

WEST VIRGINIA LEGISLATURE

SENATE COMMITTEE ON THE JUDICIARY

2023 BILL SUMMARIES



COMMITTEE ON THE JUDICIARY
WEST VIRGINIA SENATE

EIGHTY-SIXTH LEGISLATURE
FIRST REGULAR SESSION



APRIL 2023

SENATE COMMITTEE ON THE JUDICIARY

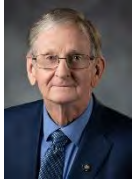
2023 Regular Legislative Session

Staff Members

The seal of the West Virginia Senate 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 and oak leaves. The words "WEST VIRGINIA" are written in an arc above the building, and "MONTANI SEMPER LIBERI" is written in an arc below. The outer border of the seal is a rope-like pattern.

<u>Name</u>	<u>Title</u>	<u>Employment Status</u>
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
Zach Viglianco	Counsel	Per Diem
J. A. Curia	Counsel	Per Diem
Quinlin Sollars	Herndon Fellow	Per Diem
Tom Smith	Chief Counsel	Per Diem

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(R – Wood, 03)



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(R – Wayne, 06)



Mike Caputo
(D – Marion, 13)



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86th Legislature
West Virginia Senate

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WEST VIRGINIA LEGISLATURE
SENATE COMMITTEE ON THE JUDICIARY
STATISTICS 2023

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

BILLS:	2,318
RESOLUTIONS:	73
CONCURRENT RESOLUTIONS:	112
<u>JOINT RESOLUTIONS:</u>	<u>38</u>
TOTAL:	2,541

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

SENATE BILLS:	759
SENATE RESOLUTIONS:	50
SENATE CONCURRENT RESOLUTIONS:	28
<u>SENATE JOINT RESOLUTIONS:</u>	<u>10</u>
TOTAL:	874

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

HOUSE BILLS:	1,559
HOUSE RESOLUTIONS:	23
HOUSE CONCURRENT RESOLUTIONS:	84
<u>HOUSE JOINT RESOLUTIONS:</u>	<u>28</u>
TOTAL:	1,694

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

BILLS:	0
<u>CONCURRENT RESOLUTIONS:</u>	<u>3</u>
TOTAL:	3

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

SENATE BILLS:	275
HOUSE BILLS:	57
SENATE CONCURRENT RESOLUTIONS:	0
SENATE JOINT RESOLUTIONS:	10
HOUSE CONCURRENT RESOLUTIONS:	0
<u>HOUSE JOINT RESOLUTIONS:</u>	<u>0</u>
TOTAL:	342

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

SENATE BILLS:	63
HOUSE BILLS:	36
RULES BILLS:	64
JOINT RESOLUTIONS:	1
<u>CONCURRENT RESOLUTIONS:</u>	<u>3</u>
TOTAL:	167

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

SENATE BILLS:	130
<u>HOUSE BILLS:</u>	<u>203</u>
TOTAL:	333*

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

SENATE CONCURRENT RESOLUTIONS:	14
<u>HOUSE CONCURRENT RESOLUTIONS:</u>	<u>30</u>
TOTAL:	44

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

SENATE BILLS:	31
<u>HOUSE BILLS:</u>	<u>34</u>
TOTAL:	64

**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:	30
<u>HOUSE BILLS:</u>	<u>34</u>
TOTAL:	64**

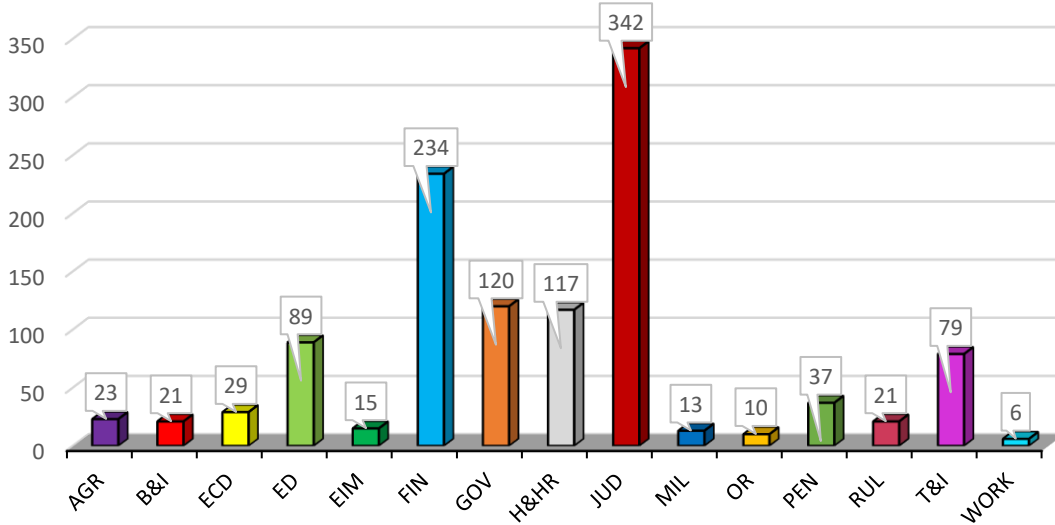
(Senate Judiciary Totals include Rules Bundles as a single bill.)

(*Of the 333 Bills that Completed Legislative Action, there was one veto.)

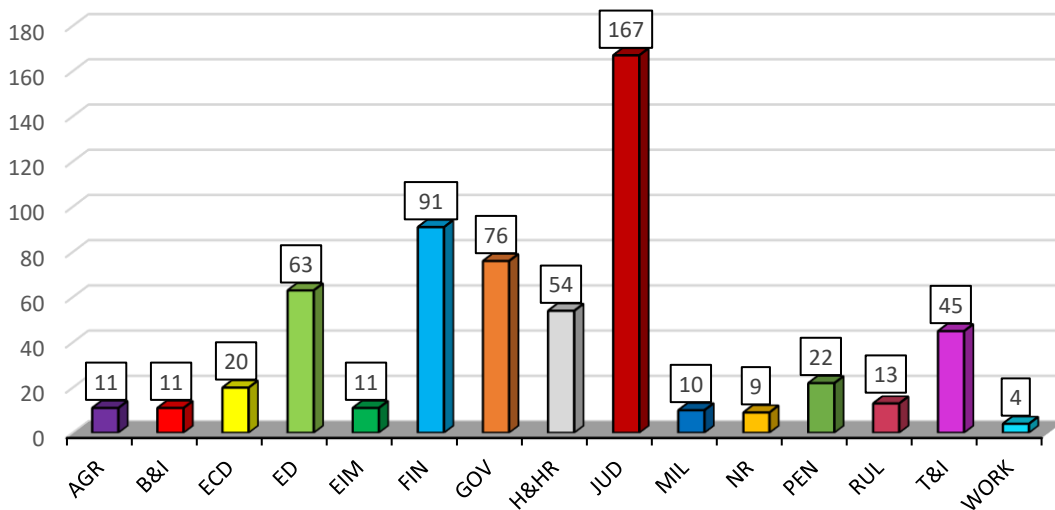
**Of the 64 Bills reported that Completed Legislative Action, there were no vetoes.)

STATISTICS 2023

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Senate Bill 10

COMMITTEE SUBSTITUTE

SHORT TITLE: Campus Self-Defense Act.

CODE REFERENCE §18B-1-16, §18B-1B-4, §18B-2A-4, §18B-B-6 (Amends and Reenacts); §18B-4-5b (New)

SUMMARY:

The general purpose of this bill is to allow persons who are holders of concealed handgun permits to carry same on the campuses of the state institutions of higher education.

(1) The bill creates an exception to any general prohibition a school might have regarding carrying a handgun on campus.

(2) The authorization extends to persons holding a current and valid WV provisional (age 18-21) license, standard license (21 and older) and persons from other states holding a current and valid license per W. Va. Code §61-7-6a including reciprocity city and recognition of out of state licenses.

The amended sections all contain the same language, stating that on and after July 1, 2024, the governing entities of the various types of higher education programs may only restrict or regulate license holders consistent with the new §18B-4-5b.

Subsection (a) of the new section authorizes license holders to carry concealed on campus per limitations in subsection 5.

Subsection (b) allows colleges to continue to regulate and restrict carrying in the following campus locations in compliance with §61-7-14 of this code:

(1) At an organized event taking place at a stadium or arena with a capacity of more than 1,000 spectators;

(2) At a daycare facility located on the property of the state institution of higher education;

(3) In the secure area of any building used by a law-enforcement agency on the property of the state institution for higher education;

(4) In an area of the property of the state institution of higher education that has

adequate security measures in place to ensure that pistols or revolvers are not carried by the public into the area. As used in this section, "adequate security measures" means the use of electronic equipment and armed personnel at public entrances to detect and restrict the carrying of any pistols or revolvers into the area, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes to ensure that pistols or revolvers are not carried in those areas by members of the public;

(5) In an on-campus room or rooms in which a student or employee disciplinary proceeding is being held;

(6) In sole occupancy offices on the campus and in the buildings of the state institution of higher education. "Sole occupancy office" means a room with at least one door and walls that extend to the ceiling that is assigned to a single person as his or her workspace. This subdivision does not authorize a state institution of higher education to prohibit, regulate, or restrict faculty or staff members who hold a current and valid license to carry a concealed deadly weapon from carrying a concealed pistol or revolver in his or her assigned office;

(7) At a primary or secondary education school-sponsored function being held in a specific location on the property of the state institution of higher education that is rented, leased, or under the exclusive use of the West Virginia Department of Education, the West Virginia Secondary Schools Activities Commission, a county school board, or local public school for the actual period of time the function is occurring;

(8) At a private function that is being held in a specific location on the property of the state institution of higher education that is rented, leased, or under the exclusive use of an entity that is not affiliated with the state institution of higher education for the actual period of time the function is occurring;

(9) In any area on the property of the state institution of higher education where possession of a firearm is prohibited by state or federal law;

(10) In specifically designated areas in which patient-care or mental health counseling is being provided;

(11) In high hazardous and animal laboratories, defined as laboratories with:

(A) Greater than 55 gallons of Class I flammable liquids and/or significant quantities of acids, bases, organics, pyrophorics, peroxides, bio-hazardous materials, extremely toxic materials or pyrophoric or toxic gases classified NFPA 704 Category 3 or higher;

(B) Hazardous gases with K-size or larger cylinders containing corrosive, reactive, flammable, toxic, and/or oxidizer gases classified NFPA 704 Category 2 or higher;

(C) MRI and/or NMR equipment capable of generating significant magnetic fields with field strength of at least 5 gauss is measured outside the equipment or 5 gauss line typically at least 3 feet and as much as 20 feet from equipment;

(D) Large cylinders of acetylene; or,

(E) Animal research laboratory spaces in locations not accessible to the public or generally accessible to students and staff; or

(12) In on-campus residence halls, except common areas such as lounges, dining areas, and study areas.

Subsection (c) allows an employee who holds a license whose job requires being in residence halls to carry therein.

Subsections (d) and (e) require colleges to provide a secure location for guns in residence halls or make safes available for residence hall rooms. It also requires the institutions to develop a policy to coordinate having sufficient resident rooms for license holders in residence halls with a storage room. A reasonable fee may be charged for storage room use or safes.

Subsection (f) allows for school discipline for license holders who violate restrictions.

Subsection (g) prohibits license holders and anyone else from carrying when the gun is visible or threatening a breach of the peace.

Subsection (h) states the legislatures intent and limits the liability of schools.

Subsection (i) defines license to carry as previously explained.

Subsection (j) names the 2023 amendments the “Campus Self-defense Act.”

Subsection (k) adopts July 1, 2024, as the effective date.

DATE OF PASSAGE: February 21, 2023

EFFECTIVE DATE: February 21, 2023, with internal effective date of July 1, 2024

ACTION BY GOVERNOR: Signed March 1, 2023

Senate Bill 187

COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Making it felony offense for school employee or volunteer to engage in sexual contact with students.

CODE REFERENCE: §61-8B-11b (New)

SUMMARY:

The bill makes it a felony offense for any public or private school employee to engage in sexual intercourse, sexual intrusion, or sexual contact with any student enrolled in the school where the employee is employed regardless of the student's age. It further provides that consent for the act, occurrence off school property, or occurrence at a time other than during a school function is not a defense.

The bill also provides that the offense is separate from any other applicable offense and the penalties are in addition to any other penalties for any other applicable offense. The penalty for anyone convicted of this offense is not less than one nor more than five years in prison, and/or a fine of up to \$5,000, and includes the permanent forfeiture of any teaching or other certificate.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

Senate Bill 191

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to liability for payment of court costs as condition of pretrial diversion agreement.

CODE REFERENCE: §62-11C-9 (Amends and Reenacts)

SUMMARY:

This bill provides that persons whose cases are being dealt with through both “pretrial diversions” and “deferred adjudications” are liable for any applicable court costs. The payment shall be a condition of the deferred adjudication agreement once they are placed into community corrections.

The bill also adds that a court order or agreement may add restitution as a condition of a pretrial diversion or deferred adjudication. There is a proviso that financial inability to pay these costs may not be a basis for denying a person the ability to participate in a deferred adjudication.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

Senate Bill 208

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to criminal justice training for all law-enforcement and correction officers regarding individuals with autism spectrum disorders.

CODE REFERENCE: §30-29-5a (Amends and Reenacts)

SUMMARY:

This bill requires all current law enforcement officers to receive a course of basic training on autism spectrum disorders, Alzheimer's, and related dementias as part of their mandated in-service training requirement every three years.

DATE OF PASSAGE: March 2, 2023

EFFECTIVE DATE: May 31, 2023

ACTION BY GOVERNOR: Signed March 11, 2023

Senate Bill 220

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Industrial Hemp Development Act.

CODE REFERENCE: §19-12E-12, §19-12F-1 *et seq.*, and 60-10-1 *et seq.* (New)

SUMMARY:

This bill is to regulate the processing, distribution and sale of kratom and certain hemp-derived cannabinoids for human consumption (delta-8, delta-10 tetrahydrocannabinols) under the Commissioner of Agriculture.

(1) Hemp-derived cannabinoids are regulated by the new section §19-12E-12, and Kratom by the new article 19-12E-1 *et seq.* This section does not apply to naturally occurring plant-based derivative products not containing tetrahydrocannabinol content.

(2) The bill limits sales of kratom and hemp-derived cannabinoids to persons 21 years of age and older.

(3) Sets up a regulatory scheme for both products designed to limit physical availability of the products.

(4) Authorizes the Alcohol Beverage Control Administration Commission (ABCA) to assist in enforcing regulations on the products at the retail level.

(5) Imposes an excise tax of 11% on the sale of the products, the proceeds of which are divided between the Commissioner of Agriculture, the anti-drug fund, and the ABCA enforcement fund.

(6) Declares products not approved by the Commissioner to be contraband and subject to seizure, forfeiture, and destruction.

(7) Creates new criminal offenses for unlawful possession, distribution, and sale of unapproved products and distributing to persons under 21.

(8) Grants ABCA enforcement authority in the new article §60-10-1 *et seq.*

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

Senate Bill 232

COMMITTEE SUBSTITUTE

SHORT TITLE: Creating study group to make recommendations regarding diversion of persons with disabilities from criminal justice system.

CODE REFERENCE: §27-6A-12 (New)

SUMMARY:

This bill creates a multi-disciplinary study group to make recommendations to the Legislature about dealing with persons with disabilities in the criminal justice system. The group would be convened by the Chair of the Dangerousness Assessment Advisory Board and would be made up of the 18 members listed below from multiple disciplines:

- (1) The Statewide Forensic Clinical Director;
- (2) The Statewide Forensic Coordinator;
- (3) The two forensic psychiatrists who are members of the board;
- (4) The two psychologists who are members of the board;
- (5) The Director of the Office of Drug Control Policy;
- (6) A designee of the Supreme Court of Appeals
- (7) A designee of the Bureau of Children and Adult Services with experience in juvenile forensic matters;
- (8) A designee of the Division of Corrections and Rehabilitation;
- (9) A designee of the Division of Rehabilitation Services;
- (10) A designee of the Prosecuting Attorney's Institute;
- (11) A designee of the Public Defender Services;
- (12) A designee of the West Virginia Behavioral Healthcare Providers Association who is a licensed clinician with forensic patient experience;

(13) A designee of the West Virginia Hospital Association;

(14) A designee of the West Virginia Housing Development Fund;

(15) A designee of Disability Rights of West Virginia;

(16) A designee of the West Virginia Sheriff's Association;

(17) A designee of the Juvenile Justice Commission; and

(18) A designee of the West Virginia University Center for Excellence in Disabilities.

The open meeting law and FOIA do apply to the group. Non-governmental members will receive the standard per-diem pay rate. Finally, recommendations from the group are to be to the Senate President and Speaker of the House by November 30, 2023.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: March 11, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 247

COMMITTEE SUBSTITUTE

SHORT TITLE: Making administrative appeals and judicial review of board action subject to provisions of Administrative Procedures Act.

CODE REFERENCE: §30-1-9 (Amends and Reenacts)

SUMMARY:

Chapter 30 of the West Virginia Code establishes boards which govern the licensing and regulation of various professions and occupations (*e.g.*, dentistry, accounting, and engineering). Among other things, a Chapter 30 board is statutorily authorized to suspend or revoke the licenses of members to practice in the field regulated by that board.

The bill makes appeals of final board action (*i.e.*, denial, suspension, or revocation of a license or registration, or disciplinary action) subject to the appellate provisions of the Administrative Procedures Act set forth in W. Va. Code §29A-5-1 *et seq.* As a result, appeals of final board decisions will be filed with the Intermediate Court of Appeals instead of a Circuit Court.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

Senate Bill 258

COMMITTEE SUBSTITUTE

SHORT TITLE: Eliminating ceiling on fair market value of consumer goods and permitting dealer to require security deposit.

CODE REFERENCE: §46B-2-1 and §46B-3-8 (Amends and Reenacts)

SUMMARY:

This bill amends two sections in Chapter 46B, which regulates rent-to-own transactions. The bill makes two straightforward changes. First, it removes the existing “fair market value” ceiling on rent-to-own transactions. Prior to enactment, it was unlawful to enter into a rent-to-own transaction for an item with a fair market value of greater than \$10,000; that cap has been removed. Second, the bill permits sellers offering a rent-to-own option to require the buyer to pay a security deposit. Under existing law, security deposits were not permitted.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed on March 29, 2023

Senate Bill 276

INTRODUCED

SHORT TITLE: Awarding service weapon of retiring State Fire Marshal.

CODE REFERENCE: §15A-10-25 (Amends and Reenacts)

SUMMARY:

This bill reduces the number of years a Fire Marshal, full-time deputy fire marshal, or full-time assistant fire marshal must serve before being awarded his or her service weapon upon retirement from 20 years to 10 years. The bill makes the same reduction for such personnel retiring with less than 10 years of service due to a total physical disability as a result of service with the Fire Marshal. The bill clarifies language relating to when a service weapon may not be awarded to such personnel due to federal or state firearms prohibitions, mental incapacity, or dangerousness of the employee.

DATE OF PASSAGE: March 2, 2023

EFFECTIVE DATE: March 2, 2023

ACTION BY GOVERNOR: Signed March 11, 2023

Senate Bill 298

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to non-federally declared emergencies and non-states of emergency.

CODE REFERENCE: §15-5-9 (Amends and Reenacts)

SUMMARY:

The bill authorizes local emergency services entities to enter into mutual aid agreements with fire and emergency medical services located in border counties of contiguous states for day-to-day cooperation.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: March 10, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

Senate Bill 335

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing Department of Homeland Security to promulgate legislative rules.

CODE REFERENCE: §64-6-1 *et seq.* (Amends and Reenacts)

SUMMARY:

This bill contains 11 rules from the Department of Homeland Security and is known as Bundle 6.

Senate Bill No. 335. Governor’s Committee on Crime, Delinquency, and Corrections, Protocol for Law Enforcement Response to Domestic Violence, 149 CSR 03

The rule amends a current legislative rule by extending the existing Sunset Provision by five years changing the termination date from June 30, 2023, to August 1, 2028.

Senate Bill No. 336. Emergency Management, National Flood Insurance Program, 170 CSR 07

The rule is new. It reflects passage of Engrossed Committee Substitute for House Bill 4295 in the 2022 Regular Session, which transferred the National Flood Insurance Program (NFIP) from the Office of the Insurance Commissioner to the Emergency Management Division within the Department of Homeland Security.

The rule establishes that the NFIP will be supervised by the Emergency Management Division and requires the Emergency Management Division to develop templates to be used to help communities comply with NFIP. The rule also requires state floodplain managers, Emergency Management, and NFIP to develop a strategic plan for development of shared goals and their implementation. Finally, the rule provides that administration of the NFIP is the responsibility of the Division of Emergency Management.

Senate Bill No. 337. Fire Commission, Hazardous Substance Emergency Response Training Programs, 87 CSR 03

The rule amends a current legislative rule to amend the sunset date from July 1, 2023, to August 1, 2028.

Senate Bill No. 338. Fire Commission, Certification of Home Inspectors, 87 CSR 05

The rule repeals a current legislative rule. Certification of home inspectors is now under the purview of the State Fire Marshal so the provisions of the rule are being moved to 103 CSR 07.

Senate Bill No. 339. Fire Commission, Volunteer Firefighters' Training, Equipment, and Operating Standards, 87 CSR 08

The rule amends a current legislative rule. The rule (1) adds a sunset provision; (2) updates authority of the rule; (3) includes the definition for “probationary firefighter”; (4) updates references to the West Virginia Division of Emergency management from the Department of Homeland Security; (5) includes the minimum training levels for probationary firefighters; (6) allows the Fire Commission to use the modular training program as an alternative to the Emergency Vehicle Operations Course to meet the training requirement for operators of fire vehicles; (7) updates the approved curriculum and authorizes the Commission to create a policy to specify further exclusions; (8) clarifies equivalencies; and (9) deletes Appendices 87-8 A - F.

Subdivision 4.1.9 allows the State Fire Commission to create a policy to specify further exclusions from the specified curriculum. This subdivision needs to be deleted as any further exclusions need to be made by amendment to the legislative rule.

Senate Bill No. 340. Fire Marshal, Certification of Electrical Inspectors, 103 CSR 01

The rule amends a current legislative rule. It addresses the certification of electrical inspectors by: (1) adding a sunset provision; (2) including the definition for “Journeyman electrician” and adding reference to “Journeyman electrician” throughout the rule; (3) setting forth the requirements for reciprocity, including a state law examination, if required by the Board; (4) setting forth the process for the denial, limitation, suspension, or revocation of electrical inspectors licenses and requiring State Fire Marshal to promulgate a procedural rule; and (5) clarifying the disposition of complaints by removing the Fire Commission from the process.

