulnerable adult, with the Securities Commission in order to aid their investigations.

DATE OF PASSAGE: March 7, 2022

EFFECTIVE DATE: June 5, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4299

INTRODUCED

SHORT TITLE: To prohibit the intentional interference with election processes and creating associated criminal penalties.

CODE REFERENCE: §3-9-21 (New)

SUMMARY:

The bill clarifies that it is a misdemeanor offense to physically interfere with a voter's travel on the walkways, driveways, and parking areas adjacent to the polling place with the intent to delay, hinder, interrupt, harass, or intimidate a voter. Those convicted of this misdemeanor may be fined up to \$1,000, confined in jail for not more than one year, or both fined and confined.

DATE OF PASSAGE: February 24, 2022

EFFECTIVE DATE: May 25, 2022

ACTION BY GOVERNOR: Signed March 9, 2022

House Bill 4301

INTRODUCED

SHORT TITLE: Reforming membership requirements of Huntington Park and Recreation District Board.

CODE REFERENCE: Section two, chapter 26, Acts of the Legislature, regular session, 1925 (municipal charters), as last amended by chapter 187, Acts of the Legislature, regular session 2011 (Amends and Reenacts)

SUMMARY:

House Bill 4301 is a local bill which addresses the composition and election of commissioners to the Greater Huntington Park and Recreation District Board.

In subsection (a), the bill modifies the composition of the Board by reducing the total number of commissioners, reducing the number of commissioners from Cabell County, and increasing the maximum number of commissioners from any one magisterial district in Cabell County.

In subsection (b), the bill makes the Board commissioners nonpartisan. The bill modifies the election date for Board commissioners by establishing that the election will occur in the nonpartisan primary election for state officers on the second Tuesday in May. The bill also adds provisions regarding the number of commissioners to be elected in 2022, 2024, and 2026, their terms, and the counties and magisterial districts from which they are to be elected.

DATE OF PASSAGE: February 14, 2022

EFFECTIVE DATE: February 14, 2022

ACTION BY GOVERNOR: Signed February 16, 2022

House Bill 4307

INTRODUCED

SHORT TITLE: Increase some benefits payable from Crime Victims Compensation Fund.

CODE REFERENCE: §14-2A-3 (Amends and Reenacts)

SUMMARY:

The bill changes the maximum allowable award for a secondary victim to receive mental health treatment from \$1,000 to \$5,000. The bill changes the maximum allowable award of victim relocation costs from \$2,500 to \$4,500, and the maximum allowable award of travel expenses for a claimant to attend court proceedings for the prosecution of the offender from \$1,000 to \$5,000. The bill also amends the definition of “work loss” to include loss of income from work by the claimant, the victim, or the parent or guardian of a minor victim, as a result of missing work to attend court proceedings for the prosecution of the offender.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4308

INTRODUCED

SHORT TITLE: Authorizing disclosure of juvenile information to Crime Victims Compensation Fund for investigation and award of benefits.

CODE REFERENCE: §14-2A-14 and §49-5-101 (Amends and Reenacts); §14-2A-11a (New)

SUMMARY:

This bill creates a new section of code that expands the persons who may file a petition for a child who is the subject of a civil abuse and neglect petition to include foster parents and Department of Health and Human Resources employees. The new section further provides that all records and proceedings related to such claims are confidential and may not be disclosed to those not a necessary party to the claim. The provision allows publication of anonymized statistical reports as necessary to satisfy the requirements of state or federal law.

The bill eliminates a provision of law that the agency filing the abuse and neglect petition shall file the application for benefits on behalf of the minor child.

The bill amends the confidentiality provisions of the Code authorizing the West Virginia Crime Victims Compensation Fund to receive information related to a civil abuse and neglect proceeding to make a determination for the award of benefits.

DATE OF PASSAGE: February 21, 2022

EFFECTIVE DATE: May 22, 2022

ACTION BY GOVERNOR: Signed March 9, 2022

House Bill 4311

COMMITTEE SUBSTITUTE

SHORT TITLE: Creating criminal penalties for illegal voting activity.

CODE REFERENCE: §3-9-17 (Amends and Reenacts)

SUMMARY:

Senate Bill 4311 modifies one section of the state Election Code that establishes certain voting crimes and penalties relating to illegal voting and deceiving voters. Prior to amendment, this section established several voting crimes as a misdemeanor punishable by up to a \$1,000 fine and/or up to one year in jail.

The bill reorganizes this section into three subsections and makes all crimes established under this section a felony punishable by one to 10 years imprisonment and/or up to a \$10,000 fine. It also adds as an element of each crime that the person committed the crime knowingly and willfully.

In subsection (a), the bill establishes the following crimes relating to voting in multiple elections, which must be committed both knowingly and willfully, with the knowledge that the act is illegal:

1. Voting or attempting to vote more than once in the same election in West Virginia;
2. Voting or attempting to vote in more than one county in West Virginia at the same or equivalent election; and
3. Voting or attempting to vote in West Virginia and another state or category at the same or equivalent election.

In subsection (b), the bill establishes the following crimes relating to illegal voting, which must be committed both knowingly and willfully:

1. Voting or attempting to vote when the person knows he or she is not legally entitled to do so;
2. Procuring or assisting in procuring an illegal vote to be admitted or received, with knowledge that it is illegal; and
3. Causing or assisting in causing a legal vote to be rejected, with knowledge that it is legal.

In subsection (c), the bill establishes the following crimes relating to deceiving a voter, which must be committed both knowingly and willfully:

1. Altering the ballot of a voter by marking out the name of a candidate the voter wishes to vote for with intent to deceive;

2. Writing the name of a person on a ballot other than the candidate the voter directed with intent to deceive;
3. Altering a ballot, whether it is voted or not, with intent to deceive; or
4. Defrauding a voter by deceiving and causing the voter to vote for a different person than the voter intended or desired to vote for.

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4312

INTRODUCED

SHORT TITLE: Extending the option of electronic absentee ballot transmission to first responders in certain emergency circumstances.

CODE REFERENCE: §3-3-1 and §3-3-5 (Amends and Reenacts)

SUMMARY:

House Bill 4312 modifies two sections of the state Election Code pertaining to absentee voting.

In §3-3-1(b)(3), the bill authorizes qualified first responders responding to an emergency outside of their county of residence to vote by electronic absentee ballot. “Qualified first responder” is defined as a person with specialized training who arrives and provides aid at the scene of an emergency, such as an accident, natural disaster, or act of terrorism. The bill provides that first responders typically include emergency medical technicians, firefighters, law-enforcement officers, neighborhood assistance officers, and paramedics.