Senate Bill No. 341. Fire Marshal, Supervision of Fire Protection Work, 103 CSR 03

The rule amends a current legislative rule. It (1) adds a sunset provision; (2) updates the definition for “Journeyman sprinkler fitter”; (3) removes the definition of “Sprinkler Fitter in Training”; (4) removes obsolete language relating to the minimum qualifications to obtain licensure and removes other requirements; (5) provides for reciprocity and requires a state law exam if required by the Board; (6) authorizes the State Fire Marshal to deny an application for initial licensure in certain instances where the applicant has a criminal conviction; (7) specifies the reasons for which the State Fire Marshal may deny, limit, suspend, or revoke a license; (8) sets forth penalties for a

person performing or offering to perform fire protection work without a license; and (9) makes changes to the appeals and hearing processes.

Senate Bill No. 342. Fire Marshal, Electrician Licensing, 103 CSR 05

The rule amends a current legislative rule. It (1) extends the sunset provision; (2) removes the Apprentice Electrician license and defines the term “Electrician’s Assistant/Helper” who replace Apprentice Electricians; (3) reduces the required work experience for Master and Journeyman electricians; (4) allows an applicant for licensure under the age of 18 who is enrolled in an approved electrical vocation program to take the exam and receive the license upon turning 18; (5) authorizes the State Fire Marshal to develop exams or contract with a private testing agent; (6) provides for reciprocity; (7) raises the penalty fee for renewing an expired license from \$15 to \$50; (8) rewrites the section on the State Fire Marshal’s ability to deny an application for licensure or limit, suspend, or revoke any license based on specific authority given in statute; and (9) makes changes to the appeals and hearing processes.

Senate Bill No. 343. Fire Marshal, Certification of Home Inspectors, 103 CSR 07

The rule is new. Pursuant to Enrolled Committee Substitute for Senate Bill 586 which was passed during the 2020 Regular Session, this rule moves the “Certification of Home Inspectors” from the State Fire Commission series in 87 CSR 05 to the State Fire Marshal series in 103 CSR 07. It defines home inspection, outlines what must be included in a home inspection, defines unethical conduct by home inspectors, and creates penalties for prohibited acts.

Senate Bill No. 344. State Police, West Virginia State Police Professional Standards Investigations, Employee Rights, Early Identification System, Psychological Assessment and Progressive Discipline, 81 CSR 10

The rule amends a current legislative rule. It (1) replaces the phrase use of force with the phrase response to resistance or aggression throughout the rule; (2) provides a statute of limitations of 12 months for the filing of complaints against WVSP employees; (3) provides for the use of real-time data in the Early Identification System; (4) addresses procedure for those facing disciplinary action; and (5) adds a waiver provision following notice of disciplinary action.

State Police, Modified Vehicle Inspections, 81 CSR 4

This rule is a current legislative rule which did not go through the rule-making process. The amendments remove requirements for fenders, the positioning of the outmost edge of a tire regarding the fender, fender well or other wheel enclosure, and the minimum width of fender flares. Currently, vehicles with large tires are failing inspection. Owners are getting around the inspection by putting regulation tires on to pass inspection and then putting the large tires back on.

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: March 6, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

Senate Bill 345

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing Department of Revenue to promulgate legislative rules.

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

SUMMARY:

This committee substitute contains 11 rules from the Department of Revenue and is known as Bundle 7.

Senate Bill No. 345. Division of Financial Institutions, Rule Pertaining to Money Transmission Services, 106 CSR 23

This rule establishes permissible investments for cash (or cash equivalents), irrevocable letters of credit, and additional permissible investments that money transmission services may hold to satisfy the fiduciary duties. Finally, the rule adds new language that would be added requirements for compliance with West Virginia Code, examination by the Division of Financial Institutions, and penalties for failure to so comply.

Senate Bill No. 346. Insurance Commission, Bail Bondsmen in Criminal Cases, 114 CSR 103

This rule removes a previous requirement that bail bondsmen be residents of West Virginia with a valid WV ID.

When this rule was taken up by the LRMRC, an amendment was offered and adopted which appears in this committee substitute. The amendment affects the different types of bondsmen. For professional bondsmen, it adds more types of security which a bondsman may pledge with the Insurance Commissioner to order to meet that definition. For surety bondsmen, the amendment includes insurance company underwriting agreements to meet that definition. The amendment avoids the issue of all bondsmen in the state being required to become licensed as an insurance agent, the deadline for which has already passed. The Insurance Commission has already amended its emergency rule to reflect this amendment.

Senate Bill No. 347. Insurance Commission, Suitability in Annuity Transactions, 114 CSR 11B

This rule requires insurance agents (referred to as producers) that sell annuities to act in the best interest of the consumer when making a recommendation of an annuity and requires insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed. This rule is based on the NAIC's "Suitability in Annuity Transactions Model Regulation" (Model 275), as amended in 2020. The rule also includes provisions governing Exemptions (Section 3), Definitions (Section 4), Duties of Insurers and Insurance Producers (Section 5), Insurance Producer Training (Section 6), Compliance Mitigation, Penalties and Enforcement (Section 7) and Recordkeeping (Section 8).

An amendment was offered and adopted in the House that removed a proviso in the rule prohibiting a private cause of action for violations. The Senate concurred in the House amendment.

Senate Bill No. 348. Insurance Commission, Pharmacy Auditing Entities and Pharmacy Benefit Managers, 114 CSR 348

This rule updates terminology, prohibits a pharmacy benefit manager from limiting a consumer's access to prescription drugs through the designation of specialty drugs, prohibits a pharmacy benefit manager from placing certain requirements or restrictions on a pharmacist or pharmacy, updates requirements for 340B (federal drug discount program) entities, clarifies how drug acquisition cost is calculated, requires pharmacy benefit managers to disclose any sub-networks for specialty drugs to the Insurance Commissioner, prohibits a pharmacy benefit manager from limiting network access, provides clarification regarding assessment of fees related to adjudication of claims, provides clarification regarding criteria for requirements of methodologies, and requires notice of contract changes.

Significantly, Section 10 is new and deals with specialty drug complaints, which are consumer complaints to the Commissioner when a pharmacy or an insured person believes the insurer is unreasonably designating the drug as a specialty drug. The Commissioner consults with the Board of Pharmacy to determine reasonableness of the designation and, if found unreasonable, requires the insurer to remove the specialty drug designation and allow for the drug to be prescribed normally and filled in any pharmacy.

The rule also includes provisions governing applicability of the rule (Section 1) definitions (Section 2), Registration of Auditing Entities (Section 3), Licensure of Pharmacy Benefit Managers (Section 4), Responsibilities and Prohibited Acts (Section 5), Network Adequacy and Reporting Requirements (Section 6), examinations of Pharmacy Benefit Managers (Section 7), penalties and reimbursement (Section 8), Consumer Choice for Pharmacy Benefits (Section 9), and Specialty Drug Complaints [new] (Section 10).

Senate Bill No. 349. Lottery Commission, West Virginia Lottery Sports Wagering Rule, 179 CSR 09

This rule sets forth the regulations, qualifications, and requirements for sports wagering in West Virginia, which is regulated by the Lottery Commission. The rule closes a perceived gap in the regulation of Daily Fantasy Sports (DFS). Daily fantasy sports are not defined in our state code as sports wagering, which has given companies the opportunity to offer parlay sports wagers as part of their daily fantasy sports product and not have such be a “wager.” The rule defines Daily Fantasy Sports in line with a written opinion of the WV Attorney General. It allows persons playing fantasy games to play against another person and not the company offering the game or the house. The definition provides that fantasy sports are between two or more participants who manage imaginary teams for a predetermined prize. Winning the game is determined by the skill and knowledge of the participant and is determined in large part by statistical data not on the score, point spread, or performance of a single team.

The rule also contains new definitions regarding confidentiality in account information and affiliate companies. Daily fantasy sports are still generally excluded.

There are additional definitions of “Confidential Player Account Information” which is player account balances and personally identifiable information – which is also defined in the rule as data which is used to uniquely identify a person such as name, SS#, etc. A definition of “Registrant” is also included. This means affiliate companies such a sports wagering marketing affiliate companies which have the purpose of offering a link in the form of a click on ad to redirect a participant to a sports wagering site.

The General Requirements section has been updated and now includes identical language to that set forth in West Virginia Code §29-22D-1 *et seq.* This includes the general exclusion of daily fantasy sports.

Finally, a new section pertains to Licensing and Registration and makes the rule consistent with the Interactive Wagering Rule. The change allows market affiliates to act as a registrant of wagering services, not a supplier, which also changes the fee from \$1000 per year to \$100 per year.

Senate Bill No. 350. Tax Division, Municipal Sales and Use Tax Administration, 110 CSR 28

This rule implements the provisions of W. Va. Code §11-10-27, amended in House Bill 4461 from the 2022 Regular Session, that provide that the Tax Commissioner’s administrative fees for collecting municipal sales and use taxes be deposited into the Tax Administration Services Fund instead of the Local Sales Tax and Excise Tax Administration Fund, and fixes those fees at 1% of collections. The amendments also

remove language relating to computing the fee under the provisions of law before the passage of House Bill 4461.

Senate Bill No. 351. Tax Division, Valuation of Producing and Reserve Oil, Natural Gas Liquids, and Natural Gas for Ad Valorem Property Tax Purposes, 110 CSR 01J

This rule lists the estates subject to property taxation under the rule. Natural gas liquids were added throughout this section as a separate substance. Oil, natural gas liquids, and natural gas are separately and specifically listed.

The modified rule adds and changes definitions of many key terms, including actual annual operating costs, gross receipts, natural gas liquids, and total production.

Specific sections detailing the methods of valuing the different types of property (e.g., oil producing, natural gas producing, home-use only wells, etc.) are either added or revised.

Values for oil and/or natural gas producing property will be determined through the process of applying a yield capitalization model to net receipts. Net receipts are the gross receipts, less royalties paid, and less actual annual operating costs for the working interest. A yield capitalization model is applied to the gross royalty payments for the royalty interest.

The rule contemplates valuation when ownership of the property is split by lease or agreement.

The rule then describes the valuation determination for oil and natural gas wells, as well as the valuation of a royalty interest.

The different models for valuation are then described, including the yield capitalization model, the working interest model, and the royalty interest model. A decline rate adjustment is also contemplated and described. The capitalization rate is stated to be state-wide and determined annually. The rule also states that depletion of the asset must be considered. Also considered by the Commissioner is the proportion of equity and debt used by the industry to support ongoing activities. Certain factors regarding this consideration are laid out in the rule.

The rule states that gross proceeds are determined at the point of sale of the output of a well in an arm's length transaction. There are also calculations contemplated for when the lessee's contract sets the sales price of natural gas as a percentage of the purchaser's gross proceeds after processing the gas.

Valuations regarding sale to market affiliates, related parties, and times when a purchaser provides services typically the responsibility of the lessee are also considered.

Retention of relevant data for audit purposes must be retained. The rule describes various costs and how they must be allocated as well as a distinction between allowable and non-allowable costs.

The rule then describes a default method of valuation for when the producer does not file a complete return by the August 1 due date. The return to be filed is then described.

The rule states that the Commissioner will publish an annual summary of the variables used to determine the value of oil or natural gas property. The published variables will include information about the capitalization rates and the safe harbor rates.

The rule concludes with provisions concerning confidentiality of records and data.

Senate Bill No. 352. Tax Division, Farm-To-Food Bank Tax Credit, 110 CSR 13DD

The rule amends the sunset date to August 1, 2028.

Senate Bill No. 353. Tax Division, West Virginia Film Industry Investment Act, 110 CSR 13X

This rule implements changes made to WV Code §11-13X-1, *et seq.*, enacted in House Bill 2096 in the 2022 Regular Session that reinstated a tax credit for companies engaged in the business of producing film industry productions, which had ended in 2018. In addition to removing the \$5 million aggregate maximum amount of credit that can be taken each year, administration of the program is moved to the Department of Economic Development and the minimum qualifying expenditure threshold was changed from \$25,000 per project to \$50,000 per year, among other changes, including changes to definitions (section 2), the amount of the tax credit (section 3), requirements for the credit and the application for the credit (section 4), review by the Department of Economic Development (section 5), forfeiture of the credit (section 6), uses and transferability of the credit; (section 7), confidentiality (section 8), requirements to claim the tax credit, applicability of various tax laws, and maintenance of records (section 9), and effective dates, sunset date, and preservation of film tax credits earned prior to the sunset date (section 10).

There is a newly added amendment to the application section of the rule. That section mentions the requirements of the application for “commercials,” which are explicitly deemed not to be “qualified projects” in section 2, subsection 2.1 of the rule. The amendment merely removes the word “commercials,” but leaves all other language intact.

Senate Bill No. 354. Tax Division, Property Transfer Tax, 110 CSR 22

This rule amends the sunset date to August 1, 2028.

**Senate Bill No. 355. Tax Division, Personnel Rule for the Tax Division, 110
CSR 42**

Amends the sunset date to August 1, 2028.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: March 10, 2023

ACTION BY GOVERNOR: Approved March 23, 2023

Senate Bill 356

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing DOT to promulgate legislative rules.

CODE REFERENCE: §64-8-1 et seq. and §64-12-5 (Amends and Reenacts)

SUMMARY:

This committee substitute contains 6 rules relating to the Department of Transportation and is known as Bundle 8.

Senate Bill No. 356. Division of Motor Vehicles, Administrative Due Process, 91 CSR 01

This rule amends a current legislative rule. It eliminates references to administrative hearings for DUI offenses and to the Office of Administrative Hearings. These amendments are a result of the passage of Committee Substitute for Senate Bill 130 during the 2020 Regular Session, which terminated the Office effective July 1, 2020, and transferred DUI hearings to the courts.

This rule also updates the administrative process for other types of hearings, allowing electronic or telephonic hearings to be conducted, and electronic requests for hearings to be made. It increases docket fees and fees and mileage paid to witnesses at administrative hearings and modifies the hearing transcript fee provisions.

Senate Bill No. 357. Division of Motor Vehicles, Examination, and Issuance of Driver's License, 91 CSR 04

This rule amends a current legislative rule. As a result of the passage of House Bill 4535 during the 2022 Regular Session, the rule deletes the requirement for a school eligibility certificate to be presented before a driver's license may be issued to an applicant under the age of 18.

The rule also allows issuance of an identification card without a photo for religious reasons. The amendment is the result of passage of Enrolled Committee Substitute for House Bill 2177 during the 2022 Regular Session.

It also allows an applicant for a license to return to take the road skills examination without waiting the otherwise mandatory seven days if the applicant failed because of a mechanical defect in his or her vehicle and the defect is corrected. First-

time applicants for a CDL, for a school bus or passenger endorsement or for a hazardous material endorsement to a CDL must successfully complete a Federal Motor Carriers Safety Administration Entry Level Driver's Training Course before they may take the road skills or endorsement examination under the rule.

Senate Bill No. 358. Division of Motor Vehicles, Denial, suspension, revocation, disqualification, restriction, nonrenewal, cancellation, administrative appeals, and reinstatement of driving privileges, 91 CSR 05

This rule amends a current legislative rule. It amends the administrative process for adverse actions by DMV against an individual's operator's license. Currently, hearings contesting adverse actions are taken to circuit court. The rule provides for an administrative hearing by DMV with an appeal taken pursuant to the contested cases provisions of W. Va. Code, §29A-5-1 *et seq.* The amendment is the result of passage of House Bill 4535 during the 2022 Regular Session.

The rule amends the current rule regarding suspension of operators' licenses under the points system. It allows a licensee to pay a \$200 penalty fee in lieu of the suspension and any reinstatement fee, if he or she has not used that alternative in the preceding two years.

The rule modifies provisions relating to the effect of failure to comply with school attendance law on licensure. It lowers the age to 17 or below for which school attendance requirements apply, and no longer allows suspension or denial of a license. Instead, the license may be restricted to driving for work or medical purposes or for religious or educational pursuits.

The rule adds a new provision requiring the Division to take the same action against the license of an individual convicted in municipal or similar courts as would be required if the offense for which the conviction was entered is substantially similar to an offense defined in code. Where no mandatory sanction is specified by code, the DMV commissioner has discretion to enter the sanction entered by the court.

The section regarding the Alcohol and Drug Test and Lock Program has been amended to allow participation in the program of a person whose license has been revoked for driving under the influence of a controlled substance; and a person who has been convicted of driving on a suspended or revoked license, if the person serves the revocation or suspension period as additional participation time in the program. Additionally, language has been added providing for a temporary letter of authorization to operate a motor vehicle prior to receipt of a specially marked restricted license. The participant must apply for the restricted license immediately upon installation of the equipment. It now also provides that due consideration be given when lawfully prescribed medication yields a positive result in a drug test.

Finally, the rule adds a new section implementing W. Va. Code §17D-4-3, allowing the commissioner to suspend the license and related registration of individuals who have failed to timely satisfy a judgment. It establishes a procedure for determining the validity of the judgment and that the judgment falls within the scope of the relevant code section, provides for payment of certain fees set out in code, and authorizes reinstatement of the license and registration upon proof of satisfaction of the judgement, consent of the judgment creditor, discharge in bankruptcy, or expiration of the judgment.

Senate Bill No. 359. Division of Highways, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance, 157 CSR 02

This rule amends a current legislative rule. It gives the Commissioner the exclusive authority to designate excess real property and requires that all deeds transferring any interest owned by the Division be quitclaim deeds.

Department of Transportation, State Rail Authority Organizations and Meetings, 172 CSR 01

This rule is being repealed because the State Rail Authority no longer exists.

DATE OF PASSAGE: March 8, 2023

EFFECTIVE DATE: March 8, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

Senate Bill 361

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

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

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

SUMMARY:

This bill contains 49 rules from Miscellaneous Agencies and Boards and is known as Bundle 9.

Senate Bill No. 361. Board of Accountancy, Board Rules and Rules of Professional Conduct, 01 CSR 01

This rule amends a current legislative rule. It amends definitions and the certification process. Most significantly it amends the educational coursework which a candidate must complete to be eligible to sit for the Certified Public Accountants (CPA) exam. According to the Board, this reflects the changes to the Uniform CPA Exam published by the American Institute of Certified Public Accountants which will be implemented in January 2024. Finally, the timeframe for which passing test results remain valid was 18 months from the date of the test but is now being changed to 18 months from the time in which a candidate is notified of the passing score.

Senate Bill No. 362. Board of Acupuncture, Advertising by Licensed Acupuncturists, 32 CSR 05

This rule amends a current legislative rule. It eliminates the following recognized titles of acupuncturists in this state: Master of Science in Oriental Medicine: Certified Acupuncturist: and Acupuncture Physician and modifies Doctorate of Acupuncture and Oriental Medicine. It requires that all titles be commensurate with education and training.

Senate Bill No. 363. Board of Acupuncture, Standards of Practice of Acupuncture by Licensed Acupuncturists, 32 CSR 06

This rule amends a current legislative rule. It removes references to sterilization of equipment and instead requires use of a clean needle technique and standards of practice in accordance with the Council of Colleges of Acupuncture and Herbal Medicines.

The rule also references Injection therapy as opposed to point puncture (aquapuncture) and defines what is entailed in the therapy, sets forth permissible substances, and requires practitioners trained in injection therapy to comply with the ability to perform resuscitative procedures. The rule limits when a practitioner may use pointpuncture. The House amended the rule to include that the practitioner must wash his or her hands before examining patients or handling acupuncture needles and other instruments and between patients.

Senate Bill No. 364. Board of Acupuncture, Continuing Education Requirements, 32 CSR 09

This rule amends a current legislative rule. It removes provisions relating to record maintenance by the provider, approval by the Board of continuing education courses offered by a provider, application for course approval, instructors, advertisement, and denial, withdrawal, and appeal of approval. The rule removes requirements on both providers and licensees regarding documentation of the CE credits. The number of required credit hours is reduced from 24 to 15 every two years, and the number of CE credit hours which may come from an alternative source such as administrative management, language training, or education methodology is reduced from 12 to 6.

Senate Bill No. 365. Department of Agriculture, West Virginia Apiary Rule, 61 CSR 02

This rule amends a current legislative rule which establishes general operating rules and procedures for the inspection of apiaries, control of bee diseases, and limitation of liability for beekeepers. It requires a permit if bees are imported into West Virginia for any reason. Provisions regarding an educational bee registration exemption as well provisions requiring sterilization in instances of transmissible bee diseases are deleted. The House added language requiring the Agriculture Commissioner to mail an application for registration to all persons known to keep bees from the previous year.

Senate Bill No. 366. Department of Agriculture, Schedule of Charges for Inspection Services: Fruit, 61 CSR 8B

This rule amends a current legislative rule which establishes charges for federal-state inspection service for fruit. The rule updates the rate for GAP.GHP/Audits from a specified hourly rate to a general reference to the hourly rate established by USDA's Agricultural Marketing Service pursuant to WVDA/USDA cooperative agreement.

Senate Bill No. 367. Department of Agriculture, Noxious Weeds Rule, 61 CSR 14A

This rule amends a current legislative rule which sets forth provisions governing noxious weeds, including definitions, cooperative suppression activities, prohibitions, and a list of noxious weeds. The rule amends Appendix A to update the federal noxious weed list to include 15 new terrestrial species.

Senate Bill No. 368. Department of Agriculture, Grade A Pasteurized Milk, 61 CSR 15

This rule amends a current legislative rule which establishes minimum requirements governing Grade “A” pasteurized milk. The rule updates references to federal materials being incorporated by reference, including removal of one portion of the Appendix Q of the USDA Grade “A” Pasteurized Milk Ordinance and the addition of three USDA publications.

Senate Bill No. 369. Department of Agriculture, Inspection of Nontraditional Domesticated Animals, 61 CSR 23D

This rule amends a current legislative rule which governs the inspection of nontraditional domestic animals (antelope, bison, etc.) and edible products derived from them by updating the sunset date.

Senate Bill No. 370. Department of Agriculture, Hemp Products, 61 CSR 30

This rule amends a current legislative rule, which sets forth procedures and requirements for registration and regulation of hemp products sold within West Virginia. The rule clarifies the authority of the Department to deny product registrations considered potentially hazardous and/or which pose a threat to consumer safety, deletes the requirement to include list of items intended for sale in the application to sell and distribute hemp products, deletes language excluding tetrahydrocannabinols from the standard for misbranded labels, deletes language specifying maximum percentage of tetrahydrocannabinolic acid for the minimum age labeling requirement to apply, and adds language authorizing the minimum age on label to be more restrictive than 18 years old.