The bill updates §3-3-5 to address the logistics of absentee voting by qualified first responders. The bill authorizes qualified first responders to electronically complete and verify an application to vote absentee. The bill provides the timeframe for a completed application for a qualified first responder to vote absentee by mail to be accepted from the 13th day preceding the election until 5:00 p.m. the day before the election. The bill provides for transmittal of absentee ballots to qualified first responders, and processing of received absentee ballots cast electronically by qualified first responders.

DATE OF PASSAGE: February 24, 2022

EFFECTIVE DATE: May 25, 2022

ACTION BY GOVERNOR: Signed March 9, 2022

House Bill 4329

COMMITTEE SUBSTITUTE

SHORT TITLE: To clarify the definition of an “interested person” for purposes of the West Virginia Small Estate Act.

CODE REFERENCE: §44-1-28, §44-1A-1, §44-1A-2, and §44-1A-4 (Amends and Reenacts)

SUMMARY:

This bill expands on the West Virginia Small Estate Act of the 2021 Regular Legislative Session. It expands the definition of “person” to include any individual, corporation, business trust, fiduciary, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity and expressly includes a bank, financial institution, credit union, or the West Virginia Division of Motor Vehicles.

The bill further clarifies “interested person,” which is currently defined as having a meaning that “varies from time to time” and is “determined according to the particular purposes or matter involved in the proceeding.” This bill would more clearly define “interested person” to include heirs, devisees, distributees, legatees, children, spouses, or creditors of the decedent and beneficiaries and any others having a property right in or a claim against the estate of a decedent or property in a small estate. Additionally, it clarifies that interested persons include persons having priority for appointment as a personal representative and other fiduciaries representing interested persons. Furthermore, an “interested person” may also include a bank, financial institution, credit union, or person that is holding assets related to the estate.

The bill also expressly excludes from a “small estate” a probate estate of a testate decedent where the will provides for real estate devised to be sold and not merely confer the power to sell the real estate. It also provides that where the small assets are insufficient for the payment of debts, the authorized successor, successor, or a creditor may commence a circuit court proceeding to subject the real estate to the payment of debts within six months of the small estate authorization.

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4331

INTRODUCED

SHORT TITLE: West Virginia's Urban Mass Transportation Authority Act.

CODE REFERENCE: §8-27-21a (New)

SUMMARY:

Senate Bill 4331 creates a new section within the state Municipal Code to address federal grants to urban mass transportation authorities and employee wage deductions.

The bill allows union or labor organization dues or fees to be deducted from the wages of employees of an urban mass transportation authority which receives federal funding, directly or indirectly, from the Federal Transit Administration pursuant to the Urban Mass Transportation Act of 1964. The bill clarifies that the section applies only to urban mass transportation authorities under Chapter 8, Article 27.

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: March 11, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4340

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to maximizing the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

CODE REFERENCE: §16-19-9, §16-19-14, §16-19-22, and §61-12-3 (Amends and Reenacts)

SUMMARY:

This bill maximizes the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education. It permits the spouse to consent to organ donation unless spouse and decedent has lived separate and apart from the decedent in the six months prior to the decedent's death or an action for divorce is pending.

The bill provides that an anatomical gift may proceed despite the objection by a member or member of a class.

The bill adds that a person authorized or obligated to dispose of the decedent's body can make an anatomical gift. It also provides that if members of a class disagree regarding the donation, the anatomical gift may proceed despite the objection by a member of the class. Existing law provides for the appointment of a health care surrogate which is deleted.

The bill clarifies the duties of procurement organization with regard to the state medical examiner. It requires the state medical examiner to cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts.

The bill provides that a part may not be removed from the body of a decedent under a medical examiner's jurisdiction for transplantation, therapy, research, or education nor delivered to a person for research or education.

Upon request of a procurement organization, the medical examiner shall release to the procurement organization the name, contact information, name of the next of kin, and available medical and social history of a decedent whose body is under the medical examiner's jurisdiction. If the decedent's body or body part is medically suitable for transplantation, therapy, research, or education, the medical examiner shall release the post-mortem examination results to the procurement organization.

The bill provides that a hospital may not withdraw or withhold any measures necessary to maintain the medical suitability of a body part that may be the subject of an

anatomical gift until the organ procurement or designated requestor has had an opportunity to advise the applicable person under this article of the option to make an anatomical gift and has received or been denied authorization to proceed with respect to the body part.

The bill provides that subject to the individual's wishes, after a person's death, persons who may receive the anatomical gift may conduct any test or examination reasonably necessary to evaluate the medical suitability of the body or party for its intended purposes.

There is a section of the bill entitled facilitation of anatomical gift from decedent whose body is under jurisdiction of medical examiner. This section removes language stating that the medical examiner may not release the body or part of the body that is the subject of an anatomical gift or the social history, medical history with the express authorization of the prosecuting attorney if the death is the subject of a criminal investigation.

Chapter 61 states the chief medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education. The chief medical examiner may enter into contracts and agreements with a procurement organization when necessary to facilitate the efficient and economical recovery of anatomical gifts.

This chapter also provides that the Secretary of Department of Health Human Resources will propose legislative rules for the procedures necessary to maximize the recovery of anatomical gifts for the purpose of transplantation, therapy, research, or education.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4353

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to On Cycle Elections - Voter Turnout Act.

CODE REFERENCE: §18-9-1, §18-9-2, and §18-9-2a (Repeals); §3-1-30, §3-1-31, §3-2-19, §7-1-1a, §7-4-1, §7-14B-21, §7-17-12, §7-20-7, §7-20-12, §8-1-2, §8-2-5, §8-3-6, §8-4-7, §8-4-8, §8-4-10, §8-5-5, §8A-7-7, §8A-7-8a, §8A-7-13, §11-8-16, §11-8-17, §13-1-7, §13-1-11, §15-2-13, §16-12-1, §20-5K-3, §22-15A-18, §22C-4A-2, §22C-4A-3, §22C-6-3, §47-20-26, §47-21-24, §60-5-1, §60-5-3, and §60-5-4 (Amends and Reenacts)

SUMMARY:

House Bill 4353 modifies 35 sections and repeals three sections of Code generally pertaining to municipal and county elections and ballot questions. The bill synchronizes or authorizes synchronization of certain local elections with regular statewide primary or general elections.

The bill authorizes local municipal elections to be held concurrently with a regularly scheduled statewide primary or general election. It creates an alternative mechanism for municipalities without a charter to align its municipal election date with the primary or general election date by passage of an ordinance. It also provides for coordination between a municipality and county commission holding elections concurrently with a primary or general election on establishing the election date, shared costs, election officials, and registration books. The bill removes the requirement to maintain separate municipal precinct books upon request of the municipality.

The bill eliminates special elections for the following categories of local ballot questions and requires them to be placed on a primary or general election ballot:

- Reforming, altering, or modifying a county commission or council;
- Civil service coverage for county correctional officers;
- County fire service ordinances or fire fees;
- County taxes and fees;
- County service fees;
- Incorporation of a new municipality;
- Zoning ordinances;
- Additional levies;
- Issuance of bonds;
- Organization and establishment of a proposed sanitary district;
- School levy;
- School levy renewal;

- Levy rate increase authorization;
- Commercial infectious medical waste management facility siting;
- County comprehensive recycling programs for solid waste;
- Certain solid waste facilities;
- Certain hazardous waste facilities;
- Charitable bingo;
- Charitable raffles; and
- Sale of alcoholic liquors within the county.

If a majority of the votes cast upon one of the above-listed levies at any primary election are against the question, the question may again be submitted to the voters at the next succeeding general election.

The bill authorizes a one-time special election regarding school levy renewal and authorizes a school levy question which is rejected at the primary election to be placed on the general election ballot.

The bill clarifies limitations on members of the West Virginia State Police with respect to participation in elections.

Finally, the bill incorporates amendments made in Senate Bill 191, authorizing poll workers to work and be compensated for both full and half days worked during an election.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4373

COMMITTEE SUBSTITUTE

SHORT TITLE: To exclude fentanyl test strips from the definition of drug paraphernalia.

CODE REFERENCE: §47-19-3 and §60A-4-403a (Amends and Reenacts)

SUMMARY:

This bill excludes fentanyl test strips from the definition of drug paraphernalia and provides that the Uniform Controlled Substances Act does not prohibit the possession, sell, or purchase of fentanyl test strips.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4377

COMMITTEE SUBSTITUTE

SHORT TITLE: To update the involuntary commitment process.

CODE REFERENCE: §27-5-2, §27-5-3, §27-5-4, §27-5-10, §61-7A-2, §61-7A-4, and §61-7A-5 (Amends and Reenacts); §27-5-1b and §27-5-3a (New)

SUMMARY:

The bill makes changes to the involuntary commitment process. This bill adds a new section of code is added (§27-5-1b) and requires the Secretary of the Department of Health and Human Resources, the Supreme Court of Appeals, the Sheriff's Association, the Prosecuting Attorney's Association, the Public Defender Services, the Behavioral Health Providers' Association, Disability Rights of West Virginia, and the Dangerousness Assessment Advisory Board undertake an evaluation of the utilization of alternative transportation providers and the development of standards that define the role, scope, regulation, and training necessary for the safe and effective utilization of alternative transportation providers. The report shall be presented to the President of the Senate and the Speaker of the House on or before July 31, 2022. The Legislature requests the Supreme Court cooperate with the listed parties and undertake this evaluation.

This section also requires the Secretary to establish a process to conduct retrospective quarterly audits of applications and licensed examiner forms prepared by certifiers for the involuntary commitment. This process should determine whether the licensed examiner forms prepared by certifiers are clinically justified and consisted with the requirements of this code.

With respect to the duties of the mental health center, each center shall make available as necessary qualified and competent licensed person to conduct prompt evaluations of persons for commitment. They shall be conducted in person unless it would create a substantial delay, and then the evaluation may be conducted by videoconference.

This section also provides for a pilot program in Cabell, Berkeley, and Ohio counties to implement an involuntary commitment process. It further provides that no alternative transportation provider may be utilized until standards are developed and implemented to define the role, scope, regulation and training necessary for this provider.

The probable cause examination shall be conducted in person unless it would create a substantial delay, and then the evaluation may be conducted by videoconference. The probable cause hearings may be conducted via videoconference unless the individual

or his or her attorney object for good cause or unless the magistrate, mental hygiene commissioner or circuit judge order otherwise. The Supreme Court of Appeals is requested to develop regional mental hygiene collaboratives where mental hygiene commissioners can share on-call responsibilities, thereby reducing the burden on individual circuits and commissioners.

The other new section of the bill (§27-5-31) addresses the legal effect of the commitment after it is determined to not be based on mental illness or addiction. This section states that in the event that a person is hospitalized and it is later determined after the entry of the order that the behavior which led to the entry of the order was caused by a physical condition or disorder rather than mental illness or addiction, the hospitalization shall not serve to make him or her a proscribed person under state laws relating to firearms possession or to negatively affect a person's professional licensure, employment, employability or parental rights.

With respect to the certificate filed with the application, it adds a requirement that the certificate include facts that less restrictive interventions and placements were considered but are not appropriate and available. The bill also adds a requirement that the applicant include the names and last known addresses of the persons identified in §27-5-4(e)(3). The bill adds an exception is added for this process not to apply to competency in criminal proceedings.

With respect to examination of an individual by court-appointed physician, psychologist, advanced nurse or physician assistant, there is an exception when a certificate of the licensed examiner and an application for final civil commitment at the mental health facility where the person is currently committed has been completed and filed.

Effective July 1, 2022, the Department of Health and Human Resources shall reimburse the Sheriff, the Department of Corrections and Rehabilitation or other law enforcement agency for the actual costs related to transporting a patient who has been involuntary committed.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4419

INTRODUCED

SHORT TITLE: Allowing candidate committees and campaign committees to make contributions to affiliated state party executive committees.

CODE REFERENCE: §3-8-5c, §3-8-9b, and §3-8-10 (Amends and Reenacts)

SUMMARY:

House Bill 4419 modifies provisions of the state Election Code which govern contribution limits, coordinated expenditures by political party committees and political party caucuses in connection with certain statewide candidates, and use of certain contributions.

In §3-8-5c(b), the bill carves out candidate committees and caucus campaign committees from the \$10,000 annual limit on contributions to a state party executive committee or its subsidiary, branch, or local unit, or a caucus campaign committee. It raises the annual limit for candidate committees and caucus campaign committees to \$75,000 in a new subsection (d). It provides in a new subsection (e) that these amendments are effective November 9, 2022.

In §3-8-9b, the bill modifies section (a) by eliminating the \$5,000 limit on coordinated expenditures that may be made by a state committee of a political party and caucus campaign committee with the general election campaign of the candidate for the offices of Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State, Treasurer, State Senate, or House of Delegates. It provides, in a new subsection (c), that these amendments are effective November 9, 2022.

In §3-8-10, the bill modifies subsection (a)(2)(C) by eliminating the \$15,000 annual limit on excess candidate contributions being contributed to a state party executive committee or state party legislative caucus committee after the general election. It provides in a new subsection (c) that these amendments are effective November 9, 2022.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4433

INTRODUCED

SHORT TITLE: Providing that retirement benefits are not subject to execution

CODE REFERENCE: §8-22-25b (New)

SUMMARY:

This bill prohibits municipal policemen's and firemen's pension and relief funds from being the subject of execution, attachment, garnishment, the operation of bankruptcy or insolvency laws or other process, or assignment, except qualified domestic relations orders. It makes exceptions for deductions from payments for group insurance or prepayment plans and allows a municipality to set off any claim arising from embezzlement by, or fraud of, a member, retirant or beneficiary. The bill also exempts assets of the retirement system from state, county, and municipal taxes.