Senate Bill No. 371. Livestock Care Standards, 61 CSR 31

This rule amends a current legislative rule which governs the care and well-being of livestock. The rule adds and defines the term “dispossess” and replaces reference to “euthanize” with “dispossess”.

Senate Bill No. 372. Department of Agriculture, Farm to Food Bank Tax Credit, 61 CSR 36

This rule amends a current legislative rule which sets forth procedures and requirements for the Department’s administration of the farm-to-food bank tax credit.

The current rule specifies that the Department must determine if the listed value of donated edible agricultural products is reasonable based on fair market value and clarifies that this value is to be compared with the value claimed on the receipt form to ensure the value claimed is not higher. This rule updates the protocol for the Department's review of the estimated value of edible agricultural products when the taxpaying farmer does not include an invoice or other statement identifying the price received for products of comparable grade or quality for a previous sale. New language provides the protocol for when the price of the donated product cannot be determined and authorizes the Department to request additional information from the taxpayer.

Senate Bill No. 373. Department of Agriculture, Farmers Markets, 61 CSR 38

This rule amends a current legislative rule which establishes the framework for regulation of farmers markets and farmers markets market vendors. The definition of a farmers' market is amended to include an on-farm market. A requirement has been added for any vendor selling fresh uncut produce at a farmers' market to complete and submit an annual produce affidavit form to the Department, only while the Department receives Food Safety Modernization Act funding from the federal Department of Agriculture. It has also been amended to add freeze-dried foods as a potentially hazardous farm and food product requiring a vendor permit in order to be sold at a farmers' market.

The rule adds safe handling instructions and any required date or lot codes to labeling requirements. Lastly, it adds USDA-inspected or certified facilities to the list of sellers of potentially hazardous food which must obtain a vendor permit from the Department to sell at farmers market and waives the vendor permit fee for these facilities.

Senate Bill No. 374. Athletic Commission, Regulation of Boxing, 177 CSR 01

This rule amends a current legislative rule. The current rule allows for one-night semi-professional match-style fighting (non-MMA) events in which bouts must be 3 rounds, 60 seconds per round with 60 second rest periods between rounds. This rule would allow the Commission to authorize promoters to hold a one-night championship match-style contest where the Commission selects the number of rounds and how long they last, as long as a match (excluding rest periods) does not exceed 10 total minutes. It also provides that a contestant can't be barred from participation in such a match-style contest based upon prior wins in semi-professional tournament style events.

Senate Bill No. 375. Athletic Commission, Regulation of Mixed Martial Arts, 177 CSR 02

This rule amends a current legislative rule. The current rule mandates that an amateur MMA fighter's first 3 bouts must be limited to 2-minute rounds with a minute rest period in between with each subsequent bout the time increases to 3-minute rounds

with a minute rest period in between. This rule allows the Commission to establish a policy which could modify the number and time of rounds of an amateur contestant's fourth and subsequent bouts as long as the total bout (excluding rest periods) does not exceed 15 minutes.

Senate Bill No. 376. Auditor, Standards for Voluntary Payroll Deductions, 155 CSR 03

This rule amends a current legislative rule. It removes any previously allowable voluntary deductions for employee associations. This is in response to Committee Substitute for House Bill 2009 which passed during the 2021 Regular Session.

The rule removes language regarding 1st and 2nd pay periods in favor of the now-standard bi-weekly pay period methodology for voluntary deductions.

The rule also: sets forth the procedure for an employee or officer to request an allowable voluntary deduction; makes the Auditor's authorization and approval of voluntary deductions permissible rather than mandatory; allows the Auditor to approve a charitable or commercial organization that does not have at least 50 employees from at least 2 state agencies; and allows the Auditor to approve any deduction that is not prohibited by law.

Senate Bill No. 377. Conservation Agency, Operation of West Virginia State Conservation Committee and Conservation Districts, 63 CSR 01

This rule amends a current legislative rule which establishes procedures for election and appointment of conservation district supervisors, expenditures of funds by the State Conservation Committee, and compliance with the Open Governmental Proceedings Act.

The rule sets forth the qualifications for elected or appointed conservation district supervisors; adds provisions regarding elections, terms of office for county district supervisor, applicability of W. Va. Code §6-1-1 *et seq.* regarding removal of conservation district supervisors, and procedures when no candidate seeks office. The requirement for county district supervisor to be a farmer with minimum 5 years of land management or related experience, strong working interest in natural resources, and knowledge of conservation best management practices has been deleted and a requirement has been added that county district supervisor have experience in agriculture, conservation, or natural resources.

Finally, the rule clarifies the applicability of fund expenditure requirements and sources of funding, clarifies restrictions on use and availability of (state) watershed improvement program funds, removes references to watershed improvement districts, and adds references to local government usage of funds.

Senate Bill No. 378. Conservation Agency, Conservation District Accounting and Auditing Standards, 63 CSR 04

This rule is new. It prescribes accounting and auditing requirements and establishes the minimum system of account and auditing practices and procedures that are to be used by conservation districts, which will be supplemented by local policies and procedures developed by the conservation districts themselves. The rule: defines terms; sets forth general requirements regarding administration of the accounting and auditing standards; explains basis of accounting and requires accounting records to be maintained on an accrual basis; sets forth requirements for signatures on transactions; provides requirements for bank accounts and institutions to be used by conservation districts for receipt and maintenance of funds; contains requirements for reconciliation of bank accounts and certificates of deposit; sets forth procedures for receipts processing; sets forth procedures for expenditure processing (invoices and bills); sets forth procurement processes for all funds held in a conservation district except co-administered funds; provides procedures for handling of conservation district contracts for projects using co-administered funds; contains requirements regarding fixed assets; sets forth procedures relating to payroll; provides requirements pertaining to financial statements; contains requirements for records and record retention; provides requirements for annual audits of the conservation districts; sets forth procedures for handling suspected fraud, waste, and abuse of assets; and lists supplemental policies and procedures to be established by the State Conservation Committee and by the conservation districts, respectively.

Senate Bill No. 379. Board of Dentistry, Dental Recovery Networks, 05 CSR 15

This rule amends a current legislative rule relating to West Virginia Dental Recovery Networks (WVDRN). The rule opens the program to applicants for licensure; provides that participation in the WVDRN will not be disclosed to the Board, as long as it is voluntary and in compliance with the terms of the agreement to participate; and provides personally identifiable information (PII) will not be included in statistical reporting to the Board regarding the WVDRN. Finally, the rule will allow the WVDRN to assess the costs of participation in the WVDRN to participants.

Senate Bill No. 380. Board of Funeral Service Examiners, Funeral Director, Embalmer, Apprentice, Courtesy Card Holders and Funeral Establishment Requirements, 6 CSR 01

This rule amends a current legislative rule which governs licensing and conduct of embalmers, funeral directors, funeral establishments, and courtesy card holders. The rule: includes hydrolyzation process in the definition of cremation; updates apprenticeship requirements to refer to combined funeral director and embalmer license as a funeral service license; changes the supervision requirement for an apprentice funeral director from direct to general; provides requirements for an

apprenticeship for a funeral director only license; adds hydrolyzation to provision governing care of bodies involved in a crime or suspected crime; exempts business cards from advertising provisions; adds a new provision requiring 2 years to complete requirements for licensee-in-charge and provides a deadline of July 1, 2024, for completion; adds a prohibition on a licensed funeral establishment performing services if it is unable to hire full licensee-in-charge within 30 days; increases 5-year apprenticeship renewal fee to \$125 and fee for 1-year extension of apprenticeship to \$100; and adds requirement that 1 of 3 general funeral service continuing education hours must be in ethics.

Senate Bill No. 381. Board of Funeral Service Examiners, Crematory Requirements, 6 CSR 02

This rule amends a current legislative rule which governs licensing and conduct of embalmers, funeral directors, funeral establishments, and courtesy card holders. The rule: defines terms; requires crematory and hydrolyzation facilities to have a certificate of registration; provides a certification requirement for crematory facilities and authorizes the Board to regulate certificate holders; requires crematory operator requirements to encompass the hydrolysis process; specifies who may perform or arrange steps in funeral process; requires a funeral service licensee to remove objects from a body and deletes language authorizing removal of objects by crematory operators; adds continuing education requirements for crematory operators; and adds requirements for hydrolysis certification.

Senate Bill No. 382. Board of Funeral Service Examiners, Fee Schedule, 6 CSR 07

This rule amends a current legislative rule which establishes a schedule for fees paid to the West Virginia Board of Funeral Services Examiners. The rule adds a \$200 initial license fee for funeral director only license and a \$250 biennial renewal fee for funeral director only license.

Senate Bill No. 383. Board of Landscape Architects, Registration of Landscape Architects, 9 CSR 01

This rule amends a current legislative rule. The current rule requires applicants for licensure as a landscape architect provide four references upon application. This rule would lower this requirement to just three references, which reportedly reflects the national standard.

Senate Bill No. 384. Board of Medicine, Licensing of Physicians and Podiatric Physicians and Disciplinary Procedures for Applicants, licensees, Credential Holders, 11 CSR 01A

This rule amends a current legislative rule. It is in response to Enrolled Committee Substitute for Senate Bill 585, which passed during the 2022 regular legislative session, and created a new code section W. Va. Code §30-3-11c, relating to administrative licenses. Specifically, physicians who seek to manage the integration of clinical medicine, strategy operations, and other business activities related to the delivery of health care services, advise both public and private organizations on health care matters; authorize and deny financial payments for care; organize and direct research programs; review are provided for quality purposes; and perform other similar duties that do not require or involve direct patient care may now apply for an administrative license.

This rule sets forth the qualification and application requirements for an administrative medicine license, establishes practice parameters pursuant to an administrative medicine license, including a prohibition on clinical practice; sets forth the process and limitations related to converting an unrestricted medicine license (including those granted via interstate compact) to an administrative medicine license and vice versa; and establishes that the professional conduct standards set forth in the Medical Practice Act and the Board's rules apply to administrative medicine licenses.

This rule provides that an administrative medicine license is valid for a period of two years and that an administrative medicine license is not eligible for inactive status, as inactive licenses relate to the ability to practice clinical medicine. An administrative medicine license is subject to the same denial, probation, limitation, discipline, suspension or revocation as other licensees and professional credential holders.

Senate Bill No. 385. Board of Medicine, Licensing, Disciplinary and Complaint Procedures; Continuing Education, Physician Assistants, 11 CSR 01B

This rule amends a current legislative rule. It is in response to House Bill 214 enacted during the 2022 Second Extraordinary Legislative Session which modified the prescriptive authority for physicians and provided the Board with rulemaking authority. The rule provides for the regulatory framework for the licensure, regulation, and discipline of physician assistant practice in West Virginia. It authorizes a physician's assistant to practice at one or more additional locations not included on his or her activated practice notification on an occasional basis not to exceed two days per month per location; and provides that the only limits on prescriptive authority relate to controlled substances and narcotics.

Senate Bill No. 386. Board of Medicine, Collaborative Pharmacy Practice, 11 CSR 08

This rule amends a current legislative rule. The rule is in response to Enrolled Committee Substitute for House Bill 4324, passed during the 2022 Regular Legislative Session, which modernized collaborative pharmacy practices and streamlined procedures relating to the registration of collaboration with the Boards of Pharmacy,

Medicine, and Osteopathic Medicine. This rule is agreed upon by the Board of Medicine, the Board of Pharmacy, and the Board of Osteopathic Medicine.

The rule specifies the requirements for collaborative pharmacy practice. It establishes requirements for the development of a collaborative pharmacy agreement between collaborating pharmacists and physicians at the practice level and outlines the process and requirements of submission of a valid practice notification to the boards. It also establishes eligibility for participation in collaborative pharmacy practice agreements and sets forth the role of the Board of Pharmacy in verifying pharmacist eligibility. It requires that the boards maintain a list of all practice notifications for collaborative pharmacy practice.

Senate Bill No. 387. Board of Medicine, Prohibiting Sexual Misconduct by Healthcare Practitioners, 11 CSR 16

This rule is new and is in response to Enrolled Committee Substitute for Senate Bill 606 which passed during the 2022 Regular Session. It provides that sexual misconduct, by either sexual contact or sexual interaction, constitutes gross misconduct. It also explicitly states that patient consent, or patient initiation, to any sexual contact/sexual interaction/sexual impropriety with a practitioner is not a defense to any charge that the practitioner engaged in sexual misconduct or a mitigating factor to any charge that the practitioner engaged in sexual misconduct.

This rule also prohibits a practitioner from committing sexual misconduct with a patient surrogate, establishes parameters by which a practitioner may have a romantic relationship with a former patient that is not categorized as sexual misconduct, addresses other types of sexual misconduct, including sexual harassment, that would constitute prohibited sexual misconduct by a practitioner, and provides that practitioners who engage in sexual misconduct, or other violations of the professional conduct standards contained in this rule are subject to license/credential denial proceedings or disciplinary action.

Senate Bill No. 388. Board of Optometry, Optometric Telehealth Practice, 14 CSR 12.

This rule is new. It lays out the requirements for the practice of optometric telemedicine. It requires the optometrist performing telehealth to have received and reviewed the patient's records, performed some examination, provided the patient with information about services to be performed, and initiated any additional diagnostics or referrals as needed. The standard of care for providing optometric care in the State of West Virginia via telehealth services by a registrant or licensed optometrist is the same as for in-person care. This rule also states that nothing in this rule requires a practitioner to use telemedicine technologies to treat a patient if the practitioner, in his or her discretion determines that an in-person encounter is required. A telehealth optometrist may not prescribe Schedule II drugs.

The rule also sets forth the process for an optometrist wishing to participate in telemedicine to register with the Board and removes the exception to the prohibition on using any automated refractor or other automated or remote testing device to generate refractive data.

Senate Bill No. 389. Board of Osteopathic Medicine, Osteopathic Physician Assistants, 24 CSR 02

This rule amends a current legislative rule in response to House Bill 214 which was passed during the 2022 Second Special Session of the WV Legislature. The rule regards osteopathic physician assistants and relates to their licensing, practice, prescribing limitations, professional discipline, and continuing education. The rule allows a physician assistant to practice on behalf of a health care facility at one or more additional locations, such as a health fair, that are not included on a practice notification on an occasional basis of 2 days per month per location. It also provides that a physician assistant may not prescribe a Schedule I controlled substance. A physician assistant can prescribe a 3-day supply of a Schedule II controlled substance and must comply with existent state laws regarding opioids and narcotics. Otherwise, there are no formulary limitations to a physician assistant's prescriptive authority.

Senate Bill No. 390. Board of Pharmacy, Licensure and Practice of Pharmacy, 15 CSR 01

This rule amends a current legislative rule. Substantive changes were made to the rule with respect to the provisions for a pharmacist-in-charge and for a Pharmacist Consultant.

Locations that need a pharmacist consultant are specified. These include: a hospital or medical clinic without a pharmacy; a humane society; a weight loss clinic; an urgent care clinic; a long-term care facility; and an opioid treatment facility or medication assisted treatment facility. They do not include: a teaching institution/researcher; emergency services; law enforcement; or a veterinary hospital or clinic.

Requirements related to a pharmacist consultant no longer apply to the following facilities: a skilled nursing facility; intermediate nursing facilities; nursing homes; rest homes; personal care centers; governmental agencies; jails and correctional facilities; clinics and other places where a pharmacy permit is not held but a controlled substance permit is required; or any place where a pharmacist's expertise is needed to increase or improve patient care and safety in the use of drugs and devices or where expertise is needed to ensure proper storage conditions and safeguards.

Senate Bill No. 391. Board of Pharmacy, Uniform Controlled Substances Act, 15 CSR 02

This rule amends a current legislative rule. The purpose of the rule is the registration and control of the manufacture and distribution of controlled substances in West Virginia. The only substantive amendment is to the section which requires a wholesale drug distributor to report suspicious orders. It now requires the reporting be on a Board supplied form.

Senate Bill No. 392. Board of Pharmacy, Registration of Pharmacy Technicians 15 CSR 07

This rule amends a current legislative rule. It has been amended to increase the ratio of pharmacists-in-charge to pharmacy technicians and/or pharmacy technician trainees from one to four to one to six.

Senate Bill No. 393. Board of Pharmacy, Regulations Governing Pharmacy Permits, 15 CSR 15

This rule amends a current legislative rule. The purpose of the rule is to govern the licensure and regulation of pharmacy permits.

New language regarding advertising has been which prohibits advertising that may jeopardize the health, safety, or welfare of patients. A pharmacy may not require a pharmacist to participate in advertising. Additional language provides for a working environment that protects the health, safety, or welfare of a patient, which includes adequate staff, appropriate opportunities for uninterrupted rest, and adequate time to complete professional duties. A new section adds a whistleblower protection clause. It provides that a permit or license holder in violation of federal or state whistleblower laws may be subject to disciplinary action by the Board.

Senate Bill No. 394. Board of Pharmacy, Inspections, 15 CSR 19

This rule is new. It is in response to a report of the Post Audit Division that found that the Board of Pharmacy lacked formal, written policies, procedures, and processes for its inspection program.

The rule requires an inspector to meet minimum qualifications that include at least 10 years of pharmacy practice experience and completion of training offered by the Board, the National Investigator and Inspector Training Basic Course, and the National Association of Boards of Pharmacy Certification for Inspection Sterile Compounding Facilities.

The Board may parcel the state into regions each with approximately the same number of licensed facilities. Each inspector would be assigned a region in which they would be responsible for inspecting all facilities licensed by the Board.

The rule also has requirements regarding frequency of inspections, notice of inspections, unscheduled inspections, necessary requirements for inspections, and reports to the Board.

Senate Bill No. 395. Board of Pharmacy, Donated Drug Repository Program, 15 CSR 20

The rule is new and is in response to the passage of Enrolled House Bill 2817 during the 2022 Regular Session of the Legislature which created the Donated Drug Repository Program.

The rule contains provisions relating to waivers for donors and eligible recipients from any provision of the rule related to this program if it is in the interest of public health; allows persons or entities to dispose of an eligible drug by donating it to an eligible recipient; defines an eligible recipient; requires drugs from a donor to be in tamper-resistant packaging or have a tamper evident seal; specifies who may donate legally obtained pharmaceuticals; specifies which drugs may or may not be donated; requires identifying information be removed; and sets forth requirements for storage and inventory. It requires donated drugs be kept separate from other inventory and provides for repackaging.

Eligible patients must meet income guidelines consistent with Medicaid eligibility, be uninsured or underinsured, or enrolled in a public assistance program. If a donated drug exceeds the need for indigent patients, that drug may be dispensed to other persons in need.

With respect to dispensing the drugs, it must be consistent with law. The drugs must be dispensed pursuant to a valid prescription. The patient must be provided appropriate counseling. Donated drugs may not be resold and are considered nonsalable.

The rule contains record keeping requirements and limits liability unless the conduct is willful or wanton misconduct.

Senate Bill No. 396. Board of Psychologists, Code of Conduct, 17 CSR 06

This rule amends a current legislative rule by extending the sunset provision from July 1, 2023, until August 1, 2028.

Senate Bill No. 397. Board of Registered Professional Nurses, Requirements for Registration and Licensure and Conduct Constituting Professional Misconduct, 19 CSR 03

This rule amends a current legislative rule in response to Senate Bill 518 passed during the 2022 Regular Legislative Session.

This rule governs applicants for licensure as a registered nurse that were educated in the United States or one of its territories, veterans, and applicants for licensure as a registered nurse that were educated outside the United States or one of its territories. It clarifies the process of completing the state and federal background check; clarifies what actions are necessary by the applicant to supplement his or her personal history as it relates to establishing good character and a clean professional credentialing history relates to paying required fees for licensure by examination; clarifies the amount of training that is required to make veteran training commensurate with civilian training; and specifies required examinations.

A new section has been added relating to a temporary permit for an exam applicant. This subsection increases the time for which an exam applicant can possess a permit from 90 to 180 days or until the licensing examination results are released. Temporary permits are non-renewable.

The rule also requires that an applicant for endorsement submit to a state and federal background check and increases the length of time a temporary permit is valid for an endorsement applicant from 90 days to 180 days.

The time frame for renewal of a license is changed from annual to biennial, specifically October 31 of each even numbered year.

Senate Bill No. 398. Board of Registered Professional Nurses, Advanced Practice Registered Nurses Licensure Requirements, 19 CSR 07

This rule amends a current legislative rule in response to House Bill 214, which passed during the 2022 First Extraordinary Session, which expanded the prescriptive authority of W. Va. Code §30-7-15a.

A new section has been added which provides for standards relating to the scope of practice for Advanced Practice Registered Nurses. It allows Advanced Practice Registered Nurses to perform nursing acts consistent with their education, training, and experience and which they are competent to perform. There is an amendment included that clarifying the circumstances of national recertification.

Senate Bill No. 399. Board of Registered Professional Nurses, Limited Prescriptive Authority for Nurses in Advanced Practice, 19 CSR 08

This rule amends a current legislative rule in response to House Bill 214, which passed during the 2022 First Extraordinary Session, which expanded the prescriptive authority for nurses in advanced practice. It strikes through the previously applicable restrictions on APRN prescriptive authority and replaces that language with language regarding their currently expanded prescriptive authority.

Senate Bill No. 400. Board of Registered Professional Nurses, Continuing Education and Competence, 19 CSR 11

This rule amends a current legislative rule that has not been reviewed since 2007. Most of the amendments are technical in nature or remove obsolete language. It eliminates the “twelve-month” reporting period for continuing education credits, thus, linking continuing education reporting to license renewal which is now biennial.

Senate Bill No. 401. Board of Registered Professional Nurses, Fees for Services Rendered by the Board, 19 CSR 12

The rule amends a current legislative rule in response to Enrolled Committee Substitute for Senate Bill 518 passed during the 2022 Regular Legislative Session which affected several fees.

This Section addresses the schedule of fees assessed by the Board of Registered Nurses. The rule removes the separate fee for a temporary permit and incorporates this into the RN endorsement fee reduces the current fee from \$100.00 to \$25.00; increases the renewal fee from \$60.00 to \$95.00 based on an increases in the time a license is valid from one to two years; removes the fee for a duplicate license and name change; removes the fee for a frameable certificate reduced the fee for endorsement of advance practice registered nurses from \$50.00 to \$30.00; and adds the following new fees \$7.00 relating to an RN conversion to a muti-state license, \$10.00 relating to a name change, \$50.00 relating to a New Prelicensure Nursing Education Program Application, and \$100.00 relating to an RN and APRN Telehealth Registration (Initial and Renewal).

Senate Bill No. 402. Board of Registered Professional Nurses, Practitioner Requirements for Accessing the West Virginia Controlled Substances Monitoring Program Database, 19 CSR 14

This rule amends a current legislative rule by amending the scope of the rule to set forth the provisions of W. Va. Code §60A-9-5A (a) relating to registering with the Controlled Substances Monitoring Program.

Senate Bill No. 403. Board of Registered Professional Nurses, Telehealth Practice Requirements; Definitions, 19 CSR 16

This rule amends a current legislative rule. It establishes procedures for the practice of telehealth for registered nurses and advanced practice registered nurses. The rule allows advance practice registered nurses to prescribe Schedule II controlled substances and clarifies the option that in-person treatment be available if the practitioner thinks that an in-person visit is required. It is amended to remove the requirement that a telehealth provider verify that a patient had visited an in-person health care practitioner within 12 months of an initial telehealth service by the provider.

Senate Bill No. 404. Secretary of State, Early voting In-Person Satellite Precincts, 153 CSR 13

This rule amends a current legislative rule which governs criteria to assure neutrality and security in the selection process for early in-person satellite precincts and establishes processes and deadlines for establishing the precincts. The rule changes references from satellite precinct to community voting location throughout the rule. The rule: adds a requirement that a community voting location proposal to be in writing; authorizes the county executive committee chairs to nominate sites as early voting community voting locations and provides requirements for the nomination process; deletes language requiring early voting satellite precinct proposals to be approved on a per-election basis and replaces this provision with authority for an approved community voting location to be used in subsequent elections and provides requirements for continued use; adds a provision with process for handling an emergency community voting location change up to 60 days before election day; and specifies the process for handling a community voting location change within 60 days of election day.

Senate Bill No. 405. Secretary of State, Combined Voter Registration and Driver Licensing Fund, 153 CSR 25

This rule amends a current legislative rule which establishes guidelines for the Combined Voter Registration and Driver Licensing Fund. The rule: specifies that the rule applies to the remainder of the Combined Voter Registration and Driver Licensing Fund; deletes and reserves entire section relating to administration of the fund and deposit of \$0.50 DMV license issuance fee; and deletes the obsolete provision regarding payment for National Change Of Address service.

Senate Bill No. 406. Secretary of State, Administrative Procedures for the Nonpublic Funding for Election Administration Fund, 153 CSR 54

This rule is new. It establishes administrative procedures and eligibility of West Virginia counties to apply and receive funding for election administration and related expenses from nonpublic funding sources, payable from the Nonpublic Funding for Election Administration Fund created by W. Va. Code §3-1A-9.

It specifies the public bodies and officials who are subject to this rule, requires a covered public body or official to apply to the State Election Commission (SEC) to receive funding from the Nonpublic Funding for Election Administration Fund and specifies information to be included in the application; outlines the process for application review, including applicable deadlines, public meeting protocol, deliberations on the application including factors for consideration, decision-making and communication of the decision to the applicant, steps following approval or denial, and the process for reconsideration of a rejected application; and outlines the process for donations made by a nonpublic funding source, including requirement for donations to be deposited into the Nonpublic Funding for Election Administration Fund and distributed by the SEC, handling of suggested recipients or purposes specified by a

donor, protocols for partial or full revocation of a donation, and requirements for notice by the SOS to the nonpublic funding source.

Senate Bill No. 407. Treasurer, Enforcement of the Uniform Unclaimed Property Act, 112 CSR 05

This rule amends a current legislative rule regarding the Uniform Unclaimed Property Act based on the passage of Enrolled Committee Substitute for House Bill 4511 during the 2022 Regular Session, which made substantive changes to that Act.

The amendment adds provisions relating to virtual currency, securities, and the termination of retirement plans. One of the key amendments to the rule allows the Treasurer to waive the requirement to file a claim for property having a value of less than \$5,000, that is not a tangible item, and that does not require a W-9 (a form used to obtain taxpayer information to assist the holder to provide informational reporting to the IRS) to be completed. The program implementing this change is called “West Virginia Cash Now”.

The rule also adds a section prohibiting the Treasurer from selling a military medal or award and prescribing how transfer of the medal or award is to be accomplished.

Senate Bill No. 491. Treasurer, Hope Scholarship Program 112 CSR 18

This rule is new. It effectuates the funding mechanism of the Hope Scholarship Act found in §18-31-1 *et seq.* of the code.

This rule sets forth eligibility requirements to receive Hope Scholarship funds. To be eligible, a student must: be a resident of the state; have not successfully completed a secondary education program; be under 21 years old; and meet other enrollment criteria. Section 3 also provides criteria for participation, if on July 1, 2024, the participation rate in the program (made up of both participants and eligible applicants) during the previous school year is less than 5% of net public school enrollment adjusted for state aid purposes for the previous school year; provides for termination of an account if a student for any reason becomes ineligible during the academic year,

This rule sets forth the application process and sets forth the minimum information which the application must contain. To enroll, the application must be submitted by the designated account holder on the student’s behalf. This section also requires renewal applications, to be submitted every year and empowers the Board to accept applications from eligible students who missed the application period on an ad hoc basis.

The rule also requires the authorized account holder, be only one eligible person authorized to manage the account on behalf of the student. Eligible persons are the student's parent, guardian, custodian, or other person with legal authority to act on behalf of the student, as determined by the Board; or the student, if he or she is 18 or older on or before the first day of the academic year. The rule allows a secondary account holder who meets the same eligibility requirements as the primary account holder and is limited in his or her authority to use the funds to purchases using the online portal. A primary account holder may remove the secondary account holder's access at any time by submitting a request to the Board. This section provides for the removal of an authorized account holder under specified circumstances.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: March 11, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 409

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing Department of Commerce to promulgate legislative rules.

CODE REFERENCE: §64-10-1 *et seq.* (Amends and Reenacts)

SUMMARY:

The Committee Substitute, which is the Department of Commerce Bundle, contains 10 rules. It is known as Bundle 10.

Senate Bill No. 409. Development Office, Small Business Innovation Research and Small Business Technology Transfer Matching Funds Program, 145 CSR 15

This rule amends a current legislative rule, which governs the West Virginia Small Business Innovation Research and Small Business Technology Transfer Matching Funds Program (Matching Funds Program) that provides grants for West Virginia for-profit small businesses. The rule reduces from three to two the monthly periods per year during which applications for participation in the Matching Funds Program will be accepted by the Department of Commerce. Thus, applications would be accepted only during the periods of January 1 – 31 and July 1 – 31, rather than during the periods January 1 – 31, May 1 – 31 and September 1 – 30 each year. The agency advises that this is necessary because the history of recent Matching Funds Program revenues from the p-card rebate program have been insufficient for a full funding of awards three times a year.

Senate Bill No. 410. Division of Labor, Board of Manufactured Housing Construction and Safety Rule, 42 CSR 19

This rule amends a current legislative rule. The Board of Manufactured Housing Construction and Safety has been approved by the federal Department of Housing and Urban Development (HUD) as the state administrative agency (SAA) with respect to enforcement of federal manufactured housing construction and safety standards. To maintain that designation, HUD conducts periodic reviews of the Board's programs and rules. This rule address concerns identified by HUD during its most recent review and will allow the Board to continue to be the SAA for manufactured housing in the state.

Most of the changes made by the amendments are technical. The rule authorizes the Board to provide private home inspections to help resolve consumer complaints. It

also authorizes random inspections of private manufactured home installations to hold installers responsible for the work they perform. It provides an hourly inspection fee and allows the payment of reasonable expenses.

The rule amends the complaint handling procedures, making the process clearer and more specific. It adds a new section regarding cease-and-desist orders which authorizes the Board to order persons engaged in the manufactured housing business without a license to stop doing so immediately and to impose a penalty of not less than \$200 nor more than \$1,000.

Senate Bill No. 411. Division of Labor, Supervision of Plumbing Work, 42 CSR 32

This rule amends a current legislative rule, relating to the licensing and regulation of plumbing work by the Division of Labor. The amendments implement changes resulting from the passage of Enrolled Committee Substitute for House Bill 2008 during the 2021 Regular Session and Enrolled Committee Substitute for House Bill 4634 during the 2022 Regular Session.

House Bill 2008 altered the requirements for licensure for all classifications of plumbers: plumbers-in-training, journeyman plumbers, and master plumbers, essentially requiring passage of a written examination for licensure as a journeyman, passage of a written examination plus at least one year as a journeyman for licensure as a master, and payment of a fee not to exceed \$25 for licensure as a plumber-in-training. The rule reflects those changes.

House Bill 4634 effected a form of universal licensure recognition, authorizing licensure for plumbers who are licensed in other states, or have work experience in other states that do not license plumbers. The rule reflects those requirements.

Senate Bill No. 412. Division of Labor, Regulation of HVAC Work, 42 CSR 34

This rule amends a current legislative rule. Passage of Enrolled Committee Substitute for House Bill 2008 in 2021 Regular Session and Enrolled Committee Substitute for House Bill 4634 in 2022 Regular Session necessitated amendment of the existing rule relating to HVAC work. House Bill 2008 modified the requirements for licensure for HVAC technicians. The rule reflects a reduction in the experience required for licensure as an HVAC tech from 8,000 hours (2,000 hours on HVAC systems plus 6,000 hours of HVAC-related work, including sheet metal industry work) to 2,000 hours. It also reflects the elimination of the 2,000 hours experience requirement for HVAC residential technician licensure.

The rule also adds provisions implementing the licensure recognition requirements of House Bill 4634 from the 2022 Regular Session relating to licensing based on work experience licensing when the applicant is licensed in another state.

Senate Bill No. 413. Division of Labor, Registration of Service Persons and Service Agencies, 42 CSR 35

This rule amends a current legislative rule by extending the sunset date.

Senate Bill No. 414. Division of Labor, Registration of Weighing and Measuring Devices Used by Businesses in Commercial Transactions, 42 CSR 36

This rule amends a current legislative rule by extending the sunset date.

Senate Bill No. 415. Division of Natural Resources, Hunting, Fishing, and Other Outfitters and Guides, 58 CSR 11

This rule amends a current legislative rule by extending the sunset date.

Senate Bill No. 416. Division of Natural Resources, Commercial Whitewater Outfitters, 58 CSR 12

This rule amends a current legislative rule. It reflects changes approved by the Whitewater Commission for flow rate changes that reduced the regulatory burden on some waters which had previously been designated as whitewater zones. The rule also adds some additional permitted rental zones.

Finally, the rule increases the cubic feet per second inner tube restriction on several parts of the New River; allows inner tube, canoes, inflatable kayaks, kayaks, standup paddle boards, and rafts from Teays Landing to the bridge at Hawks Nest State Park; and forbids rental of any vessel or watercraft at flows exceeding 10,000 cubic feet per second for the Thurmond location.

Senate Bill No. 417. Division of Natural Resources, Special Motorboating Regulations, 58 CSR 27

This rule amends a current legislative rule. It reflects changes requested by the Pleasants County Commission and the City of Morgantown. Each political subdivision solicited public comment on its proposed changes and then applied to DNR for a rule change based on the results. Pleasants County sought to extend a no wake zone on the Ohio River due to safety concerns in an adjacent swimming area. Both Pleasants County and Morgantown requested the removal of buoy requirements to sync with US Coast Guard federal regulatory changes.

Senate Bill No. 418. Division of Natural Resources, Miscellaneous Permits and Licenses, 58 CSR 64

This rule amends a current legislative rule by extending the sunset date.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: March 10, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 461

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to WV public employees grievance procedure.

CODE REFERENCE: §6C-2-1, §6C-2-2, §6C-2-3, §6C-2-4, and §6C-2-6 (Amends and Reenacts)

SUMMARY:

The bill updates the procedures which govern claims brought by public employees alleging a violation, misapplication, or misinterpretation of the statutes, policies, rules, or written agreements applicable to them.

The bill clarifies that neither actions taken by an employer related to declared states of preparedness or states of emergency, nor matters relating to protected classes under the West Virginia Human Rights Act, may be grieved.

The bill exempts the Division of Personnel as a party to grievances involving Department of Transportation employees.

The bill requires a grievant to provide a signed and notarized grievance and provides that a grievant's failure to sign or notarize the grievance will result in dismissal without prejudice.

The bill provides for the extension of time limits for cause when requested by a party.

The bill requires a grievant representative to provide the name and work location of each employee being represented and requires the grievant to identify their representative.

The bill provides that the grievant or employer may prevail by default in the absence of a required response and either party may appeal that decision.

The bill provides that a party may assert a motion to dismiss on certain grounds (including untimeliness, lack of jurisdiction, failure to state a claim) and requires the resolution of motions to dismiss within 10 days before further proceedings can take place.

The bill sets forth a process for appeal and potential remand of a level one finding of untimeliness of the grievance filing and requires the administrative law judge to decide timeliness issues within 30 days.

The bill prohibits revival of a dismissed grievance that is subsequently consolidated.

The bill mandates that grievances are held in abeyance when an employee is on leave.

The bill limits the employee representative to serve in the capacity of representative in no more than five grievances per year, requires employee accounting for grievance time, and further requires the employee representative to request annual leave for any time in excess of four hours (per grievance).

The bill requires an administrative law judge to schedule a level three hearing within 30 days of receipt of the appeal.

The bill permits chief administrators to resolve scheduling/preparation time disagreements, record the initial conference and permits them to adopt procedural rules.

Finally, the bill updates language to reflect that level three decisions are appealed directly to the Intermediate Court rather than Kanawha County Circuit Court, and that attorney fees and costs may be awarded to a prevailing appellant; however, the clarifies that attorney fees and costs may only be recovered from a grievant if he or she has not substantially prevailed at any level of the grievance process or any appeal to the Intermediate Court of Appeals or the Supreme Court of Appeals.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 490

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Patrol Officer Cassie Marie Johnson Memorial Act.

CODE REFERENCE: §61-6-11a (New)

SUMMARY:

This bill creates the new criminal offense of willful obstruction of certain public safety officers acting in his or her official capacity and thereby causing the death of the officer. It is named the Patrol Officer Cassie Marie Johnson Memorial Act.

Specifically, the bill criminalizes knowing willful and forcible obstruction of a law enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, State Fire Marshal, a deputy or assistant fire marshal, firefighter or EMS personnel who at the time is acting lawfully in his or her official capacity and the obstruction proximately causes the death of one of the listed workers. “Forcibly” is defined as “actions involving the use of physical force.” This is a felony and upon conviction, shall be sentenced to 15 years to life in prison.

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: June 4, 2023

ACTION BY GOVERNOR: Signed March 13, 2023

Senate Bill 495

COMMITTEE SUBSTITUTE

SHORT TITLE: Providing correctional institutions and juvenile facilities video and audio records be confidential.

CODE REFERENCE: §5A-4-8a (Amends and Reenacts)

SUMMARY:

This bill makes corrections to the existing law regarding confidentiality of facility video, incident reports, and investigation reports of the Division of Corrections and Rehabilitation.

Court and administrative tribunals may order disclosure with limits on the use of the document's recordings or records. The bill also clarifies that such records may be subject to disclosure pursuant to the West Virginia Freedom of Information Act and provisions of W. Va. §49-5-101 relating to juvenile records.

Counsel for possible litigants and family members of persons who suffered an alleged injury or died in custody are allowed to view facility video, incident reports, or investigation reports but not possess otherwise confidential records for purposes of determining if litigation is viable.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: March 11, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 508

INTRODUCED

SHORT TITLE: Clarifying reporting and disclosure requirements for grassroots lobbying expenditures

CODE REFERENCE: §6B-3-5 (Amends and Reenacts)

SUMMARY:

This bill amends monetary thresholds under Chapter 6B (the Ethics Act) related to “grass roots lobbying campaigns.” Under prior law, after spending more than \$200 in one month or \$500 over a three-month period on a campaign aimed at the public and designed to influence legislation, (*e.g.*, passing out flyers in support of a bill, holding a rally, or encouraging citizens to contact their representatives, an individual was required to register as the sponsor of a grass roots lobbying campaign). After registration, a sponsor was also required to disclose the names of any person who had donated more than \$25 dollars to that campaign.

The amended bill raises these monetary thresholds. Now, an individual must spend more than \$1,000 dollars in one month or more than \$5,000 over three months to trigger the registration requirement. Only donors who donate at least \$1,000 are required to be disclosed. The bill further clarifies that only donors whose donations are made “for the purpose of furthering” the grass roots lobbying campaign are required to be disclosed.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed on March 29, 2023

Senate Bill 529

INTRODUCED

SHORT TITLE: Allowing businesses to register as limited liability limited partnerships.

CODE REFERENCE: §47B-10-3 (Amends and Reenacts)

SUMMARY:

This bill provides for recognition of limited liability limited partnerships and requires the use of “Registered Limited Liability Limited Partnership”, “L.L.L.P.”, or “LLL” as the suffix of the entity name. Accordingly, business entities registered as LLLPs in other states can use that same suffix when doing business in West Virginia and are not required to register a new name with an LLP (Registered Limited Liability Partnership) designation.

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: June 4, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 534

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to nonintoxicating beer, nonintoxicating craft beer, cider, wine, and liquor license requirements.

CODE REFERENCE: §11-16-3, §11-16-6a, §11-16-6d, §11-16-6f, §11-16-8, §11-16-9, §60-3A-3a, §60-3A-8, §60-4-3a, §60-4-3b, §60-7-2, §60-7-6, §60-8A-5, and §60-8-27 (Amends and Reenacts); §8-12-26, §60-7-2a, §60-7-8a, §60-7-8g, and §60-8-8g (New)

SUMMARY:

The bill:

- Clarifies amendments made to code in House Bill 4848 from the Regular Session of 2022.
- In order to expand tourism opportunities, it grants manufacturing licensees a limited off-site retail privilege at private fairs and festivals when all parties agree to permit such activity.
- Authorizes municipalities to create private outdoor designated areas that are zoned for alcohol consumption in the area for alcohol drinks sold by qualified permit holders who are also Class A licenses.
- Allows beer slushies;
- Requires payment of taxes and fees;
- Removes time-limited gallonage cap on distilleries, mini-distilleries, and micro-distilleries;
- Clarifies that micro-distilleries are subject to some general provisions of code applicable to mini-distilleries and distilleries;
- Creates a private food court license and a private coliseum or center license;
- Clarifies dual licensing provisions so a fair and festival can dually operate at a private coliseum or center;
- Permits a private wine restaurant to operate a separately licensed but connected wine specialty shop.

- Modifies some on-site food requirements to offset food price measures for private club bars and private cigar shops.
- Updates some definitions and requirements.
- Allow manufacturers to substitute portable kitchen and food trucks to meet kitchen requirements, but such substitution only permits alcohol sales when the food truck is operating at the manufacturer's location.
- Permits free standing liquor retail outlets greater freedom for sampling liquor and increases the volume of the sample.
- Permits an exception to admission to dance hall requirements for a private coliseum center, private food court, and a private outdoor designated area.
- Prohibits municipalities from requiring at least one alcohol related license if the state already requires a license for the activity.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 546

COMMITTEE SUBSTITUTE

SHORT TITLE: Adding and removing certain compounds from controlled substance list.

CODE REFERENCE: §60A-2-204, §60A-2-206, §60A-2-210, and §60A-2-212 (Amends and Reenacts)

SUMMARY:

At the recommendations of the Board of Pharmacy with the cooperation of the West Virginia State Police forensics lab, this bill updates the list of scheduled drugs and substances of the Controlled Substances Act. The bill updates the Schedules which have not been updated since 2017. The effect of scheduling is how a drug or substance is scheduled determines the criminal penalties for a violation of the act for unlawful possession, manufacture, or distribution. Under West Virginia law, only the legislature can amend the schedule and if a substance is not scheduled there is no criminal offense.

The bill, in addition to the recommendations of the Board of Pharmacy, also adds delta-8, and delta-10 tetrahydrocannabinols to Schedule I. Arguably delta-8 and 10 are already scheduled due to current language in §60A-2-204 which places tetrahydrocannabinols, their synthetic equivalents, resinous extractives of cannabis, its immediate derivative and their isomers with similar chemical structure and pharmacological activity in schedule 1 currently. This also makes clear that all the tetrahydrocannabinols are included whether specifically listed or not. It also makes xylazine a schedule IV drug.

The bill removes Pregabalin from Schedule V. And finally, the bill exempts cannabis products lawfully manufactured, distributed, or possessed pursuant to the Industrial Hemp Act and the Medical Cannabis Act.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 548

COMMITTEE SUBSTITUTE

SHORT TITLE: Clarifying what parties can redeem delinquent property and limiting those entitled to bid.

CODE REFERENCE: §11A-3-2, §11A-3-13, §11A-3-38, §11A-3-45 (Amends and Reenacts); §11A-3-45a (New); §11A-3-46, §11A-3-47, and §11A-3-48 (Amends and Reenacts); §11A-3-48a (New); and §11A-3-56 (Amends and Reenacts)

SUMMARY:

Under current law, any person entitled to pay taxes on a delinquent property may redeem the property by payment of outstanding taxes and interest. The bill additionally authorizes redemption by the owner of delinquent property whose interest is not subject to separate assessment, and by a lienholder on the property or an undivided interest in the property.

The bill clarifies that the property will be sold to the highest eligible bidder at a public auction held by the Auditor. The bill requires bidders to pre-register with the Auditor's office or to complete and execute a notarized affidavit affirming that they meet the applicable requirements on the day of the sale, and provides that they cannot at the time of registration have failed to make a payment from a prior auction; be delinquent in the payment of real property taxes to any county; have a history of noncompliant with county or municipal code enforcement violations; be subject to legal proceedings involving real property code enforcement violations; or have failed to comply with a raze or repair order in the five years preceding the purchase. The bill requires companies that seek to bid to be registered with the Secretary of State and be authorized to conduct business in West Virginia. The bill provides rulemaking authority to the Auditor to effectuate these provisions.

Citizens of or entities with a connection to a "Country of Particular Concern" (as designed by the U.S. State Department) cannot participate in the Auditor auctions. The list of those countries is updated annually and, as November 2022, includes Burma, China, Cuba, Eritrea, Iran, North Korea, Nicaragua, Pakistan, Russia, Saudi Arabia, Tajikistan, and Turkmenistan.