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4438

INTRODUCED

SHORT TITLE: Applying current requirements for certain voting systems to be independent and non-networked to all voting systems that seek certification in West Virginia.

CODE REFERENCE: §3-4A-9 (Amends and Reenacts)

SUMMARY:

House Bill 4438 modifies minimum requirements for electronic voting systems.

In a new subdivision (15), the bill requires all voting systems utilized in an election to be independent, non-networked voting systems, and prohibits any component of the system from being connected to the internet at any time.

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: June 7, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4511

COMMITTEE SUBSTITUTE

SHORT TITLE: To make numerous amendments to modernize and increase efficiencies in the administration of the West Virginia Unclaimed Property Act.

CODE REFERENCE: §36-8-1, §36-8-2, §36-8-8, §36-8-10, §36-8-13, §36-8-15, §36-8-25, and §36-8-33 (Amends and Reenacts)

SUMMARY:

This bill amends the law relating to unclaimed property to reflect new technology and new forms of property not previously addressed.

This bill includes definitions for the terms: “electronic”, “electronic mail”, and virtual currency as well as shortens the timeframe for when certain property types are presumed abandoned to facilitate a prompter return of property.

Addressing virtual currency, the bill creates a presumption of abandonment for “virtual currency” and a process for unclaimed virtual currency. More specifically, it requires the holder to liquidate the unclaimed virtual currency anytime within 30 days of filing the report and remit the proceeds to the administrator.

The bill makes it easier to return abandoned property in safe deposit boxes by authorizing the administrator to directly reimburse the holder for unpaid rent or storage charges in an amount not to exceed \$150 after the property has been claimed and returned to the apparent owner using funds in the Unclaimed Property Fund.

It authorizes the administrator to invest the Unclaimed Property Fund with the West Virginia Board of Treasury Investments or the Investment Management Board. The bill replaces money transfers to the Prepaid Tuition Program, a program that is now closed, and authorizes those transfers to the Jumpstart Savings Program. This program supports individuals who have gone to a trade or vocation school by facilitating saving for tools and equipment upon graduation. The bill reduces the amount of paperwork required for common transactions and provides for a more automated approach to claims processing.

Finally, the bill makes it easier for individuals to find out information about their unclaimed property and further increases transparency regarding how the Treasurer’s office publishes data by requiring the Treasurer’s office to publish an annual report.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4560

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to motor vehicle dealers, distributors, wholesalers and manufacturers.

CODE REFERENCE: §17A-6A-2, §17A-6A-3, §17A-6A-5, §17A-6A-8a, §17A-6A-10, §17A-6A-11, §17A-6A-12, §17A-6A-13, §17A-6A-15, §17A-6A-15a, §17A-6A-15c, and §17A-6A-18 (Amends and Reenacts)

SUMMARY:

The purpose of this bill is to modify and update provisions regulating the relationships between car dealers and manufacturers and wholesalers.

The bill clarifies that this article governs all agreements addressed in the article to “modernize and acknowledge” that dealers now sign numerous more agreements than just a single Sales and Service Agreement. It further clarifies what it means to engage in the operation and business of a new motor vehicle dealership. The bill also clarifies that a dealership is entitled to be reimbursed by a manufacturer for diagnostic time on warranty and recall work, considering the complexity of the modern motor vehicle, including any assistance with over the air updates.

In addition, the bill sets forth a procedure to be used by the manufacturer and motor vehicle dealer in sales and service audits. The bill provides additional protections for motor vehicle dealers from too frequent unreasonable image and facility mandates from manufacturers. It increases their rights to such mandates from 10 to 15 years. Additionally, the bill clarifies the duties and responsibilities of the manufacturer and motor vehicle dealer for vehicles sold pursuant to a reservation or subscription service and clarifies that the financing of motor vehicles occurs at the dealership.

The bill allows a motor vehicle dealer to implement a succession plan while the dealer is still living and sets forth a procedure for any disagreements that may arise between the manufacturer and motor vehicle dealer. The bill increases the protection of a consumer’s data that they provide to a motor vehicle dealer when purchasing a motor vehicle. It also clarifies different duties of a manufacturer and other third-parties such as a dealer management system provider.

The bill provides a definition for “dealer data” and sets standards for the treatment and protection of such data. These include:

- a. Limiting a manufacturer’s ability to share a dealer’s consumer data to a third-party to the consumer data on its same line vehicles sold by the

- dealer as opposed to access to all consumer data of a motor vehicle dealer;
- b. Requiring a dealer management system provider to meet Standards for Technology in Automotive Retail Standards (“STAR”) for the protection of consumer data;
 - c. Preventing a data systems provider from limiting how a dealer shares its consumer data with other required vendors and third-parties or charging an unreasonable fee to a dealer or third party for a dealer sharing its own consumer data;
 - d. Requiring a data systems provider to cooperate in transferring back the motor vehicle dealer’s consumer data and use a commercially reasonable format to allow reasonable transmission back to a dealer upon termination of the agreement without the charging of unreasonable fees;
 - e. Requiring a data systems provider to inform a motor vehicle dealer of any third-party dealer management system provider that it is sharing a motor vehicle dealers customer’s data and requires a dealer management system to obtain permission from the dealer to share a dealer’s customer data;
 - f. Clarifying that the data a customer provides to a motor vehicle dealer is the dealer’s data and allows the dealer to protect that information more securely;
 - g. Allowing a dealer to obtain information from a data systems provider or other third-party that it is protecting the dealer’s consumer data it provided to them;
 - h. Giving dealers more control over its customer data by limiting what a third-party can access; and
 - i. Providing a severability clause and continues to provide the motor vehicle dealer indemnity from any manufacturer or third-party who engages in willful or negligent actions or allows an impermissible use of protected consumer data.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4578

INTRODUCED

SHORT TITLE: Relating to authorizing the Superintendent of the State Police to administer the Handle with Care program.

CODE REFERENCE: §15-2-56 (New)

SUMMARY:

This bill specifies that the West Virginia State Police, through the West Virginia Center for Children’s Justice, will oversee the administration and implementation of the state’s Handle with Care program. The duties of the superintendent include directing and overseeing the administration and implementation of the program, employing the personnel necessary to administer the program, establishing and coordinating the education and training of law enforcement, and any other necessary parties for the implementation of the program. The superintendent is also responsible for applying for grant funding as well as accepting grants, gifts, bequests, donations, and other funds to accomplish the mission of the program. The bill also specifies that Legislature is not required to appropriate funds to the West Virginia State Police for the administration of the program.

DATE OF PASSAGE: March 7, 2022

EFFECTIVE DATE: June 5, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4583

COMMITTEE SUBSTITUTE

SHORT TITLE: Clarifying the definition of incapacity so that incarceration in the penal system or detention outside of the United States may not be inferred as resulting in a lack of capacity to execute a power of attorney.

CODE REFERENCE: §39B-1-106 (Amends and Reenacts)

SUMMARY:

This bill states that the fact that a person is either detained, including being incarcerated in a penal system, or is outside the United States and unable to return, does not create an inference that the person lacks the capacity to execute a power of attorney.

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: June 7, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4596

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to additional persons qualifying for the provisions of the Law-Enforcement Officers Safety Act.

CODE REFERENCE: §15A-7-5, §30-29-1, §49-4-719, §61-7-11a, 62-12-5, and §62-12-6 (Amends and Reenacts); §62-11B-7b (New)

SUMMARY:

This bill clarifies that home incarceration supervisors, juvenile probation officers, and state adult and juvenile parole officers are members of law enforcement and are allowed to carry concealed firearms under the Law-Enforcement Officers Safety Act. The bill also allows them to be armed on school property if they are there on official business.

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: June 7, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 4600

COMMITTEE SUBSTITUTE

SHORT TITLE: Making it a felony for a “Person in a Position of Trust” to assault, batter, or verbally abuse a child, or neglect to report abuse they witness.

CODE REFERENCE: §61-8D-5a (Repeals); §61-8F-1, §61-8F-2, §61-8F-3, §61-8F-4, §61-8F-5, §61-8F-6, and §61-8F-7 (New)

SUMMARY:

The purpose of this bill is to add protections for disabled children in institutional settings, such as schools and care facilities. It repeals §61-8D-5a which set penalties for and defined verbal abuse of noncommunicative children. It also creates a new article with seven sections.

The first section describes the findings of the Legislature and the purpose of the new article. These findings are that disabled persons, particularly disabled children, are often more vulnerable and in greater need of protection than the nondisabled.

The second section defines five terms. These terms are:

1. “Disabled child” means a child with any physical, intellectual, developmental, communication, or psychological disability or impairment. A disability includes , but is not limited to one that: (A) Limits the child’s ability to recognize abuse, unlawful activity, or his or her rights to safety and protection, or that makes the child rely on others to recognize that he or she is being abused; (B) Limits the child’s ability to recognize unlawful sexual abuse or misconduct; (C) Causes the child to be dependent on others to assist with any activity of daily living or personal care; (D) Limits the child’s ability to formulate or execute a response to abuse, to verbally or physically defend himself or herself, or to physically escape from an abusive environment; or (E) Limits the child’s ability to disclose abuse.
2. “Noncommunicative child” means a child who, due to physical or developmental disabilities, is unable to functionally articulate verbally, in writing, or through a recognized sign language.
3. “Person in a position of trust in relation to a disabled child” means any adult who is acting in the place of a parent and charged with any of a parent’s rights, duties, or responsibilities concerning a disabled child or someone with supervisory responsibility for a disabled child’s welfare, or any person who by virtue of their occupation or position is charged with any duty or responsibility for the health, education, welfare, or supervision of a disabled child,
4. “Repeatedly” means on two or more occasions,

5. “Supervisory responsibility” means any situation where an adult has direct supervisory decision-making, oversight, instructive, academic, evaluative, or advisory responsibilities regarding the child. Supervisory responsibility may occur in a residence, in or out of a school setting, institutional setting, and in curricular, co-curricular, or extra-curricular settings.

Section 3 creates a new misdemeanor criminal offense for maltreatment of a disabled child. It expands on House Bill 4362, which passed during the 2020 Regular Legislative Session, and was limited to noncommunicative children who are included in the definition of “disabled child” in §61-8F-2. It establishes a penalty of up to one year confinement, a fine of not less than \$500 or more than \$2,500, or both fined and confined.

Section 4 creates felony offenses of battery and assault of a disabled child by a person in a position of trust with supervisory responsibility over the child. Battery is punishable by a fine not more than \$1,000, imprisoned in a state correctional facility for not less than one or more than five years, or both fined and imprisoned. The felony assault is punishable with not less than one nor more than three years imprisoned, a fine of not more than \$500, or both fined and imprisoned.

The fifth section creates three new offenses. The first is a misdemeanor (up to one year) for failure to report abuse of a disabled child where one is a person in a position of trust to a disabled child and a mandated reporter. The second is for impeding or obstructing the reporting of abuse by a person in a position of trust. This is a felony crime punishable by a fine of not more than \$5,000, imprisoned in a state correctional facility for not less than one nor more than three years, or both fined and imprisoned. The third is for discriminating or retaliating against a reporter. This is a felony crime punishable by a fine of not more than \$5,000, imprisoned in a state correctional facility for not less than one nor more than three years, or both fined and imprisoned.

Section 6 of the new article directs the West Virginia Department of Education and the Department of Health and Human Resources to collaborate in the establishment of a program designed to educate staff and supervisors in dealing with disabled children and require employees to successfully complete the program for ongoing or continued employment effective on and after July 1, 2023. It also directs this group to study and report to the legislature about the feasibility of putting in place a system which would allow parents, etc. to be able to view a disabled child’s classroom or common area remotely via computer. Additionally, the bill requires the West Virginia Prosecuting Attorney’s Institute and the Law Enforcement Professional Standards subcommittee on the Governor’s 22 Committee on Crime Delinquency and Correction to put together a program for law enforcement and prosecutors related to specifics of dealing with crimes against disabled children. The three-hour mandatory program is to be in place on or before January 1, 2023.

The seventh section provides the internal effective date for the bill.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: July 1, 2022 for criminal offenses; March 12, 2022 for the remainder

ACTION BY GOVERNOR: Signed March 25, 2022

House Bill 4629

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to procedures for certain actions against the state.

CODE REFERENCE: §55-17-3 (Amends and Reenacts); §55-17-3a (New)

SUMMARY:

This bill provides that if 90 days have elapsed since a notice of intent to institute an action was filed, and an action is not instituted, the notice is considered to have expired. The complaining party or parties must provide a new notice before an action is instituted. New notices must be accompanied by the required fee payable to the Attorney General or chief officer of the state agency. The applicable statute of limitations is not tolled during second or subsequent notices.