With respect to properties going through the unsold land process, the Auditor is authorized to hire an attorney for a title examination on auctioned property and to require the purchaser reimburse the Auditor for that expense. Alternatively, the bill provides that a purchaser may hire an attorney to provide the title examination at his or her own cost.

The Auditor is further permitted to refuse to sell unsold lands if the buyer does not meet the previously specified pre-registration requirements or if the citizen or entity is connected to a “Country of Particular Concern.”

The bill updates various notice provisions including the certification list, notice of auction, and post-sale redemption provisions to align with these changes.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 558

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Prohibiting law-enforcement agencies from posting booking photographs of certain criminal defendants on social media

CODE REFERENCE: §62-1-6A (New)

SUMMARY:

This bill adds a new section to Chapter 62, which governs criminal procedure. The bill prohibits law enforcement agencies from routinely posting on social media the booking photographs of individuals arrested for allegedly committing a “minor crime.”

The definition of “minor crime” is tied to West Virginia’s recently revised expungement statute, W. Va. §61-11-26. Thus, law enforcement agencies (but not the Division of Corrections, which is specifically exempted) are prohibited from posting the booking photographs of arrested individuals charged with crimes that would be expungeable—generally, misdemeanors and non-violent felonies, subject to the numerous exceptions outlined in §61-11-26—on social media unless one of several exemptions (including when the individual is a fugitive or otherwise a danger to public safety, and in response to a court order) applies.

The bill also provides a mechanism for individuals whose booking photos have been shared on social media to request the removal of their photo in the event a charge is dismissed, a jury returns a not-guilty verdict, or a conviction is subsequently overturned. It also shields law enforcement agencies from civil liability in the event of an accidental post that violates the provisions of this section, so long as the dissemination occurred in good faith.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed on March 29, 2023

Senate Bill 568

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to Dangerousness Assessment Advisory Board.

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

SUMMARY:

This bill:

- 1) States that the primary purpose of the Dangerousness Assessment Board is to provide advice to circuit courts in matters of placement for persons found not guilty by reason of mental illness or incompetent to stand trial and non-restorable;
- 2) Statutorily declares that the Board is independent of, and not under the supervision of, the Secretary of the DHHR; and
- 3) States that the Board, in its discretion, and at a court's request may, offer advice and opinions as to matters of treatment, replacement custody, and supervision of persons found not guilty by reason of mental illness or non-restorable.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: March 10, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 573

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to child support guidelines and Support Enforcement Commission.

CODE REFERENCE: §48-1-205, §48-13-301, §48-13-303, §48-13-403, §48-13-404, and §48-13-501 (Amends and Reenacts)

SUMMARY:

The bill updates the child support formula, adds criteria for attributed income, and addresses incarcerated parents. The bill addresses the federal requirements which allow the Bureau of Child Support Enforcement (BCSE) and bring West Virginia into compliance with federal law to maintain eligibility for federal funding.

The bill revises the factors a court evaluates when attributing income to include noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, physical and mental health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.

The bill authorizes courts to permit a deduction from gross income of the parties in determining child support when there are student loan payments being made. The bill sets forth specific requirements that must be met for this deduction to be allowable and, if allowed, what must be done moving forward by the parties regarding changed loan circumstances.

The bill provides that income is not attributed to an obligor who is incarcerated, and incarcerated individuals cannot be treated as voluntarily unemployed when establishing or modifying a support obligation. The new language found in both the attributing income and incarceration subsections is mandated under federal law (45 CFR 302.56).

The monthly basic child support obligation table, which had not been updated since 1999 and was based on 1997 child rearing costs, is also being updated to reflect 2022 financial data. The threshold for a manual calculation for the basic child support obligation is increased from \$1,550 to \$2,600 per month. The amount for an ability to pay calculation and self-support reserve is increased from \$500 to \$997.

Finally, the bill increases the multiplier for the extended shared parenting adjustment from 1.5 to 1.6.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 608

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Correcting list of items which are considered deadly weapons.

CODE REFERENCE: §61-7-2 (Amends and Reenacts)

SUMMARY:

The bill corrects an internal section reference. The bill specifically references by subdivision the items in the list which are “deadly weapons”.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 631

COMMITTEE SUBSTITUTE

SHORT TITLE: Updating administration, funding, and requirements for federal elections held in WV.

CODE REFERENCE: §3-1-48, §3-2-6, and §3-2-18 (Amends and Reenacts)

SUMMARY:

Senate Bill 631 undertakes code clean-up and other minor alterations to statutory provisions related to the administration of elections in West Virginia.

Via the Help America Vote Act (HAVA), the federal government appropriates money designed to assist states and their political subdivisions upgrade and secure their voting machines and related election infrastructure. Portions of this money are “use it or lose it.” This bill authorizes the Secretary of State to directly purchase equipment and invest in upgrades to electronic systems and other election infrastructure with HAVA money sitting in the already-established County Assistance Voting Equipment Fund, in order to avoid it going unused. The bill authorizes the Secretary of State to propose the expenditures, which must then be approved by the State Election Commission.

The bill also provides that voter registrations received via the state’s approved electronic registration system can be submitted until one minute before midnight on the deadline day.

Finally, existing law requires county clerks to report, within 120 days, certain voting data to a statewide database. The bill shortens the deadline for those submissions to 80 days. This will help the Secretary of State catch potential discrepancies and irregularities with enough time to correct any error before local election results are certified.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed on March 29, 2023

Senate Bill 633

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Requiring prompt appearances for persons detained on capiases.

CODE REFERENCE: §62-1-7, §62-1c-17b, and §62-2-17 (Amends and Reenacts)

SUMMARY:

The bill provides that a defendant who is arrested in a county other than where the indictment or charge is pending will be arraigned by the magistrate court in that county. However, if the defendant remains incarcerated after the arraignment, he or she will be transported to the regional jail servicing the charging county within five days of arrest.

This bill provides that if a defendant admitted to bail and released fails to appear at a scheduled court appearance, a court may issue a capias or bench warrant for failure to appear if the court determines that it provided the defendant with “effective notice of the court appearance,” defined as a notice stating the date, time, location, and purpose of the hearing, transmitted to the defendant or defendant’s counsel, no fewer than 10 days prior to the scheduled court appearance, or fewer than 10 days if waived by the court upon a finding of emergent circumstances.

The bill also provides that for purposes of failure to appear after indictment, newspaper publication alone does not constitute effective notice. The bill provides for a 24-hour grace period for a defendant to voluntarily appear when a defendant did not receive effective notice or when a defendant has no documented history of failure to appear. If the defendant appears within the 24-hour timeframe, he or she is not subject to prosecution under this section.

The bill authorizes a court to issue a capias upon credible information of danger to a person or the community, new criminal conduct, or a bail violation other than failure to appear.

The bill provides that, upon an arrest in the county where the indictment or charge is pending, bail hearing will be scheduled and held within five days of the arrest.

The bill provides that upon the appearance in the county in which the indictment or charge is pending of a defendant against whom a capias has been issued, the court must provide written notice to the sheriff for dissemination to all appropriate law-enforcement agencies that the warrant or capias is no longer active and order it to be immediately removed from all databases.

The bill provides that where a defendant is arrested and held under a capias for failure to appear in the county wherein the charge or charges is pending, and he or she is entitled to admission to bail, an initial appearance shall be held as soon as practicable, or within five days whichever is sooner, and bail shall be considered pursuant to W. Va. Code §62-1C-1a. The bill requires the court to provide written notice to the sheriff that the capias warrant is no longer active for dissemination purposes so that this record can be immediately removed from all applicable databases upon the appearance of a defendant upon an indictment or complaint upon which a warrant or capias has been issued.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 647

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to substantiation of abuse and neglect allegations.

CODE REFERENCE: §49-4-601b (Amends and Reenacts)

SUMMARY:

The bill creates a mechanism to seal records of child abuse and/or neglect relating to employment inquiries. The bill requires sealing of records in instances where there is a substantiated finding, and a petition could have been filed, but a petition was not filed. This occurs after one year unless there is another substantiated finding.

It also requires an unsubstantiated finding in cases where an allegation is initially substantiated, a petition is filed, and the petition does not result in an adjudication of child abuse and/or neglect.

It creates a discretionary sealing of records where there is an adjudication of abuse and/or neglect by petition to the Court after five years have elapsed unless there is another substantiated allegation of abuse and/or neglect.

The bill specifies certain factors the Court may consider in granting or denying a petition. The bill defines sealing of a record as pertaining only to an inquiry relating to possible employment

Finally, the bill requires DHHR to propose legislative rules.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2004

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Prevent the use of payment card processing systems for surveillance of Second Amendment activity and discriminatory conduct.

CODE REFERENCE: §31A-2A-4 (Amends and Reenacts); §31A-2B-1, §31A-2B-2, §31A-2B-3, §31A-2B-4, §31A-2B-5, §31A-2B-6, §31A-2B-7, §31A-2B-8, §31A-2B-9, and §31A-2B-10 (New)

SUMMARY:

The bill creates the Second Amendment Financial Privacy Act (“Act”) in response to Visa, Mastercard, and American Express adopting a unique Merchant Category Code for firearms and ammunition retailers (“firearms code”). The bill provides that the legislative intent is to “prohibit the misuse of payment card processing systems to surveil, report, or otherwise discourage constitutionally protected firearm, firearm accessories or components, and ammunition purchases and sales within West Virginia’s jurisdiction.”

The bill defines “protected financial information” as a customer’s payment card transactional records that are “based on the assignment of a firearms code” and prohibits any financial institution involved in facilitating or processing a payment card transaction from disclosing a customer’s protected financial information unless the disclosure is expressly permitted by law and the information is not disclosed based upon the assignment of a firearms code; made pursuant to a valid warrant issued in a criminal investigation, subpoena, or a customer’s written authorization; or only stating that the financial institution does not possess the information. A financial institution may not require a customer to provide written authorization for disclosure of protected financial information as a condition of doing business with the financial institution.

The bill also prohibits a financial institution from utilizing a firearms code to engage in discriminatory conduct, such as declining a lawful payment card transaction based on the assignment of a firearms code; limiting or declining to do business with a customer or potential customer based on the assignment of a firearms code to previous lawful transactions involving the customer; charging a higher transaction or interchange fee to a merchant compared to the fee charged for similarly situated merchants based upon the assignment of a firearms code; or taking any action against a customer or merchant intended to suppress lawful commerce involving firearms or ammunition.

With respect to enforcement, the bill creates a civil action for liquidated or compensatory damages against any financial institution or government entity that violates the Act. A successful plaintiff can also obtain injunctive relief and reasonable

attorney's fees. Prior to filing a civil action, an aggrieved party must give a financial institution the right to cure a violation, incorporating by reference the right to cure procedures in the West Virginia Consumer Credit and Protection Act.

Finally, the bill authorizes the Attorney General to conduct investigations and enforce the requirements of the Act by seeking injunctive relief in the courts. The bill also authorizes the Commissioner of Banking to administer requirements of the article and permits the State Treasurer to disqualify an offending financial institution from the competitive bidding process or from any other official selection process.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2007

COMMITTEE SUBSTITUTE

SHORT TITLE: Prohibiting certain medical practices.

CODE REFERENCE: §30-3-20 and §30-14-17 (New)

SUMMARY:

The bill applies to both the medical practice act and to osteopathic physicians. The bill defines terms such as biological sex, gender, gender altering medication, gender transition, and irreversible gender reassignment surgery.

The purpose of the bill is to prevent a physician from providing irreversible gender reassignment surgery or gender altering medication to a person who is under 18 years of age. The bill provides a physician may provide any of the following a person who is under 18:

- 1) Services provided to an individual born with a medically verifiable disorder of sex development, including but not limited to a person with external biological sex characteristics that are irresolvably ambiguous such as an individual born with forty-six xx chromosomes or having both ovarian and testicular tissue;
- 2) Services provided to an individual when a physician has otherwise diagnosed a disorder of sexual development and in which the physician has determined through genetic or biochemical testing that the individual does not have normal chromosome structure, sex steroid production or sex steroid action;
- 3) The treatment of any infection, injury, disease, or disorder, that has been caused by or exacerbated by the performance of gender transition procedure, whether or not these procedures were performed in accordance with state and federal law;
- 4) Any procedure undertaken because the individual suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician place the person in imminent danger of death, or impairment of a major bodily function unless surgery is performed; and
- 5) Limited use of gender-transforming medication for adolescents diagnosed with severe gender dysphoria.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2008

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Requiring local entities to enforce immigration laws

CODE REFERENCE: §15-15-1, §15-15-2, §15-15 -3, §15-15 -4, §15-15 -5, §15-15 -6, §15-15 -7, §15-15 -8 and §15-15 -9 (New)

SUMMARY:

This bill establishes a new article concerning federal immigration law enforcement in Chapter 15 of the state code. The bill prevents state and local entities, including but not limited to law enforcement agencies, from adopting “sanctuary city” policies—that is, procedures, ordinances, directives, or any other rule or regulation that prohibits cooperation with federal immigration authorities or materially interferes with the enforcement of federal immigration law.

The bill contains a non-exhaustive list of policies such entities cannot adopt. Thus, the bill prevents covered entities from establishing policies that restrict or prohibit:

- Inquiries into the immigration status of any person;
- Transmitting, requesting, and/or receiving information regarding immigration status to or from a federal immigration enforcement agency;
- Maintaining, archiving, or otherwise storing for subsequent use information relating to immigration status;
- Exchanging information relating to immigration status with another local entity, state entity, or federal immigration agency;
- Complying with an immigration detainer;
- Complying with a request from a federal immigration agency seeking to be notified prior to the release of an inmate subject to an immigration detainer;
- Providing a federal immigration agency with an inmate’s incarceration status or release date;
- Assisting or cooperating with a federal immigration agency;
- Participating in an intergovernmental cooperative program authorized by the federal Immigration and Nationality Act;
- Permitting a federal immigration officer to conduct immigration law enforcement activity at a municipal jail, county jail, or Division of Corrections and Rehabilitation facility.

The bill also imposes several mandatory duties on specific covered entities. A law enforcement agency that takes initial custody of an individual subject to an immigration

detainer is required to record the individual's status in their case file, notify the court which has jurisdiction to release the individual on bail or bond, and comply with a valid detainer to the extent required by law. A court which receives notice under the auspices of this section is obliged to record that fact in the individual's case file. And any local jails, as well as the state Division of Corrections, is obliged to enter into an arrangement with the federal government to temporarily house individuals who are subject to immigration detainers.

The bill also contains procedural mechanisms designed to ensure compliance with its substantive components. Most notably, the bill declares that any elected official who takes official action allowing a sanctuary city policy (one violative of this article) to come into or continue in effect has engaged in malfeasance in office and acted in neglect of his or her duty, and thus can be removed from office. The bill also permits any person, expressly including federal immigration authorities, to file a complaint with the West Virginia Attorney General alleging the existence of such a policy and authorizing the Attorney General to investigate. If the Attorney General determines there is sufficient evidence, he or she can file suit seeking to enjoin the violation. The bill also extends the protections of West Virginia's Whistle-Blower law to individuals who report violations or suspected violations of the article to the Attorney General.

Finally, the bill authorizes the Attorney General to defend local entities who have sought to comply with the provisions of this article in good faith against a suit brought under this section and directs the implementation of this article be accomplished without discrimination on the basis of race, religion, language, color, national origin, and be otherwise in accordance with the constitution and laws of both West Virginia and the United States.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2218

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Distracted Driving Act.

CODE REFERENCE: §17C-14-15 (Amends and Reenacts)

SUMMARY:

This bill creates the Electronically Distracted Driving Act (“Act”), also known as the Robin W. Ames Memorial Act, which updates existing legislation prohibiting the use of electronic communications devices without handheld features while driving.

The bill requires drivers to exercise due care in operating a motor vehicle on the highways and prohibits actions that distract such driver from the safe operation of the vehicle. The bill prohibits drivers, while operating a motor vehicle on a highway, from holding a stand-alone electronic device or wireless telecommunications device; writing, sending, or reading any text-based communication; making any communication involving a wireless telecommunications device, such as by telephone call, except if using a voice operated or hands-free communication feature or function; retrieving any form of electronic data or entering any data on a wireless telecommunications device or stand-alone electronic device; watching a video or movie, but not including a navigation device; broadcasting video, except for devices like dashboard cameras; or gaming on a device.

The bill specifically prohibits school bus drivers from using a wireless telecommunications device or two-way radio while loading or unloading passengers and further prohibits the use of a wireless telecommunications device while the bus is in motion or stationary unless communicating with school officials/safety officials like a two-way radio.

The bill also prohibits commercial motor vehicle drivers reaching for a wireless telecommunications device or stand-alone electronic device in such a manner that requires the driver to no longer be in a seated driving position or no longer be properly restrained by a safety belt.

Under existing law, violations of the statute are punishable under W. Va. Code §17C-14-15. The bill retains these punishments but also imposes to a \$100 fine for a first conviction within 24 months; up to a \$200 fine for a second conviction within 24 months; and up to a \$350 fine for a third or subsequent conviction within 24 months. The bill also provides that for a third or subsequent conviction within 24 months, three points are added to the driver’s record maintained by the Division of Motor Vehicles

(DMV) (in existing code); and adds that the driver's license may be suspended for 90 days.

The bill further provides that any driver who causes physical harm to property as the proximate result of committing a violation of this section is guilty of a misdemeanor punishable up to 30 days in jail or a fine of \$100 to \$500.

Any driver who causes serious physical harm to another person as the proximate result of committing a violation of this section is guilty of a misdemeanor and, upon conviction, subject to a fine of \$500 to \$1,000 and/or confinement in jail up to 120 days. The driver would also have his or her license to operate a motor vehicle revoked by the DMV for a period of one year. Finally, a driver who causes the death of another as the proximate result of committing a violation of this section is guilty of negligent homicide, as defined by W. Va. Code §17C-5-1.

The Act incorporates existing provisions in the statute requiring the Department of Transportation to erect signage about texting while driving; making clear that the Act does not authorize a law-enforcement agency to seize cell phones or electronic devices; and prohibiting certain provisions in personal liability insurance policies regarding recovery for injuries proximately caused by violations of the Act.

The bill provides that the Act does not apply to drivers reporting to authorities any accident, emergency, criminal or delinquent act, or hazard; an employee or contractor of a utility services provider acting within the scope of his or her employment while responding to a utility emergency; a driver operating a commercial vehicle while using a mobile data terminal that transmits and receives data; a law-enforcement officer, firefighter, emergency medical services personnel, ambulance driver, or other similarly employed public safety first responder during the performance of his or her official duties; or drivers while in a motor vehicle that is lawfully parked.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed April 29, 2023

House Bill 2221

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to bankruptcy

CODE REFERENCE: §38-10-4 (Amends and Reenacts)

SUMMARY:

House Bill 2221 amends §38-10-4, the section which outlines the property and other things of value West Virginians are permitted to exempt from their bankruptcy estate if they declare bankruptcy. The bill updates the monetary thresholds for several existing exemptions—for household goods, jewelry, the debtor’s trade tools, and payments received as a result of personal bodily injury—which had not been adjusted in nearly 30 years. The adjusted amounts are now largely in line with amounts exempted under federal law and account for the impact of inflation.

The bill also adjusts the substantive treatment of life insurance. It expands a previously limited exemption for life insurance proceeds that have been paid out to the debtor (or are being paid out in the form of an annuity) to have no limitation. Thus, a debtor can exempt all life insurance proceeds from their bankruptcy estate. The bill also fully exempts the cash redemption/surrender value of life insurance policies owned by the debtor who name someone else as a beneficiary.

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2436

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to the implementation of an acuity-based patient classification system.

CODE REFERENCE: §16-5B-20, §33-15-23, §33-16-19, §33-24-7x, §33-25-8u, and §33-25A-8x (New)

SUMMARY:

The bill requires certain healthcare facilities to develop an “acuity-based patient classification system” by July 1, 2024 to be used to establish the staffing plan for each unit. The term “acuity-based patient classification system” is defined as a set of criteria based on scientific data that acts as a measurement instrument which predicts registered nurse care requirements for individual patients based on severity of patient illness, need for specialized equipment and technology, intensity of nursing interventions required, and the complexity of clinical nursing judgment needed to design implement and evaluate the patient’s nursing care plan.

The bill directs each unit nurse staffing committee to annually review the facility's current classification system and submit recommendations to the facility for changes based on current standards of practice; and to provide orientation, competency validation, education, and training programs in accordance with a nationally recognized accrediting body recognized by the Centers for Medicare and Medicaid Services or in accordance with the Office of Health Facility Licensure and Certification. The orientation must include providing for orientation of registered nursing staff to assigned clinical practice areas.

The bill includes legislative findings which specifically provides that the classification system and staffing plan are considered confidential records under W. Va. Code §30-3C-3 and are therefore not subject to discovery in any civil action or administrative proceeding.

The bill also provides for a new limitation on copayments, coinsurance, or office visit deductible amounts charged to an insured, subscriber, or member for services rendered for each date of service by certain licensed healthcare providers. Specifically, the amount charged for services by an occupational therapist, occupational therapist assistant, speech-language pathologist, speech-language pathologist assistant, physical therapist, or a physical therapist assistant may not exceed the amount charged for services of a primary care physician or osteopathic physician. The policy, provision, contract, plan, or agreement must clearly state the availability of occupational therapy,

speech-language therapy, and physical therapy coverage and all related limitations, conditions, and exclusions.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 2509

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Creating the Uniform Premarital Agreement Act.

CODE REFERENCE: §48-1A-101, §48-1A-201, §48-1A-301, §48-1A-401, §48-1A-501, §48-1A-601, §48-1A-701, §48-1A-801, §48-1A-901, §48-1A-1001, and §48-1A-1101 (New)

SUMMARY:

The bill creates the Uniform Premarital Agreement Act and applies to premarital agreements signed on or after July 1, 2023. The bill requires a premarital agreement to be in writing, be signed by both parties, and contain an acknowledgement that both parties have had an opportunity to consult with separate legal counsel. The bill provides that a premarital agreement may be enforced without consideration and is effective upon marriage.

Parties are permitted to contract regarding property rights including the disposition of property upon the dissolution of marriage or death; modification or elimination of spousal support (subject to certain limitations); the making of a will or trust to carry out the terms of the premarital agreement; ownership rights and disposition of death benefits from life insurance proceeds; choice of law governing construction; and any other matter not in violation of public policy or statute. The bill specifically prohibits any agreement whereby the right of a child to support is adversely affected.