This bill also, under the separation of powers provision of the state constitution, prohibits a court from issuing a writ of mandamus, a writ of prohibition, or an injunction against the Legislature, and prohibits the naming of the Legislature, or its presiding officers, in any action challenging the constitutionality of a statute. It requires dismissal of such actions or dismissal of the improperly joined parties. Finally, the bill provides for the retrospective and retroactive application of the prohibitions to all actions pending at the time of the enactment of this bill.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4636

COMMITTEE SUBSTITUTE

SHORT TITLE: Clarifying when business and occupation taxes owed to a city or municipality are considered to be remitted on time.

CODE REFERENCE: § 11-13-1 and 11-13-32 (Amends and Reenacts)

SUMMARY:

This bill provides that payments for municipal business and occupation taxes or for rates, fees, and charges that are postmarked on or before their due date are considered to be on time. Municipalities are prohibited from assessing a late fee or penalty on these payments.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4642

INTRODUCED

SHORT TITLE: Relating to pecuniary interests of county and district officers, teachers and school officials in contracts.

CODE REFERENCE: §61-10-15 (Amends and Reenacts)

SUMMARY:

This bill allows county commissioners, district school officers, a secretary of a Board of Education, supervisor or superintendent, principal, or teacher at public schools or any member of any other county or district board or any county or district officer to have a pecuniary interest in a contract where he or she may have any voice, influence or control in the award or letting of the contract under certain circumstances. These criteria are:

- (1) The contract is not for services;
- (2) The contract has been put out for competitive bid, and the contract is awarded based on the lowest cost;
- (3) The party to the contract recuses himself or herself from voting or decision-making if they are in such position as to the contract; and
- (4) The party to the contract has previously obtained a written advisory opinion from the West Virginia Ethics Commission.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4667

COMMITTEE SUBSTITUTE

SHORT TITLE: Prohibition on county, city, or municipality restrictions on advanced air mobility aircraft.

CODE REFERENCE: §5B-2-18 and §5B-2-18a (New)

SUMMARY:

House Bill 4667 creates two new sections within the Economic Development Act.

In §5B-2-18, the bill creates the West Virginia Uncrewed Aircraft Systems Advisory Council in the Department of Economic Development. It provides for membership, duties, and expense reimbursement.

In §5B-2-18a, the bill requires uncrewed aircraft system operators to comply with applicable federal law and Federal Aviation Administration regulations. It preempts political subdivisions enacting ordinances regarding ownership or operation of advanced air mobility aircraft or advanced air mobility system and preempts political subdivisions from otherwise regulating uncrewed aircraft systems, advanced air mobility aircraft, and aircraft mobility systems. It provides that an ordinance, whether enacted before or after the effective date of this new statute, is void to the extent it violates this provision. Lastly, the bill defines the terms “advanced air mobility aircraft” and “advanced air mobility system”.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4668

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to air bag fraud.

CODE REFERENCE: §17C-15-50 (Amends and Reenacts)

SUMMARY:

Current law prohibits a person knowingly installing or reinstalling any object in lieu of an air bag, other than an air bag approved for the vehicle. Violation of the section is a misdemeanor punishable by a fine of not less than \$1000 nor more than \$5000 or jailed for not more than one year, or both fined and confined. This bill updates the section to include definitions, prohibits counterfeit and nonfunctional air bags, establishes more severe penalties, and creates limited exceptions.

A person violating the provisions of the section remain guilty of a misdemeanor and are still punished with a fine of \$1000 to \$5000, confined for not more than one year, or both fined and confined. If the violation results in serious bodily injury or death, however, the person is guilty of a felony and would be fined \$2500 to \$10,000, imprisoned for one to five years, or both fined and imprisoned. Violations consist of knowingly trading in counterfeit or nonfunctional air bags; knowingly trading in devices that cause a vehicle's diagnostic system to inaccurately indicate a functional air bag; or knowingly trading in a vehicle if the person knows the air bag does not comply with federal standards.

The section would not apply to sellers or employees who have no knowledge of the defective air bag. It also does not apply to individuals who disable an airbag in a passenger vehicle that is used exclusively for personal or who aide in disabling an airbag in passenger vehicle used exclusively for personal use. Provided, that the individual selling such a vehicle with the airbags disabled discloses in writing that the airbag in the vehicle is disabled. Furthermore, the section does not limit civil liability for a violator, nor does it create a duty of a seller to inspect the air bag.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4712

COMMITTEE SUBSTITUTE

SHORT TITLE: Require the prompt enrollment in payment plans for costs, fines, forfeitures, restitution, or penalties in circuit court and magistrate court.

CODE REFERENCE: §8-10-2b, §50-3-2, §50-3-2a, §59-1-10, and §62-4-17 (Amends and Reenacts)

SUMMARY:

Regarding the prompt enrollment in payment plans for costs, fines, forfeitures, restitution, or penalties in circuit court and magistrate court, this bill requires the prompt payment or enrollment in payment plans “upon the entry of the order assessing the costs, fines, forfeitures, restitution, or penalties” if an individual is not incarcerated. It provides that if an individual is incarcerated pursuant to a magistrate court order, he or she is required to enroll in a payment plan within 30 calendar days after their release (if not paid in full immediately).

The bill also mandates that if an individual is incarcerated pursuant to a circuit court order, he or she is required to enroll in a payment plan within 90 calendar days after their release (if not paid in full immediately). In addition, the bill mandates that all payments made pursuant to a plan be made within three years for the satisfaction of magistrate court orders and within five years for circuit court orders. The bill adds these same provisions for the costs, fines, forfeitures, restitution, or penalties issued by a municipal court and requires all payments to satisfy municipal court orders be made within three years.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4778

INTRODUCED

SHORT TITLE: Permit banks to transact business with any one or more fiduciaries on multiple fiduciary accounts

CODE REFERENCE: §31A-4-33 (Amends and Reenacts)

SUMMARY:

This bill amends current law governing banking institutions and services to allow banks to conduct business with any one of multiple fiduciaries on multiple fiduciary accounts. It would allow a bank to make a payment from a fiduciary account with multiple fiduciaries on request from, or at the direction of, any one or more of the fiduciaries on the account or accounts.

Definitions are established for a ‘fiduciary account’ and ‘multiple-fiduciary account’.

A fiduciary account is defined as follows:

- (1) an estate account for a decedent,
- (2) an account established by one or more agents under a power of attorney or an existing account of a principal to which one or more agents under a power of attorney are added,
- (3) an account established by one or more conservators,
- (4) an account established by one or more committees,
- (5) a trust account under a testamentary trust, or
- (6) an account established pursuant to an attorney-client relationship.

This definition does not include a trust account.

A multiple-fiduciary account means a fiduciary account where more than one fiduciary is authorized to act.

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4779

COMMITTEE SUBSTITUTE

SHORT TITLE: Permit banks the discretion to choose whether to receive deposits from other banks, savings banks, or savings and loan associations when arranging for the re-deposits of county, municipal, and state funds.

CODE REFERENCE: §7-6-2, §8-13-22a, §12-1-4, and §18-9-6 (Amends and Reenacts)

SUMMARY:

This bill provides banks the option to receive a reciprocal deposit from other banks, savings bank, or savings and loan associations when coordinating re-deposits of county, municipal, state, and county board of education funds, while still protecting public funds.

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4785

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to judicial vacancies.

CODE REFERENCE: §3-10-3 (Amends and Reenacts)

SUMMARY:

House Bill 4785 amends provisions of the state Election Code which govern the process for filling vacancies occurring in offices of certain state officials and the judiciary. The changes to this section specifically pertain to the length of the unexpired term which triggers an election to fill the remainder of a term for a vacancy in the judiciary.

In subsection (b), the bill increases the length of the unexpired term which triggers a subsequent election to fill the remainder of a term for a judicial vacancy on the Supreme Court of Appeals, Intermediate Court of Appeals, a circuit court, or a family court from two to three years. The bill provides that this change is applicable to any such vacancy existing at passage.

The bill similarly updates provisions under subsection (c) relating to timing of elections when the vacancy occurs before the close of the candidate filing period for the primary election and when the vacancy occurs after the close of candidate filing for the primary election up to 84 days before the general election.

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: March 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4787

COMMITTEE SUBSTITUTE

SHORT TITLE: Creating the Highly Automated Motor Vehicle Act.

CODE REFERENCE: §17H-1-1, §17H-1-2, §17H-1-3, §17H-1-4, §17H-1-5, §17H-1-6, §17H-1-7, §17H-1-8, §17H-1-9, §17H-1-10, §17H-1-11, §17H-1-12, §17H-1-13, §17H-1-14, and §17H-1-15 (New)

SUMMARY:

This bill creates the Fully Autonomous Vehicle Act and permits vehicles with automated systems to operate on West Virginia roadways and highways.

The Society of Automotive Engineers recognizes five levels of driving automation:

- Level 0 – No Driving Automation (but includes emergency braking and blind spot warnings);
- Level 1 (Driver Assistance – would include adaptive cruise control where the vehicle keeps a safe distance behind a car);
- Level 2 (Partial Driving Automation – sometimes referred to as Advanced Driver Assistance Systems (ADAS) and would include things such as Tesla’s current Autopilot system and Cadillac’s Super Cruise;
- Level 3 (Conditional Automation – is not currently operational in the U.S. market, but will have “environmental detection” whereby various driver assistance systems and artificial intelligence make decisions based on changing driving situations around the vehicle);
- Level 4 (Level 4 vehicles can intervene if things go wrong or there is a system failure, but humans can still manually override the vehicle); and
- Level 5 (Full Driving Automation where no human attention is required).

A “fully autonomous vehicle” is defined as a motor vehicle equipped with an automated driving system designed to function without a human driver as a level 4 or 5 system under the Society of Automotive Engineers (SAE) driving automation level system.

Fully Autonomous Vehicles Without Human Drivers.

A fully autonomous vehicle on the public roads of this state may be operated without a human driver provided that the automated driving system (ADS) is engaged and the vehicle meets a number of conditions including operating in compliance with motor vehicle safety laws and federal safety standards. Prior to operating a fully autonomous vehicle without a human driver, a person shall submit a law enforcement

interaction plan that describes, among other things, the communication with a fleet support specialist and how the vehicle could be safely removed from the road and towed.

Operation of a Fully Autonomous Motor Vehicle With an ADS by a Human Driver.

A person may operate a motor vehicle equipped with an ADS capable of performing the entire dynamic driving task (DDT) if:

- (1) Such ADS will issue a request to intervene (i.e., notify the human driver that they should promptly begin or resume performance of part or all of the dynamic driving task) whenever the ADS is not capable of performing the entire DDT with the expectation that the person will respond appropriately to such a request; and
- (2) The ADS is capable of being operated in compliance with the applicable provisions of and regulations promulgated under this article, unless an exemption has been granted by the Department of Transportation or the National Highway Traffic Safety Administration

Nothing in the Act prohibits or restricts a human driver from operating a fully autonomous vehicle equipped with controls that allow for the human driver to control all or part of the DDT.

Operation of Fully Autonomous Commercial and Motor Carrier Vehicles

A fully autonomous vehicle that is a commercial vehicle or a motor carrier vehicle requiring a CDL may operate pursuant to state and federal laws governing the operation of commercial motor vehicles, except that any provision that by its nature reasonably applies only to a human driver does not apply to such a vehicle operating with the ADS engaged. This section does not apply to a school bus.

On-Demand Autonomous Motor Vehicle Networks

An on-demand autonomous motor vehicle network shall be permitted to operate pursuant to State laws governing the operation of transportation network companies, taxis, or any other ground transportation for-hire of passengers, with the exception that any provision of such laws that reasonably applies only to a human driver would not apply to the operation of fully autonomous vehicles with the ADS engaged on an on-demand autonomous vehicle network.

Platooning

“Platooning” refers to a situation when no more than three fully autonomous vehicles are traveling in concert pursuant to a pre-determined written travel plan that identifies the vehicles and proposed route. Platoons have the following restrictions:

- (1) A maximum of three vehicles shall be in a platoon;
- (2) Vehicles in a platoon shall travel only on limited access highways or interstate highways, unless otherwise permitted by the Department or the West Virginia Division of Highways;
- (3) The department or the West Virginia Division of Highways may restrict movement under this section for operational or safety reason, including, but not limited to, emergency conditions; and
- (4) Consistent with applicable Federal and State laws, the lead vehicle in a platoon may operate with a driver and non-lead vehicles may operate with an ADS engaged, with or without a driver.

Plan for general platoon operations. A person may operate a platoon on a highway of this State if the person files and reviews a plan for general platoon operations with the department. The department shall review the plan in consultation with the West Virginia State Police and the West Virginia Division of Highways, as applicable. Non-lead vehicles in a platoon shall not be subject to violations of this code relating to following too closely. Each vehicle in a platoon must be marked with a visual identifier and the State shall establish the criteria and placement of the visual identifier. The WV Department of Transportation shall be the lead state agency on fully autonomous vehicle

Duties Following Crashes Involving Fully Autonomous Vehicles.

In the event of a crash:

- (1) The fully autonomous vehicle shall remain at the scene of the crash when required by State law consistent with its capability under §17H-1-5; and
- (2) The owner of the fully autonomous vehicle, or a person on behalf of the vehicle owner, shall promptly report any crashes or collisions consistent with §17C-4-1, et seq.