After marriage, parties are permitted to amend or revoke the agreement only if the amendment or revocation is reduced to writing and signed by the parties.

The bill provides that a premarital agreement may not be enforced against a party if the party contending the agreement is unenforceable proves that he or she did not execute the agreement voluntarily; that either party was under the age of 18; and that the agreement was unconscionable when executed, and before the execution of the agreement if the party did not receive adequate financial disclosures; did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations beyond what was provided; and did not know, and reasonably could not have known, of the property or obligations. The bill clarifies what constitutes adequate financial disclosure.

If a modification or elimination of spousal support causes a party to be eligible for public assistance at the time of separation, the family court, notwithstanding the terms of the agreement, may require the party to pay spousal support to the extent that spouse would no longer require public assistance.

The court may refuse to enforce a term of the premarital agreement that is unconscionable at the time of signing or would result in substantial hardship for a party because of a material change in circumstances arising after the agreement was signed. Issues regarding unconscionability and substantial hardship are to be resolved as a matter of law by the family court judge.

The bill provides that a term in an agreement is unenforceable if it adversely affects a child's right to support; limits or restricts a remedy available to a victim of domestic violence under West Virginia law; purports to modify the grounds for a court-decreed separation or marital dissolution available under West Virginia law; or penalizes a party for initiating a legal proceeding leading to a court-decreed separation or marital dissolution. The bill clarifies that a term defining the rights or duties of the parties regarding custodial responsibility is not binding on a court.

If a marriage is determined to be void, an agreement that would have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result. Finally, the bill provides that any applicable statute of limitations is tolled during the marriage, but other equitable defenses are available.

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2540

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Travel Insurance Model Act.

CODE REFERENCE: §33-12-32b (Repeals); §33-62-1 through 12 (New)

SUMMARY:

This bill repeals West Virginia’s existing law governing travel insurance, an earlier version of a model act, and replaces it with an updated version that is a synthesis of the virtually identical model acts produced by the National Conference of Insurance Legislators (NCOIL) and the National Association of Insurance Commissioners (NAIC).

The new model act defines terms, creates a licensing regime, imposes a \$200 licensing fee (the same fee imposed under the now-repealed, earlier version of the model act), establishes a tax on travel insurance premiums, creates forms and specifies rates, allows for comprehensive travel protection plans (which combine travel insurance, travel assistance service, and cancellation fee waivers) to be sold for a single price if certain disclosures and other conditions are met, makes agents or entities offering travel insurance subject to West Virginia’s Unfair Trade Practices Act, specifically deems certain activities, such as selling “illusory” travel insurance, to be an unfair trade practice, requires cancellation with a full refund be available for 10 days after purchase, permits travel insurance to be offered to individuals, groups, or via blanket policies, authorizes the Insurance Commissioner to enforce these new sections, and grants the Insurance Commissioner rulemaking authority.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2564

INTRODUCED

SHORT TITLE: Repeal of administrative hearing procedures for DUI offenses.

CODE REFERENCE: §17C-5A-2; §17C-5C-1, §17C-5C-1a, §17C-5C-2, §17C-5C-3, §17C-5C-4, §17C-5C-4a, §17C-5C-4b, §17C-5C-5 (Repeals)

SUMMARY:

In 2020, the Legislature provided for the phase-out and termination of the Office of Administrative Hearings (OAH), which held DMV license revocation proceedings for DUI-related offenses (Senate Bill 130). Specifically, it provided that OAH would no longer have jurisdiction over DUI-related offenses occurring after June 30, 2020, and that OAH would be terminated a year later, after the resolution/dismissal of all DUI appeals for offenses occurring on or before June 30, 2020. Although OAH was terminated, obsolete statutes relating to OAH still remained in Code.

This bill repeals W. Va. Code §17C-5A-2, an obsolete statute relating to hearings, revocation of licensure, and review by OAH; and the entirety of Article 5C, in Chapter 17C (W. Va. Code §17C-5C-1 through §16C-5C-5), all obsolete statutes relating to OAH.

DATE OF PASSAGE: February 3, 2023

EFFECTIVE DATE: May 4, 2023

ACTION BY GOVERNOR: Signed February 14, 2023

House Bill 2569

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Establishing the Motorsport Responsibility Act

CODE REFERENCE: 20-19-1, §20-19-2, §20-19-3, §20-19-4, §20-19-5, §20-19-6, §20-19-7, and §20-19-8 (New)

SUMMARY:

This bill provides clear protections for motorsports operators and participants who are not in violation of the provisions or duties of the Motorsport Responsibility Act. The bill is analogous to portions of the West Virginia Code for similar industries such as the Skiing Responsibility Act – §20-3A-5, the Whitewater Responsibility Act (§20-3B-2), the Equestrian Activities Responsibility Act (§20-4-1), and the ATV Responsibility Act (§20-15-1).

The bill identifies the purpose of the act and legislative findings, recognizing that motorsports services contribute significantly to the West Virginia economy but pose inherent risks for participants. The bill defines terms, and areas of responsibility, liabilities, and duties of motorsports and for participants.

It also sets forth the duties of operators of motorsports events, and the duties of persons participating in those events; further addressing the liability of motorsports operators and holding that a motorsport operator is liable for injury, loss, or damage if the operator fails to follow the duties set forth in this article and where the violation of duty proximately caused the injury, loss, or damage suffered. The operator is not liable for any injury, loss, or damage caused by the negligence of any person who is not an agent or employee of the motorsport operator, or any injury, loss, or damage caused by a participant's violation of any duty described in this article.

The bill also establishes that a participant is liable for injury, loss, or damage resulting from violations of the duties established in this article if those violations proximately caused the injury, loss, or damage suffered. It also makes clear in the participants' liability provision that motorsports is typically a "no-fault" activity when it comes to incidents between participants and a participant is liable for negligent and/or intentional violations of the duties in this article.

And finally, it provides that the Department of Economic Development shall promulgate rules setting forth (a) safety requirements for equipment; (b) safety requirements for the design of racing surfaces; (c) safety requirements for the provision

of run-off areas; (d) requirements for fire and emergency services; and (e) requirements for signage.

DATE OF PASSAGE: March 8, 2023

EFFECTIVE DATE: June 27, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2605

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to Good Samaritan law.

CODE REFERENCE: §55-7-15 and §55-7-17 (Amends and reenacts)

SUMMARY:

This bill expands the immunity to a person trained, licensed, or certified professionals or an entity who voluntarily in good faith renders or provides emergency care, or assistance at the scene of an accident, emergency, or disaster without payment for rendering or providing these services may be liable for civil damages as the result of any act or omission at the scene in rendering or providing such emergency care or assistance. The bill then provides definitions relating to “emergency” and “disaster”.

The bill also provides that no person trained in a qualified program of “emergency services”, or entity, who voluntarily and in good faith renders or provides advice, assistance, equipment, or materials, without payment for said advice or assistance, at the scene of an actual or threatened emergency, accident, or disaster is liable for any civil damages as a result of any act or omission at the scene. This bill then amends the Code to provide that immunity from civil liability is not extended to persons, or entities, who by act or omission caused or contributed to the cause of the actual or threatened accident, emergency, or disaster. The bill then provides definitions relating to “emergency”, “disaster”, and “emergency services”.

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: June 4, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2621

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to bail bondsman.

CODE REFERENCE: §33-1-1, §51-10-1, and §51-10-8 (Amends and Reenacts)

SUMMARY:

The bill ends the practice of bail bondsmen using real estate as the collateral pledged by bondsmen, while grandfathering in any bondsman who has a license prior to July 1, 2024 until that bondsman's license is suspended or revoked. The bill imposes a testing regime for both existing bondsman and future individuals who apply for a bondsman license.

The bill deletes language that exempted professional bondsmen acting in criminal cases from the definition of "surety" set forth in the Insurance Code, thereby permitting the Insurance Commissioner to exercise regulatory authority over bondsmen. The bill specifies which "approved securities" the Insurance Commissioner may accept from bail bondsmen and provides that real estate cannot be offered as a direct security after July 1, 2024. The bill exempts bondsmen from having to be licensed as an insurance producer with a property and casualty line of authority. Finally, the bill requires the Insurance Commissioner to formulate testing requirements for all initial license applicants.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 2638

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing the Department of Administration to promulgate a legislative rule relating to purchasing

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

SUMMARY:

This Committee Substitute contains 2 rules from the Department of Administration and is known as Bundle 2.

House Bill No. 2638. Department of Administration, Purchasing, 148 CSR 01

The rule amends a current legislative rule in response to Enrolled Committee Substitute for House Bill 4499, passed during the 2022 Regular Session.

Section 3 requires spending units formally exempted from this rule who could choose to follow it, to follow it unless they have established their own rules, The requirement that all spending units adhere to all automated systems prescribed by the Director of Purchasing has been deleted.

Section 4 regarding competitive bids in state purchases has been amended. It provides alternatives to competitive bids as provided in §5A-3-10c of the code, if that method is determined to be in the best interest of the spending unit and the state. Alternative procurement methods include:

- A direct award procurement described in W. Va. Code § 5A-3-10c and Section 7.5;
- An emergency procurement described in W. Va. Code § 5A-3-15 and Subsection 7.6.1;
- A purchase that falls below the agency's established no bid threshold described in W. Va. Code § 5A-3-11 and Subsection 7.2.1; and
- If the State conducts a request for quotation for a commodity or service, and all responsive bids received are higher than a publicly posted price for that same commodity or service, the State may cancel the solicitation and procure that commodity or service directly from the source of the publicly posted lower price but may only pay the publicly posted lower price or less. A publicly

posted price in this context means pricing posted on a publicly accessible website, in a vendor catalogue, or some other advertising media, and expressly excludes verbal or unpublished pricing, or any pricing sourced directly from vendors after bids have opened.

Buyer qualifications are removed, except that the Purchasing Division may require qualifications if they are uniformly applied to each job title.

Section 6.6 adds three new subparts which allow the Purchasing Division to seek additional information from a bidder for clarification purposes, allows the Director to object to separable terms that, if agreed to by the bidder, get deleted from the bid, and allows the division to require the bidder sign additional documentation related to such things as contract terms, privacy requirements, etc., which weren't contemplated in the bidder's bid.

Section 6.9 is changed to make the bid bond process electronic.

Section 7 removes the former dollar caps in favor of delegated procurement thresholds which may be increased for any spending unit by the Director. The rule is amended to reflect the bidding process through wvOASIS. Section 7.6 sets forth the procedure for emergency procurements. Spending units are required to provide the Division documentation so that it may adhere to its requirement of public publishing.

Section 12 has been amended to allow the Director to recognize prequalification agreements established by other public entities for the purpose of conducting a delegated prequalification bid, but approval must be obtained prior to issuing the delegated prequalification bid and the delegated prequalification bid must be directed to all entities within the prequalification group known to offer the commodity or service in question.

House Bill No. 2639. Department of Administration, Parking, 148 CSR 01

The rule amends a current legislative rule. The change extends the sunset date of rule to August 1, 2032. An amendment from the LRMRC was adopted that shifts the parking fee from the employees to the entity for which they work.

DATE OF PASSAGE: March 2, 2023

EFFECTIVE DATE: March 2, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2640

COMMITTEE SUBSTITUTE

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

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

SUMMARY: The Committee Substitute contains 8 rules relating to the Department of Environmental Protection and is known as Bundle 3.

House Bill No. 2640. 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 rule adopts and incorporates by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2022. These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State. Finally, the promulgation history of the rule is updated.

House Bill No. 2641. Department of Environmental Protection, Requirements for Operating Permits, 45 CSR 30.

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).

This rule provides for the establishment of a comprehensive air quality permitting system consistent with the requirements of Title V of the CAA and the state operating permit program requirements of 40CFR Part 70. This rule establishes: (a) the obligation for a source to obtain a Title V operating permit; (b) applicability for other sources, including exemptions and deferred sources; (c) permit application, content, issuance, renewal, reopening, revision, review, suspension, modification, revocation, and reissuance requirements, and (d) Title V fee requirements. All fees collected pursuant to this rule shall be expended solely to cover all reasonable direct and indirect costs required to administer the Title V operating permit program and accounted for in accordance with this rule.

The fee structure is being revised as recommended by the U.S. EPA in its September 2021 Title V Program Evaluation Report, August 2019 Title V Permit Fee Evaluation Report, and May 2015 Title V Program Evaluation Report and other revisions were made to comport with Revisions to the Petition Provisions of the Title V Permitting Program [85 Fed. Reg. 6431, February 5, 2020] and Removal of Title V Emergency Affirmative Defense Provisions from State Operating Permit Programs and the Federal Operating Permit Program [87 Fed. Reg. 19042, April 1, 2022]. Obsolete transitional language was removed, and other clarifications were made.

These amendments are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State. Finally, the promulgation history of the rule is updated.

Section 8 relating to fees has been completely rewritten. It:

- (1) Replaced the annual emissions only fee to an annual fee that includes an emissions fee, base fee, and complexity fee components.
- (2) The emissions fee factor is a calculation based on the 3-yr average of the DAQ Title V Fund expenses. The calculated emissions fee factor is now multiplied by the amount of actual emissions released by the specific source to determine the emissions fee component.
- (3) The emissions fee cap was removed.
- (4) The Certified Emissions Statement (CES) was eliminated. (Emission reporting requirements remain.)
- (5) The Title V fee program does not reference the Rule 22 minor source fee program.

Table 45-30A Hazardous Air Pollutants - This table was struck in its entirety, consistent with the revised definition.

Table 45-30B - Class I and Class II Substances - This table was struck in its entirety, consistent with the revised definition.

LRMRC proposed the following clean-up amendment:

On page 39, subdivision 8.1.a.1, by striking the number “\$15,000” and inserting in lieu thereof the number “\$5,000”.

The committee substitute contains several amendments which have already been included in the modified rule. There is a committee amendment to remove those amendments.

House Bill No. 2642. 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 rule incorporates by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2022. Revisions to the rule include the annual incorporation by reference amendments of the NESHAPs promulgated by the EPA under 40 CFR Part 63 as of June 1, 2022, that include: (a) Carbon Black Production and Cyanide Chemicals Manufacturing Residual Risk and Technology Reviews, and Carbon Black Production Area Source Technology Review; (b) Flexible Polyurethane Foam Fabrication Operations Residual Risk and Technology Review and Flexible Polyurethane Foam Production and Fabrication Area Source Technology Review; (c) Clean Air Act Section 112 List of Hazardous Air Pollutant: Amendments to the List of Hazardous Air Pollutants (HAP); (d) Mercury Cell Chlor-Alkali Plants Residual Risk and Technology Review; (e) Municipal Solid Waste Landfills Residual Risk and Technology Review; Correction; (f) Refractory Products Manufacturing Residual Risk and Technology Review; (g) Stationary Combustion Turbines; Amendments; (h) Surface Coating of Automobiles and Light-Duty Trucks, Surface Coating of Metal Cans, Boat Manufacturing, i) Clay Ceramics Manufacturing; Technical Correction and (j) General Provisions Technical Correction.

These modifications 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.

House Bill No. 2643. Department of Environmental Protection, Control of Ozone Season Nitrogen Oxides Emissions, 45 CSR 40.

This rule modifies an existing DEP 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 modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2022.

These modifications 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. The modifications also update the promulgation history of the rule.

Section 4 relating to applicability has been amended to update the classification of certain units as not being subject to this rule since they are already the subject of a Federal NOx ozone season emissions trading program.

House Bill No. 2644. Department of Environmental Protection, Rules for Quarrying and Reclamation, 38 CSR 03.

The rule amends a current legislative rule promulgated under the Quarry Reclamation Act which governs the extraction of non-coal minerals by quarrying.

Section 6.8 relating to blasting has been amended to require blasters to be approved by the Secretary, be current in their Blaster's Certification, and have the certification in their possession while conducting blasting activities. The Certified Blaster is in charge of and responsible for the design, loading, and firing of the blast.

House Bill No. 2645. Department of Environmental Protection, Recycling Assistance Grant Program, 33 CSR 10.

The rule amends a current legislative rule and is promulgated under the A. James Manchin Rehabilitation Environmental Action Plan in W. Va. Code §22-15A-1 *et. seq.* The rule sets out guidelines and procedures for providing grants to local governments and other parties to plan, initiate, expand, or upgrade recycling programs, public education programs, and recycling market procurement efforts.

The rule has been in effect since 2008. Overall, the changes are needed to update the rule for current technology and marketplace circumstances. The rule adds language under multiple sections to add "source reduction programs" which are those programs that reuse waste materials to avoid using recycling centers and landfills. The rule adds additional flexibility to the department concerning the "Cure period", removes language prohibiting certain parties who do not participate in tax and fee collection from receiving grants, removes the 20-year minimum lease limitation for recycling facilities construction and improvements. Allows grant money to be used for a reasonable share of costs of audits required by West Virginia Code §12-4-14 up to a maximum of \$2,000 and increases the maximum grant size from \$20,000 to \$35,000 for Recycling Feasibility Study and Planning Grant, Local Government.

Section 12 relating to requirements for grant recipients has been amended to require that requests for changes in a grant budget be in writing and not significantly alter the original scope of the grant, requires a minimum of three verbal bids for recipient purchases between \$5,000 and \$10,000; allows electronic bids, requires written bids for all purchases estimated to be more than \$10,000, requires all bids be recorded in the required reports and retained in the recipient's file, prohibits any attempt to segregate a project into sections having an estimated value of less than \$10,000, sets forth notice to solicit bids and documentation requirements, allows feasibility studies to be procured using a Best Value Procurement method, and allows, the Department to waive or modify the bidding procedures to allow direct purchase of commodities and services under defined circumstances.

House Bill No. 2646. Department of Environmental Protection, Reclamation of Abandoned and Dilapidated Properties Grant Program, 33 CSR 13.

The rule is new and is promulgated under the A. James Manchin Rehabilitation Environmental Action Plan in W. Va. Code §22-15A-1 *et seq.* The rule sets out guidelines and procedures to assist county commissions, municipalities, urban renewal authorities, land reuse agencies, and municipal land banks in the remediation of abandoned, blighted, and dilapidated structures or properties. Enrolled Committee Substitute for Senate Bill 552 which passed during the 2022 regular session is the basis for the rule.

Section 2 defines terms including “Abandoned” and “Dilapidated”.

Section 3 creates the Reclamation of Abandoned and Dilapidated Properties (RADP) Grant Program and sets forth the application process. Grants are available to county commissions and municipalities to remediate abandoned and dilapidated structures by demolition or deconstruction. The grants are awarded for a period of one year from the date of the grant agreement. One six-month extension may be granted for good cause if a request is submitted before the expiration of the grant period. Subsequent grants may be obtained by a grantee through submission of a new application, as long as all the objectives of the current grant have been completed.

Section 4 sets applicable conditions for funding under the program: The project must provide environmental improvement by decreasing imminent danger, risk to public health and welfare and negative visibility of structures. The project may provide for redevelopment of property or new development initiatives.

Section 5 relates to the authorized use of grants funds in an approved program. Uses may include asbestos testing; asbestos removal prior to demolition; demolition of the structure; costs associated with disposal at a permitted landfill or materials recovery center; site stabilization; legal costs associated with securing properties for demolition; and other costs approved by the department.

Section 6 relates to unauthorized uses of grants. A grantee may not use a grant to replace funds currently budgeted to demolish or deconstruct a structure or for expenditures not related to demolition or deconstruction of a structure. Also, grant funds may not be used for land acquisitions; environmental testing of soil conditions; administrative costs; beautification costs not related to site stabilization; office equipment; entertainment; alcoholic beverages, meals, and gratuities; lobbying expenses; or landfill operations or management.

Section 7 relates to the review of applications. The department may reject applications not meeting eligibility and submission requirements and may partially award or reject applications based on available funding. The department must submit those recommended for funding to the Secretary and the Governor for approval.

Section 8 relates to grant recipient requirements. Grant funding is disbursed at the time of receipt of invoices and all other required information for approved expenditures on at least a 30-day rolling basis. This section contains provisions on the maintenance of financial and other records, requires the grantee, and requires the grantee to submit a final report to the department within 30 days following the last day of the grant period and specifies information to be contained in the report.

Section 9 relates to site visits. It allows the department to periodically conduct site visits.

Section 10 requires all unexpended grant funding at the end of the grant period to remain within the program.

The House amended the rules to ensure the program gives priority to structures in “high traffic areas, tourism corridors, and/or common open spaces.”

House Bill No. 2647. Department of Environmental Protection, Reclamation of Solar and Wind Electricity Generation Facilities, 60 CSR 11.

The rule is new and is promulgated under the West Virginia Wind and Solar Energy Facility Reclamation Act, W. Va. Code §22-32-1 *et seq.* created in Enrolled Committee Substitute for Senate Bill 492 which passed during the 2021 regular session. The rule establishes requirements and bonding for the decommissioning of solar and wind generation facilities to guarantee the decommissioning.

An owner of a solar or wind generation facility must decommission its facility and pay for the costs of decommissioning. Decommissioning activities must begin within 90 days after abandonment and be completed within 24 months unless the owner receives departmental approval of an alternative plan.

The owner of a facility which commenced operations on or before July 1, 2021, is to submit by July 1, 2022, the date that the generation facility commenced operations; a decommissioning plan; and identification of landowners.

An owner that commences commercial operation after July 1, 2021, is to submit certain information after commencing operation. Within 90 days, the department will notify the owner of any deficiencies in the decommissioning plan. Within 90 days after receiving a deficiency notice, an owner must address all deficiencies and resubmit the decommissioning plan.

New owners must confirm compliance with the decommissioning agreement of the prior owner or submit an alternative decommissioning agreement for approval.

Within one year of commencing operations, each non-exempt facility will pay a fee to the Wind and Solar Decommissioning Account of \$100 per megawatt of generation capacity, and \$50 per megawatt of generation for each subsequent modification.

The department may inspect solar or wind generation facilities to ensure compliance.

Unless exempt, the owner of a facility must prepare a decommissioning plan which includes a commitment to remove all aboveground equipment such as solar panels, turbines, foundations, and structures. The plans must include an estimate of the cost of decommissioning the facility with supporting calculations.

The facility is to be returned to the approximate original topography with grading, topsoil, and revegetation to prevent adverse hydrological effects.

In lieu of the decommissioning plan requirements, parties may reach an alternative decommissioning agreement. The alternative agreement must be provided to the department for review. The parties are required to grant the department and the Public Service Commission authority to enforce compliance with the alternative agreement. Decommissioning agreements, which legally bind exempt parties, are subject to review and comment by the department not approval.