Fully Autonomous Vehicles Are Not Exempt From State Laws Pertaining to Ownership

Whether traveling individually or in a platoon, fully autonomous vehicles, are not exempt from any other laws or regulations applicable to the ownership and operation of any non-fully autonomous vehicle in this state.

Fully Autonomous Vehicle Equipment Standards

A fully autonomous vehicle that is designed to be operated exclusively by an ADS for all trips is not subject to motor vehicle equipment laws or regulations of this State that

relate to or support motor vehicle operation by a human driver seated in the vehicle and which are not relevant for an ADS.

Licensing, Titling, and Registration of a Fully Autonomous Vehicle

When an automated driving system (ADS) installed on a motor vehicle is engaged:

- (1) The ADS is considered the driver or operator, for the purpose of assessing compliance with applicable traffic or motor vehicle laws and shall be deemed to satisfy electronically all physical acts required by a driver or operator of the vehicle; and
- (2) The ADS is considered to be licensed to operate the vehicle.

A fully autonomous vehicle shall be properly registered in accordance with the laws of this state.

If a fully autonomous vehicle is registered in this state, the vehicle shall be identified on the registration as a fully autonomous vehicle. The requirements under this article relating to exhibiting a driver's license and registration card are satisfied if the license and vehicle registration card are in the fully autonomous vehicle physically or electronically, and available for inspection by a police officer.

Insurance

Before operating a fully autonomous motor vehicle on public roads in this state without a human driver, a person shall submit proof of financial responsibility satisfactory to the Department of Motor Vehicles that the fully autonomous vehicle is covered by insurance or proof of self-insurance that satisfy the applicable laws of this state.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4826

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to e-sports

CODE REFERENCE: §29-22D-3 (Amends and Reenacts)

SUMMARY:

This bill amends the West Virginia Lottery Sports Wagering Act to allow licensed gaming facilities in this state to accept wagers on e-sports events. An e-sports event is defined as “leagues, competitive circuits, tournaments or similar competitions where individuals or teams play video games, typically for spectators, either in-person or online, for the purpose of prizes money, or entertainment”.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Became law without Governor's signature

House Bill 4827

INTRODUCED

SHORT TITLE: Relating to the promotion and development of public-use vertiports.

CODE REFERENCE: §5B-2K-1, §5B-2K-2, §5B-2K-3, §5B-2K-4, §5B-2K-5, and §5B-2K-6 (New)

SUMMARY:

House Bill 4827 creates a new article under the Economic Development Act called the “Promoting Public-Use Vertiports Act”.

Section 1 establishes the state’s policy of promoting development of a network of vertiports and avoiding vertiport monopolization or discrimination.

Section 2 defines the term “vertiport”.

Section 3 provides that the new article applies to any vertiport that is available for public use by any advanced air mobility operator authorized by the U.S. Department of Transportation or Federal Aviation Administration to engage in passenger and/or cargo services in scheduled or non-scheduled service in or affecting interstate commerce.

Section 4 requires covered vertiports to comply with FAA rules and advisory circulars regarding vertiport design and performance characteristics and requires vertiports to submit a vertiport layout plan to the FAA for approval.

Section 5 preempts political subdivisions from exercising zoning and land use authority to grant or permit exclusive rights to one or more vertiport owners or operators, and requires political subdivisions to use their authority to promote reasonable access to advanced air mobility operators at public-use vertiports within their jurisdiction.

Section 6 clarifies that the new article is intended to supplement federal law regarding design, construction, operations, or maintenance of a vertiport designed or constructed under certain federal grants, and provides that provisions of the article which conflict with or are preempted by federal law are void.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: March 12, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4847

ORIGINATING

SHORT TITLE: Relating to missing persons generally.

CODE REFERENCE: §15-3D-4, §15-3D-5, and §15-10-5 (Amends and Reenacts)

SUMMARY:

This bill requires that, as soon as practicable, the information obtained regarding a missing person is to be turned over to the West Virginia State Police who has discretion to monitor and assist in the investigation. It also allows the State Police to supervise the investigation at the request of the lead law-enforcement agency, or if the available evidence supports a conclusion that the missing person may have left the county from which he or she went missing. The bill makes clear that a missing individual over 75 years old involves high risk. The bill also requires a law-enforcement agency to “commence an active investigation immediately upon receipt of the missing persons complaint.”

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4848

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to nonintoxicating beer, wine and liquor licenses.

CODE REFERENCE: §60-7-17 (Repeals); §11-16-6d, §11-16-6f, §11-16-8, §60-3A-3a, §60-3A-3b, §60-3A-17, §60-4-22, §60-4-23, §60-6-24, §60-7-2, §60-7-6, §60-7-8a, §60-7-8f, §60-8-6c, §60-8-6e, §60-8-6f, and §61-8-27 (Amends and Reenacts); §11-16-5a, §60-1-3a, §60-3-26, and §60-7-2a (New)

SUMMARY:

The purpose of this bill is to modify laws relating to beer, wine, and alcohol by adding new licensees and making other technical corrections.

The bill increases the \$5 cap on the convenience fee to \$20 and removes requirements relating to a scanned stored image of a driver's license or other legal identification when making delivery. However, the law still requires the delivery driver to verify that the person is at least 21 years of age before giving alcohol to the person.

The bill reduces from 300 feet to 200 feet the distance a private club licensee must be from a church or school. The 200-foot restriction may be waived by a church, college or university but not a K-12 school. Additionally, the bill clarifies that licensees are not required to bag alcoholic liquors but are instead permitted to use anything else or simply carry the purchase out of the store. The bill requires Class A licensees to provide notice to the commissioner when planning to hold a sampling event. In addition, the bill increases the minimum markup from 110 percent to 115 percent. The bill also creates new licenses for a private bakery, a private cigar shop, a private college sports stadium, a private food truck, and to permit mini bars in hotels or resort hotels.

The bill continues a reduction to licensing fees to one-third of what those fees are listed as due to the ongoing issues relating to the Covid pandemic. Fees will be two-thirds of their total amount in 2023 and will return to the full amount in 2024. Additionally, the bill permits a licensed entity that is in good standing with the commissioner be authorized to obtain a license for events such as fairs and festivals and provides for those conditions. The bill also permits authorizing wine growler sales to produce a frozen alcoholic beverage like wine slushies.

The bill also authorizes the Commissioner to divest the state of its interest in liquors produced by the Russian Federation and authorizes the Commissioner to auction any liquors to the highest bidder. The proceeds of the sale will be paid to a recognized charity providing assistance to the Ukrainian people. The provisions of this new section

will expire three years from the effective date of this section or whenever the Governor lifts this requirement, whichever is earlier.

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022