The owner of facility is exempt from the decommissioning and bonding requirements of this rule if the facility has a nameplate capacity of less than 1.0 megawatts; is operated by regulated public utility who can demonstrate financial integrity; or if the facility is legally bound by a decommissioning agreement, based upon a qualified independent party and executed before July 9, 2021; or was granted authorization or waiver to construct by the Public Service Commission, conditioned upon the execution of the agreement before July 9, 2021.

A facility remains exempt unless it is found to be in breach of an agreement, the agreement is found to be unenforceable; a facility is transferred to a party not bound by the agreement; or expands its facility by 50% or more in total disturbed acreage.

Unless exempt, each solar and wind generation facility must provide a decommissioning bond conditioned on the faithful decommissioning of the facility. The department shall set the estimated bond amount for the department to perform the decommissioning work.

The bond amount must be based on estimated costs submitted by the owner and acceptable to the department; estimated costs to the department that may arise to perform the work; and other cost information.

The value of the bond shall be based upon the total disturbed acreage, less salvage value, and shall not exceed the total projected future cost of decommissioning, less salvage value.

The department must notify the owner of the facility of any denial, approval, or modification to the decommissioning plan or the bond amount. Any person adversely affected by a decision of the department may appeal that decision to the Environmental Quality Board and thereafter to the appropriate court of law.

Unless exempt, an owner who is required to provide a bond payable to the state in a form acceptable to the department and the Attorney General in a sum determined by the department conditioned on the faithful decommissioning of the facility.

If the owner of a facility fails to submit a decommissioning bond or a properly executed and legally binding decommissioning agreement, the department must provide notice to the owner and may assess a penalty of not more than \$10,000.00 for the first day of violation and an additional penalty of not more than \$500.00 for each day the failure continues.

If the owner transfers ownership to a successor owner, the department must release the bond posted by the owner. The successor owner must provide a bond that meets the requirements.

An owner must receive approval from the department prior to replacing any bond. The department shall approve a replacement bond within 90 days of receipt of the request for replacement if it meets the requirements of these rules.

Once every five years, an owner may request a reduction of the required bond amount by submitting an amended decommissioning plan. If the department finds that the amended plan reduces the estimated cost to complete decommissioning, the department may approve reducing the bond.

The department is required to review each nonexempt decommissioning plan and bond amount every five years after a facility is bonded, or when a new owner submits a revised decommissioning plan. The department may increase the amount of the bond if the facility has expanded or the cost to decommission the facility has otherwise increased.

The owner must submit either a surety bond, collateral bond, letter of credit, or certificate of deposit in a form acceptable to the department and to the Attorney General.

An owner may satisfy the bonding requirements by submitting a surety bond that complies with the requirements of this section. The requirements concern amounts, powers of attorney, bankruptcy terms, and suspension or cancellation issues.

An owner may satisfy the bonding requirements by submitting a letter of credit that complies with the requirements this section. The requirements concern the characteristics of the bank, irrevocability, ability to pay to the department upon demand, amount, and others.

An owner may satisfy the bonding requirements by submitting a certificate of deposit that complies with the requirements. The requirements concern the amount, FDIC, renewability, ability to pay, release terms, and certain waivers.

If an owner fails to decommission a facility as set forth in the decommissioning plan and did not commence action to rectify deficiencies within 90 days after notification, the department may cause the bond to be forfeited for the entire facility. The notification must include the reasons for the forfeiture, the amount to be forfeited, times for corrective action, and available appellate rights.

The department must release a bond if the department is satisfied that an owner has completed decommissioning of a facility in accordance with the decommissioning plan. The owner shall allow the department to inspect the facility to verify the adequacy of decommissioning for bond release.

Upon bond forfeiture for an abandoned facility, the department may take any necessary action to secure and decommission the facility.

Appendix A sets forth a list of solar and wind generation facilities that are exempt from the rule.

The following House amendments were adopted:

On page 5, subparagraph 4.1.d.iii after the word, ‘slabs’ by inserting the words “to a minimum depth of 36 inches below the surface”;

On page 5, subsection 4.4 after the word “receipt” by adding the following:

“The department shall only deny an alternative decommissioning agreement if they determine that it will not result in the restoration of the property to a condition in which it can be used towards the same or a similar use as its use prior to the onset of the alternative decommissioning agreement.”;

And,

On page 7, by striking out subdivision 6.2.a and inserting in lieu thereof subdivision 6.2.a to read as follows:

“6.2.a. Estimated costs of decommissioning and salvage value as submitted by the owner in the decommissioning plan and in accordance with these rules with such costs estimated by the department using current machinery production handbooks and publications or other documented or substantiated cost estimates acceptable to the department.”

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: March 6, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2648

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing certain agencies and boards of the DHHR to promulgate a legislative rule.

CODE REFERENCE: §64-5-1 *et seq.* and §64-12-2 *et seq.* (Amends and Reenacts)

SUMMARY:

The Committee Substitute contains 18 rules relating to the Department of Health and Human Resources and is known as Bundle 5.

Department of Health and Human Resources, Food Establishments, 64 CSR 17.

The House, in the committee substitute, directed DHHR to add the following amendments to the current legislative rule:

On page 2, by striking out all of subdivision 3.1.h. and inserting in lieu thereof a new subdivision 3.1.h. to read as follows:

3.1.h. Chapter 6, section 6-501.115 is not applicable if the following conditions are met:

3.1.h.1. The dog is prohibited from entering any areas where food is being prepared

3.1.h.2. The dog owner will be asked to leave, if a dog creates a nuisance;

3.1.h.3. The establishment is licensed as a private club, restaurant, brew pub, or micro distillery;

3.1.h.4. The establishment has liability insurance for dog-related incidents;

3.1.h.5. Dog accidents are cleaned and sanitized. Dog waste stations are available. A written procedure shall be established and posted concerning dog accident cleanup; and

3.1.h.6. Signage is present indicating that the establishment is dog friendly.

House Bill No. 2648, Department of Health and Human Resources, Procedures Pertaining to the Dangerousness Assessment Advisory Board, 64 CSR 26.

The rule is new. It explains the responsibilities and administration of the Dangerousness Assessment Advisory Board. The Board was created as an advisory

board by statute pursuant to Enrolled Committee Substitute for Senate Bill No. 702 during to 2021 Regular Session.

The purpose of the board is to provide opinion, guidance, and informed objective expertise to circuit courts as to the appropriate level of custody or supervision necessary to ensure that forensic patients who have been judicially determined to be incompetent to stand trial and not restorable or not guilty by reason of mental illness are in the least restrictive environment available to protect the forensic patient, other persons, and the public generally.

The rule provides for the conduct of meetings, confidentiality, immunity of Board members and compensation.

House Bill No. 2649, Department of Health and Human Resources, Standards for Local Boards of Health, 64 CSR 73.

The rule amends a current legislative rule. The rule establishes the standards for the provision of basic public health services by local boards of health. This rule is enforced by the Commissioner for the Bureau for Public Health and the Center for Local Health. The amendments were made necessary by the passage of House Bill 4113 during the 2022 Regular Session of the Legislature which changed the focus of local boards of health to the provision of basic health services.

Section 4 is completely rewritten. It addresses the distribution and monitoring the state aid formula, provides for the continuity of staff to support the provision of basic public health service and daily operations; requires the board to have liability insurance at least equivalent to that which is available to local boards through BRIM and provides for the maintenance of records.

Section 5 sets forth the basic public health services to be provided by a local board including and the standards for those services. The services include community health promotion, communicable and reportable disease service standards, environmental health protection, immunization, and threat preparedness.

Section 6 of the rule relates to reports and records. A requirement was added for the development of a data retention policy for medical records, laboratory results, and case reports.

Section 7 of the current rule relating to the general administration of the local health department has been deleted. Section 7 of the rule relates to performance-based evaluation, site visits, and plans of correction. The Center for Local Health is required to develop and facilitate bi-directional relationships with local health departments. A performance-based team appointed by the Commissioner is to conduct an on-site review

at a minimum of every four years of all local public health department's basic public health service programs.

Section 8 of the current rule which addressed financial management was deleted. This section was replaced with a new section specifying the membership and duties of the 9 member WV Public Health Advisory Board which is to: collaborate with the Bureau to design and implement a performance-based evaluation system; collaborate with the Bureau to design and develop tools for assessment of local health departments; and provide training for local health departments and state appointees.

Section 9 of the current rule which related to physical facilities was deleted. It now contains the provisions of the current rule relating to penalties. It has been amended to require the approval of a local boards plan to correct deficiencies by the Commissioner, the Board of Health and the appointing authority.

House Bill No. 2650, Department of Health and Human Resources, Medical Examiner Requirements for Postmortem Inquiries, 64 CSR 84.

The rule amends a current legislative rule. The amendments were by the passage of Enrolled Committee Substitute for House Bill No. 4340 that passed during the 2022 Regular Session of the Legislature. The rule regulates the conduct of medico-legal investigations of the cause of death, sets procedures for postmortem examination of deceased persons and the examination of substances collected as part of that process.

Section 8 relates to pronouncement, investigation, and certification of death. Technical changes were made to this section. Two new methods are added for the identification of a body. They are identification by obtaining the assistance of a law enforcement entity with the capacity to digitally capture and compare fingerprints and identification by serialized prosthetics, implants, or medical devices. This section also requires that a unique identifier to be assigned to an unidentified decedent.

Section 9 of the rule relates to obtaining blood, body fluids, and tissue material for examination. County medical examiners are only to help with determining the cause and manner of death and are no longer responsible for completion of a death certificate.

Section 10 sets forth the standards to transportation of the body. It has been amended to require that the transport company to have a transportation agreement on file with the Bureau.

Section 12 sets forth the standards for documentation of findings obtained by medico-legal death investigations by the county medical examiner, assistant county medical examiner, or county coroner. It has been amended to allow an alternative submission for death certificates if the Electronic Death Reporting System (DAVE) is unavailable for an extended period.

Section 13 sets forth the requirements of authorization for cremation by Office of Chief Medical Examiner, County Medical Examiner, Assistant County Medical Examiner, or County Coroner. It has been amended by deleting language referring to the “pronouncing physician’s” signature. It also specifies that only a medical examiner may determine a manner of death that is anything other than natural. Any death certificate with a manner of death other than natural must be certified by a medical examiner. If certified by any other provider, the death must be immediately referred to the Office of Chief Medical Examiner.

Section 14 sets forth the requirements for the death certificate. It requires that county medical examiners, provide investigatory findings to help establish the cause and manner of death. The Office of Chief Medical Examiner is then required to complete and certify the death certificate. This section also provides that under exigent circumstances county medical examiners may complete and certify a paper death certificate.

Section 16 of the rule sets forth the standards for performance of the forensic autopsy. It has been amended to remove the authority of the county medical examiner and the county coroner’s ability to authorize a forensic postmortem examination of a body. The deputy chief medical examiner now has that authority.

Section 17 of the rule sets forth the standards for specimen collection and testing and has been amended to add different types of tests that can be performed including but not limited to anthropological studies, neuropathological studies, forensic odontology review, or DNA analysis.

Section 18 sets forth the release of information and states that no preliminary information is released and that the Chief Administrator is the designated records custodian.

Section 20 sets forth the criteria for human remains and personal property. It has been amended to provide that prior to the release of custody of the remains to an organ procurement organization the Office of Chief Medical Examiner must receive verbal or written authorization from the organ procurement organization and that the decedent or legal next of kin has approved or authorized organ/tissue/cornea recovery.” This section has been amended to permit release of personal property to the funeral home/crematorium/transport agency authorized by the next of kin to accept custody of the decedent.

Section 24 is a new section relating to the temporary disposition or internment of unclaimed decedents in the custody of the OCME. It specifies the two types of unclaimed decedents that OCME has custody of are: Category 1 a decedent that is or has been the subject of an Office of Chief Medical Examiner medico-legal death investigation for which the Office of Chief Medical Examiner assumed custody of the

remains directly from the place of death and Category 2 a decedent for whom the Office of Chief Medical Examiner did not conduct a medico-legal death investigation but whose remains are in the custody of the Office of Chief Medical Examiner. The Office of Chief Medical Examiner assumed custody of the decedent, at some point, because they remain unclaimed in the custody of a funeral home, crematorium, or other entity for an extended period of time. The Office of Chief Medical Examiner does not take custody of unclaimed decedents in Category 2 cases in the normal course of business. This section specifies the requirements for the disposition of each category.

Section 25, which is new, sets forth the standards for temporary disposition or internment of unidentified decedents in the custody of the office of the chief medical examiner.

The House adopted the following amendments to the rule:

On page 14, by striking out all of section 13.5. and inserting in lieu thereof a new section to read as follows:

“13.5. This section applies only to remains of persons whose death have been pronounced within the State of West Virginia or for remains of persons whose deaths have been pronounced in another state and does not have a prior authorization for cremation issued by the state in which the death occurred.” The amendment was adopted by the Senate.

House Bill No. 2651, Department of Health and Human Resources, Medical Cannabis Program – Growers/Processors, 64 CSR 110.

The rule amends a current legislative rule that includes general provisions related to growers/processors pursuant to the WV Medical Cannabis Act. Pursuant to a statutory change in 2022, unless otherwise required for litigation or investigative purposes, the length of time surveillance video must be retained has been reduced from two years to 180 days.

House Bill No. 2652, Department of Health and Human Resources, Medical Cannabis Program – Dispensaries, 64 CSR 112.

The rule amends a current legislative rule related to dispensaries pursuant to the WV Medical Cannabis Act. Pursuant to a statutory change in 2022, unless otherwise required for litigation or investigative purposes, the length of time surveillance video must be retained has been reduced from two years to 180 days.

House Bill No. 2653, Department of Health and Human Resources, Financial Disclosure Rule, 65 CSR 13.

The rule amends a current legislative rule by changing the sunset date to August 1, 2028, from the previous date, March 14, 2023.

House Bill No. 2654, Department of Health and Human Resources, Uniform Bill Data Base, 65 CSR 34.

The rule is new. It establishes the procedures for the collection, retention, use, and disclosure of data from the uniform bill database, including provisions for the safeguards to protect the privacy, integrity, confidentiality, and availability of any data; procedures for the collection of data elements, required data format, code tables, edit specifications thresholds required for a submission to be considered complete, methods for submitting data, submission schedules, and fees for data requests payable by users.

Section 3, data collection and retention, this section states that DHHR may hire a data discharge vendor to collect and analyze UB data directly. The Hospital Data Submission System (HDSS) maintains the master data base and provides copies of the data to the DHHR on a quarterly basis in a data warehouse under the control of the DHHR.

Section 4 discusses data published on the Internet. This section states that generally data published on the Internet will be di-identified in accordance with HIPAA standards and requires the following variables to be omitted: name; all geographic subdivisions smaller than a state; all elements of dates (except year(for dates directly related to an individual including birth data, date of death *etc.*; telephone number, fax numbers, electronic mail address; social security numbers, medical record numbers, health plan beneficiary numbers, account numbers; certificate/license numbers; vehicle identifiers and serial numbers including license numbers; device identifiers and serial numbers; web universal locators; internet protocol address numbers; biometric identifiers; full fac photographic images and comparable images; and any other unique identifying numbers, characteristic, or code.

Section 5 discusses, data use and disclosures. This section states that the DHHR uses UB data for health surveillance, to inform health care policy, and to evaluate the effectiveness of programs. It sets forth the process a party must follow which requests more than a de-identified data set or a limited data set.

Section 6 sets forth a fee structure that has been established for certain types of reports and data.

Section 7 sets forth the procedure for requesting data. It provides that internal or external users may request a limited data set on specific request forms and provides the place for submission of the forms. This section states that requests may be approved as submitted or additional clarification or modifications may be required. External entities

may be required to sign a data use agreement. If a request is approved, an encrypted report will be sent to the requestor.

House Bill No. 2655, Department of Health and Human Resources, Methodologies to Examine Needs for Substance Use Disorder Treatment Facilities Within the State, 69 CSR 13.

The rule amends a current legislative rule that establishes procedures for the development of methodologies to examine the relative need for substance use disorder treatment facilities within the state.

The rule extends the sunset provision from March 22, 2023, to August 1, 2028.

House Bill No. 2656, Department of Health and Human Resources, Core Behavioral Health Crisis Services System, 69 CSR 19.

The rule is new. It applies to any person, partnership, association, or corporation that operates a 988-crisis hotline center in the state and all other persons or entities engaging in services that assist individuals who use the 988-crisis hotline center. A 988-crisis hotline is a state-identified center participating in the National Suicide Prevention Lifeline Network to respond to statewide or regional 988 calls, chats, or texts. The network is a national network of local crisis centers that provide free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, seven days a week.

The rule sets forth the means for designating crisis hotline specifies and the duties of the crisis hotline center. It also specifies training for a center's staff, methods for sharing information and required reporting and data collection

The rule has a fiscal impact of \$1,863,984. This estimate was provided by Vibrant Health, the Substance Abuse Mental Health Services Administration national contractor for the Suicide Hotline. The 988-call center will be funded by the DHHR Bureau for Behavioral Health (BBH). Federal Funding will be used when available. After funding the call center for 2-3 years, BBH may need an appropriation to continue funding the 988-call center. The 988-call center will create 25 new jobs and provide a primary contact for crisis services for WV.

House Bill No. 2657, Department of Health and Human Resources, Child Care Centers Licensing, 78 CSR 01.

The rule amends a current legislative rule which establishes standards and procedures for the licensure of child care centers under the provisions of W. Va. Code 49-2-101 et seq. and related federal and state code provisions.

The rule adds additional subjects to those required for pre-service training and adds a definition for the term "Serious Injury". It prohibits a care giver under the influence of any substance, including medical cannabis, that would impair their ability to care for children to be on the premises or have contact with the children.

The rule updates the WV Cares language. It adds a sex offender registry check requirement in staff member or volunteer's state of residency and out-of-state residency during the past five years, and adds an interstate background check requirement for providers, staff, and volunteers with out-of-state residency and out-of-state residency during the past five years. A new staff member must have documentation confirming a valid criminal background check has within the past 180 days as opposed to the current 12 months.

The rule also requires all staff to complete 15 hours of approved training annually, which may be used to complete other training requirements, requires certification in Pediatric CPR, adds an immunization grace period for children experiencing homelessness and children in foster care, permits a serious incident to be reported via email and revises nutrition plans to meet current USDA Child and Adult Care Food Program meal and snack pattern requirements.

House Bill No. 2658, Department of Health and Human Resources, Minimum Licensing Requirements for Residential Child Care and Treatment Facilities for Children and Transitioning Adults and Vulnerable and Transitioning Youth Group Homes and Programs in West Virginia, 78 CSR 03.

The rule amends a current legislative rule which establishes standards and procedures for the licensure of residential child care and treatment facilities and vulnerable and transitioning youth group homes and programs.

The rule changes the employee-to-patient ratios for a psychiatric residential treatment facility from 1-to-3 to 1-to-4 during day and evening hours. During nighttime sleeping hours the ratio changes from 1-to-6 to 1-to-8.

House Bill No. 2659, Department of Health and Human Resources, Family Child Care Facility Licensing, 78 CSR 18.

The rule amends a current legislative rule which establishes standards and procedures for the licensure of child care centers under the provisions of W. Va. Code 49-2-101 et seq. and related federal and state code provisions.

The rule adds additional subjects to those required for pre-service training and adds a definition for the term "Serious Injury". It provides that all children 12 and under are included in the calculation of children in the facility, adds requirements for field trips and water activities, adds an immunization grace period for children experiencing

homelessness and children in foster care, adds additional training requirements for a family child care facility operator and the staff, and prohibits a care giver under the influence of any substance, including medical cannabis, that would impair their ability to care for children to be on the premises or have contact with the children.

The rule updates the WV Cares language. It adds a sex offender registry check requirement in staff member or volunteer's state of residency and out-of-state residency during the past five years, and adds an interstate background check requirement for providers, staff, and volunteers with out-of-state residency and out-of-state residency during the past five years. A new staff member must have documentation confirming a valid criminal background check has within the past 180 days as opposed to the current 12 months.

House Bill No. 2660, Department of Health and Human Resources, Family Child Care Home Registration, 78 CSR 19.

The rule amends a current legislative rule to bring the rule into compliance with 45 CFR Part 98 Child Care and Development Fund; to include requirements with Bureau for Public Health and make any other necessary changes.

The rule adds additional subjects to those required for pre-service training and adds a definition for the term "Serious Injury". It prohibits a care giver under the influence of any substance, including medical cannabis, that would impair their ability to care for children to be on the premises or have contact with the children.

The rule also clarifies a child care home must be closed for a 6 hour period every 18 hours, requires the development and implementation of a safety plan that is practiced twice annually, requires notice be given to parents containing specified information if there are pets in the home and notice to parents if a new pet is brought into the home, and adds an immunization grace period for children experiencing homelessness and children in foster care.

The rule updates the WV Cares language. It adds a sex offender registry check requirement in staff member or volunteer's state of residency and out-of-state residency during the past five years, and adds an interstate background check requirement for providers, staff, and volunteers with out-of-state residency and out-of-state residency during the past five years. A new staff member must have documentation confirming a valid criminal background check has within the past 180 days as opposed to the current 12 months.

House Bill No. 2661, Department of Health and Human Resources, Informal, and Relative Family Child Care Home Registration, 78 CSR 20.

The rule amends a current legislative rule which establishes standards and procedures for the licensure of child care centers under the provisions of W. Va. Code 49-2-101 *et seq.* and related federal and state code provisions.

The rule adds additional subjects to those required for pre-service training and adds a definition for the term "Serious Injury". It prohibits a care giver under the influence of any substance, including medical cannabis, that would impair their ability to care for children to be on the premises or have contact with the children.

The rule updates the WV Cares language. It adds a sex offender registry check requirement in staff member or volunteer's state of residency and out-of-state residency during the past five years, and adds an interstate background check requirement for providers, staff, and volunteers with out-of-state residency and out-of-state residency during the past five years. A new staff member must have documentation confirming a valid criminal background check has within the past 180 days as opposed to the current 12 months.

The rule requires notice be given to parents containing specified information if there are pets in the home and notice to parents if a new pet is brought into the home, adds an immunization grace period for children experiencing homelessness and children in foster care, and requires the development and implementation of an evacuation plan and a safety plan that is practiced twice annually.

House Bill No. 2662, Department of Health and Human Resources, Out of School Time Child Care Center Licensing, 78 CSR 21.

The rule amends a current legislative rule which establishes standards and procedures for the licensure of child care centers under the provisions of W. Va. Code 49-2-101 *et seq.* and related federal and state code provisions.

The rule adds additional subjects to those required for pre-service training and adds a definition for the term "Serious Injury". It prohibits a care giver under the influence of any substance, including medical cannabis, that would impair their ability to care for children to be on the premises or have contact with the children, adds an immunization grace period for children experiencing homelessness and children in foster care, and revises nutrition plans to meet current USDA Child and Adult Care Food Program meal and snack pattern requirements.

The rule updates the WV Cares language. It adds a sex offender registry check requirement in staff member or volunteer's state of residency and out-of-state residency during the past five years, and adds an interstate background check requirement for providers, staff, and volunteers with out-of-state residency and out-of-state residency during the past five years. A new staff member must have documentation confirming a

valid criminal background check has within the past 180 days as opposed to the current 12 months.

House Bill No. 2663, Department of Health and Human Resources, Goals for Foster Children, 78 CSR 25.

The rule repeals an existing legislative rule because the authorizing statute was amended in 2020; House Bill 4092 struck the specific mandate for the rule. Since the former subsection (c) of W. Va. Code §49-126-2 no longer exists, the rule is technically void pursuant to W. Va. Code §29A-1-3b(b).

House Bill No. 2664, Department of Health and Human Resources, Deemed Head Start Child Care Center Licenses, 78 CSR 28.

The rule is new and pursuant to Committee Substitute for House Bill No. 4662 which passed during the 2022 Regular Session. The rule establishes standards and procedures for the Head Start classrooms overseen by a Head Start Agency to be deemed a child care center licensed under the provisions of W. Va. Code §49-2-115a and related federal and state code. A deemed license allows the applicant access to WV Cares. The rule defines terms, sets forth an application process, authorizes the Department to investigate complaints, and provides for revocation of a license or the reversion to another license if the Office of Head Start is no longer funding the agency.

House Bill No. 2665, Department of Health and Human Resources, All-Payer Claims Database – Submission Manual, 114A CSR 03.

The rule is new. The rule attaches a manual which contains the substantive content of the rule. The All-Payer Claims Database includes claims from public and private health plans, including private insurance plans, Medicare, and Medicaid. Claims data refers to administrative records created when health care providers require payment (bill) for services delivered to patients. Claims used for billing purposes contain coded information for diagnosis and procedures.

House Bill 2029 which passed this Session and has been signed by the Governor repealed the article of the Code that created the All-Payer Claims Database. The LRMRC recommended that the rule be disapproved.

114A CSR 01 – All-Payer Claims Database – Data Submission Requirements

This rule was amended into the rules bundle due to the passage of House Bill 2029 which passed this legislative session and was signed by the Governor, repealing the section of code which authorizes the All-Payer Claims Database. The rule will be repealed by the agency.

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: March 6, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2862

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to requirements for shareholder voting by the West Virginia Investment Management Board and the Board of Treasury Investments.

CODE REFERENCE: §12-6C-13 (Amends and Reenacts); §12-6-11a (New)

SUMMARY:

The bill establishes a standard of care for shareholder voting which applies to both the West Virginia Board of Treasury Investments (“BTI”) and the West Virginia Investment Management Board (“IMB”), to be effective July 1, 2024. The bill requires that all shareholder votes that BTI and IMB (collectively “the Boards”) are authorized to cast, or entrust to a fiduciary, are cast solely in the pecuniary interests of the underlying fund’s beneficiaries. The Boards are expressly prohibited from casting, or permitting a fiduciary to cast, any shareholder vote for the purpose of furthering non-pecuniary interests.

The bill defines pecuniary factors as those factors having a direct and material effect on the financial risk or return to beneficiaries based on an investment pool’s objectives and funding policy. The bill clarifies that environmental, social, corporate governance, or other similar considerations are not pecuniary factors, unless a prudent investor would determine that such a consideration directly and materially affects the financial risk or return to beneficiaries. Any factor that does not meet the definition of pecuniary factor is considered a non-pecuniary factor under the bill.

Additionally, the bill prohibits the Boards from adopting a policy of casting shareholder votes, or permitting a fiduciary to cast shareholder votes, according to the recommendations of a proxy advisor firm unless such firm commits, in writing, to make all shareholder voting recommendations to the Boards according to the standard of care. A fiduciary must provide the Boards with advance notice of any shareholder vote concerning non-pecuniary interests to provide the Boards with a reasonable opportunity to instruct the fiduciary how the vote must be cast.

The bill allows the Boards to waive requirements of the bill related to money managers, if those requirements could cause significant loss to the funds under management or significantly limit investment options. To adopt a waiver, the Boards would have to make a finding that reasonable and good faith efforts have been made to find a fiduciary meeting the requirements of the bill.

The bill makes clear that the Boards are not required to divest from any private market funds or from indirect holdings in actively or passively managed investment

funds. However, if the manager of such a fund offers “proxy voting choice options,” the Boards must exercise those options according to the standard of care. “Proxy voting choice options” refers to a set of features that some fund managers now offer institutional clients, in which the clients may participate in proxy voting decisions when legally and operationally viable.

Finally, the bill requires each Board to publish an annual report on its website, tabulating and describing all shareholder votes cast by the Board or its fiduciaries.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 2875

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Clarifying that Circuit Court Judges have the ability/authority to waive the requirement that a party pass a home study performed by the DHHR.

CODE REFERENCE: §49-4-114 (Amends and Reenacts)

SUMMARY:

The bill authorizes circuit judges to waive a home study in cases of grandparent adoption.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3018

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Establishing that 18 is the age of consent and removing the ability of an underage person to obtaining a consent to marry through their parents, legal guardians, or by petition to the circuit court.

CODE REFERENCE: §48-2-103 (Repeals); §48-2-106 and §48-2-301 (Amends and Reenacts)

SUMMARY:

Currently, West Virginia law permits an individual under the age of 18 to marry (1) if the marriage applicant is 16 years old or older and the applicant's parents or guardian consents; or (2) if the marriage applicant is under 16 years old, a circuit court judge may order the county commission to issue a marriage license upon consent of the parents and a finding that the issuance of a license is in the best interests of the marriage applicant. The bill removes these exceptions and establishes that the age of consent for marriage for all persons, both male and female, is 18 years old. The bill clarifies that a minor under 18 lacks capacity to marry until certain consents are obtained.

The bill provides that a 16- or 17-year-old minor may marry a person up to four years older than him or her upon the valid written consent from the minor applicant and his or her parent(s) or legal guardian(s). The bill provides requirements for a signed and acknowledged affirmation by the minor and the acknowledged consent of the parent(s) or legal guardian(s).

The bill authorizes a married 16- or 17-year-old minor to petition for annulment of his or her marriage without consent of his or her parents or guardians.

Finally, the bill clarifies that it does not annul or void a marriage entered into prior to enactment or an otherwise legal marriage entered into outside of West Virginia.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3146

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Establishing in West Virginia Code, the contents of the Uniform Public Meetings During Emergencies Act.

CODE REFERENCE: §6-9C-1 through §6-9C-10 (Amends and Reenacts)

SUMMARY:

House Bill 3146 is an adoption of a model statute, the Public Meetings During Emergency Act. Its primary purpose is to provide a framework for allowing and governing virtual public meetings during declared emergencies.

The bill defines terms, outlines when virtual public meetings are permitted, establishes procedure for the conduct of such meetings, ensures that observation by and participation of the public is facilitated, sets rules for notice, and references the acts interaction with the federal Electronic Signatures Act.

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 3147

COMMITTEE SUBSTITUTE

SHORT TITLE: To create the Upper Ohio Valley Trail Network.

CODE REFERENCE: §20-17A-1 and §20-17A-2 (Amends and reenacts); 20-17B-1 *et seq.* (New)

SUMMARY:

This bill authorizes the Mountaineer Trail Network Recreation Authority to work with adjacent neighboring states and counties to facilitate the implementation of trail-oriented recreation facilities. The Authority may also set goals of connecting to the Upper Ohio Valley Trail Network Recreation Authority, the Elk River Trail, the Chesapeake and Ohio Canal Tow Path and any other trails in adjacent neighboring states that can be feasibly connected.

This bill creates the Upper Ohio Valley Trail Network Recreation Authority consisting of representatives from all the counties in the northern panhandle and the Ohio River valley counties. The Authority may establish an Upper Ohio Valley Trail Network Recreation Authority Area within the jurisdiction of those counties. Monongalia County of the Mountaineer Trail Network Recreation Authority is to serve as an *ex officio* member for the purposes of establishing the trail network and coordinating the two networks.

Recreational purposes for the Area are specified but are not exclusive. The governing body is to be constituted and costs and expenses paid in accordance with W. Va. Code §20-17-1 *et seq.* Finally, owners of lands used by the Authority have the full benefit of limited liability in that article.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3156

INTRODUCED

SHORT TITLE: Raising the compensation rates of panel attorneys.

CODE REFERENCE: §29-21-13a (Amends and Reenacts)

SUMMARY:

This bill increases the amount of compensation (from \$3,000 to \$4,500) and expenses (from \$1,500 to \$2,500) that panel attorneys can claim in their billing vouchers from. It also increases investigative services hourly rate of pay from \$30 to \$40. Lastly, it provides for payment for representation in expungement proceedings when cases have been dismissed or there is an acquittal.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3166

INTRODUCED

SHORT TITLE: To permit a hospital to hold a patient experiencing a psychiatric emergency for up to 72 hours.

CODE REFERENCE: §27-5-2a (Amends and Reenacts)

SUMMARY:

The bill clarifies that in the absence of a mental hygiene commissioner, magistrate, or circuit judge, an authorized staff physician may order the involuntary hospitalization of a person presenting at the emergency room or a person already admitted to the hospital for 72 hours for emergency psychiatric treatment.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3190

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Amending the definition of “minor”.

CODE REFERENCE: §61-3C-14b, §61-8A-1, §61-8B-1, and §61-14-1 (Amends and Reenacts); §61-8-32 (New)

SUMMARY:

The bill adds to the definition of “minor” in multiple sections. This is solely for purposes of law-enforcement operations by people representing themselves to be minors. The change is to clarify that persons over 18 may represent themselves as minors in undercover or “sting” type operations and violations will not be jeopardized thereby.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 3270

COMMITTEE SUBSTITUTE

SHORT TITLE: To amend the deliberate intent statute to limit noneconomic damages to \$500,000.

CODE REFERENCE: §23-4-2 (Amends and Reenacts); §23-4-2A (New)

SUMMARY:

Under current law, West Virginia employers who are covered under the workers compensation system enjoy immunity from employee suits for workplace injuries. However, an injured employee may bypass an employer's workers compensation immunity and bring a “deliberate intent” civil action (also sometimes referred to as a *Mandolidis* action) against the employer by establishing that an injury was caused because the employer deliberately exposed the employee to unsafe working conditions.

The bill imposes a new requirement for deliberate intent cases based on an employee suffering from occupation pneumoconiosis, such as black lung or silicosis. In those cases, the employee is required to prove that the employer fraudulently concealed or manipulated dust samples or air quality samples to be successful in a deliberate intent claim.

The bill also imposes a limit on compensatory damages for noneconomic loss, applicable to deliberate intent causes of action accruing on or after July 1, 2023. Such damages may not exceed the higher of two times the economic damages before the post-verdict offset or \$500,000. The bill links the cap to the Consumer Price Index and requires annual increases to account for inflation until the cap reaches \$750,000.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Became law without Governor's signature March 11, 2023

House Bill 3302

COMMITTEE SUBSTITUTE

SHORT TITLE: To recognize unborn child as distinct victim in a DUI causing death.

CODE REFERENCE: §17c-5-2 and §61-2-30 (Amends and Reenacts)

SUMMARY:

The bill amends W. Va. Code §17c-5-2 to include an embryo and fetus as separate and distinct victims of DUI causing death or serious bodily injury. It amends W. Va. Code §61-3-20 which lists offenses where the fetus as a separate victim as to certain offenses to expressly include those offenses.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 15, 2023

House Bill 3332

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Creating judicial circuits and assigning the number of circuit judges in each circuit to be elected in the 2024 election

CODE REFERENCE: §50-1-2, §50-1-8, §50-1-9, §50-1-9a, §51-2-1, §51-2A-3, and §51-2A-6 (Amends and Reenacts); §50-1-9c (New)

SUMMARY:

Article 8, Section 5 of the West Virginia Constitution authorizes the Legislature to alter the number of judicial circuits during the odd number year immediately preceding the year in which circuit judges are elected to their full 8-year term. The Legislature is further authorized to change the composition of the circuits and the number of judges within any circuit provided that each circuit has at least one judge.

Similarly, Article 8, Section 16 of the West Virginia Constitution permits the Legislature to alter the number and arrangement of family court circuits. As with circuit court judges, family court judges are elected to serve an 8-year term.

Finally, Article 8, Section 10 of the West Virginia Constitution requires the Legislature to establish a magistrate court in each county and to determine the number of magistrates to be elected in each county to serve a 4-year term.

Pursuant to these Constitutional provisions and following the Legislature's receipt of three workload studies performed by the National Center for State Courts for the circuit court, family court, and magistrate court systems, respectively, this bill alters the number and composition of these court systems as well as the number of judges serving in these court systems. The bill also updates provisions relating to the election of certain judges, staffing of these court systems, and compensation of court system employees.

A. Circuit Courts

Currently, the state has 75 circuit court judges serving in 31 judicial circuits. The bill changes the counties which comprise several circuits and renumbers most of the judicial circuits, eliminating one circuit for a total of 30 circuits. The bill also adds 6 judges and eliminates one judge for a net increase of 5 judges. The changes to the judicial circuits will take effect January 1, 2025, with newly created circuit court judge positions being filled in the May 2024 election. The chart below summarizes the changes to county composition and number of judges:

Changes to Judicial Circuits	
<i>Current Circuits</i>	<i>New Circuits</i>
Doddridge, Pleasants, and Ritchie Counties (3 rd Circuit/1 Judge) Wood and Wirt Counties (4 th Circuit/4 Judges)	Doddridge, Pleasants, and Ritchie, and Wirt Counties (3 rd Circuit/2 Judges) Wood County (sole county in 4 th Circuit /4 Judges)
McDowell County (sole county in 8 th Circuit/2 Judges) Wyoming County (sole county in 27 th Circuit/1 Judge)	McDowell and Wyoming Counties (12 th Circuit/2 Judges)
Kanawha County (sole county in 13 th Circuit/7 Judges)	Kanawha County (sole county in 8 th Circuit/8 Judges)
Preston (sole county in 18 th Circuit/1 Judge) Tucker, Grant, and Mineral Counties (21 st Circuit/2 Judges)	Preston and Tucker Counties (22 nd Circuit/2 Judges) Grant and Mineral Counties (25 th Circuit/2 Judges)
Randolph County (sole county in 20 th Circuit/1 Judge)	Randolph County (sole county in 24 th Circuit/2 Judges)
Berkeley, Jefferson, and Morgan Counties (23 rd Circuit/6 Judges)	Berkeley and Morgan Counties (27 th Circuit/5 Judges) Jefferson County (sole county in 28 th Circuit/2 Judges)
Nicholas County (sole county in 28 th Circuit/1 Judge)	Nicholas County (sole county in 16 th Circuit/2 Judges)
Mingo County (sole county in 30 th Circuit/1 Judge) Logan County (sole county in 7 th Circuit/2 Judges)	Mingo and Logan Counties (11 th Circuit/3 Judges)

*This chart does not include circuits which were renumbered only.

Other changes relating to the circuit courts are as follows:

- The bill specifies that the judges will be elected by voters of the entire circuit but in separate divisions.
- The bill provides specified residency requirements for judges elected in the 3rd, 5th, 11th, 12th, 17th, 18th Circuits, and provides for declaring a winner in the divisions of the 3rd and 17th Circuits.
- The bill provides that the circuit court in Raleigh County, not Kanawha County, will have concurrent jurisdiction with the remaining single judge circuit (*i.e.*, the 30th Circuit comprised of Summers and Monroe County) if that judge is unavailable.
- The bill requires runoff elections in judicial elections beginning in 2024 in which no candidate for a division for circuit judge receives more than 30% of votes cast. The runoff election will take place at the subsequent general election between the two candidates who received the highest and next highest number of votes cast in the division.

B. Family Courts

Currently, the state has 47 family court judges serving in 27 family court circuits. The bill alters the county composition of two family court circuits and adds one family court judge to one circuit for a total of 48 judges statewide. The new judge will run in the 2024 election and begin serving January 1, 2025. The chart below summarizes these changes:

Changes to Family Court Circuits	
<i>Current Circuits</i>	<i>New Circuits</i>
Braxton, Lewis, and Upshur Counties (17 th Circuit/1 Judge)	Lewis and Upshur Counties (17 th Circuit/1 Judge)
Webster and Pocahontas Counties (27 th Circuit/1 Judge)	Webster, Braxton, and Pocahontas Counties (27 th Circuit/1 Judge)
Berkeley and Jefferson Counties (24 th Circuit/3 Judges)	Berkeley and Jefferson Counties (24 th Circuit/4 Judges)

The bill also makes the following additional changes relating to the family court system:

- The bill permits the Supreme Court of Appeals to increase number of family case coordinators.
- The bill authorizes the Supreme Court of Appeals to create staff classifications and to appoint additional support staff to family court judges based on workload.
- The bill provides for an additional \$2,300 in annual compensation for secretary-clerks and family case coordinators effective July 1, 2023.

Magistrate Courts

Currently, West Virginia has 159 magistrate judges serving in the 55 counties. The bill gives effect to an administrative order entered by the Supreme Court of Appeals recommending the addition of 11 magistrates for a total of 170 magistrates statewide. Generally, the new magistrates would be elected in 2024 and take office January 1, 2025; the exception is Monongalia County, where one magistrate would be appointed by the Chief Circuit Court Judge and take office July 1, 2023. The chart below summarizes these changes:

Changes to County Magistrate Judges	
<i>County and Current Magistrates</i>	<i>New Total Magistrates</i>
Kanawha County (10 Magistrates)	13 Magistrates (+3)
Wood County (4 Magistrates)	6 Magistrates (+2)
Monongalia County (4 Magistrates)	6 Magistrates (+2)
Berkley County (6 Magistrates)	7 Magistrates (+1)
Logan County (3 Magistrates)	4 Magistrates (+1)
Raleigh County (5 Magistrates)	6 Magistrates (+1)
Jefferson County (3 Magistrates)	4 Magistrates (+1)

The bill makes the following additional changes relating to the magistrate court system:

- Currently, the Legislature is prohibited from reducing the number of magistrates or expanding that number beyond 170. The bill removes these restrictions.
- The bill requires the Supreme Court to engage in another magistrate caseload study in 2026 and make its recommendation via administrative order in 2027.
- The bill eliminates the population-based annual salary for magistrate court clerks, magistrate assistants, and magistrate court deputy clerks; and increases their annual compensation by \$2,300 effective July 1, 2023.
- The bill removes the cap on magistrate assistants (currently 1 per magistrate) and authorizes additional magistrate assistants based on workload.
- The bill removes the cap on magistrate court deputy clerks (currently 72).
- The bill authorizes the Supreme Court of Appeals to create additional classifications of support staff for the magistrate court system and provides for an annual salary not to exceed that of magistrate assistants.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 3360

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Creating an office of the Inspector General within the Department of Homeland Security.

CODE REFERENCE: §15A-13-1 *et seq.* (New)

SUMMARY:

This bill creates an Office of Inspector General within the Department of Homeland Security. The bill sets out qualifications and duties of the office as well as to whom the Inspector General reports.

The Inspector General is to be appointed by the Governor with the advice and consent by the Senate. The salary is not set but is capped at \$95,000. The Inspector General is classified exempt, but staff is civil service.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 3432

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Relating to statutory construction.

CODE REFERENCE: §2-2-10, §2-2-12, and §4-1-13 (Amends and Reenacts)

SUMMARY:

This bill updates and clarifies provisions relating to statutory construction and the primacy of certain bills. It also codifies several areas of law as handed down by the West Virginia Supreme Court of Appeals. Specifically, the bill:

- (1) Updates and alphabetizes definitions;
- (2) Clarifies the meaning of plural words and the effect of assigning a power to multiple individuals;
- (3) Declares that statutes are to be construed to avoid absurd results;
- (4) Declares that statutes should be read as a whole, in context, and whenever possible a court is to give effect to every word of the statute; and
- (5) Where two bills affecting the same section pass in the same session, whichever enrolled bill is passed later in time is controlling.

The bill also undertakes various amounts of purely technical cleanup.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed on March 29, 2023

House Bill 3439

STRIKE AND INSERT AMENDMENT

SHORT TITLE: To limit the civil liability of child placing agencies that obtain an insurance policy in an amount not less than \$1 million per incident.

CODE REFERENCE: §49-2-130 (New)

SUMMARY:

This bill requires every child welfare agency to obtain an insurance policy in an amount of not less than \$1 million per incident against liability for damages arising from any error or omission in providing child placement services. An act of sexual assault or sexual abuse constitutes an incident. The agency has no civil liability beyond that amount unless the damages or injuries are intentionally or maliciously inflicted. The agency must file proof of insurance with the Department of Health and Human Resources annually by January 1.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3448

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Relating generally to probation officer field training.

CODE REFERENCE: §62-15-5 (Amends and Reenacts)

SUMMARY:

This bill allows the Supreme Court Division of Probation Services to conduct field training for probation officers. It also grants a field training officer the same powers as a probation officer while performing his or her field duties.

DATE OF PASSAGE: March 7, 2023

EFFECTIVE DATE: June 5, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 3479

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Creating requirements for use of unmanned aerial vehicles.

CODE REFERENCE: §61-16-1 and §61-16-2 (Amends and Reenacts)

SUMMARY:

This bill amends two sections in Chapter 61, Article 16, which regulates the use of unmanned aerial vehicles, more commonly called “drones,” in West Virginia. The bill refines this relatively new section of the Code and makes both substantive additions and technical cleanup.

Substantively, the bill imposes restrictions on the operation of drones over certain “targeted facilities”—defined via cross-reference to the “critical infrastructure” outlined in W. Va. Code §61-10-34—which includes industrial facilities (chemical plants, steel mills, railyards, oil or gas refineries & pipelines), military installations, critical facets of public infrastructure (dams, water treatment facilities, wireless/radio transmission towers, etc.), and commercial airports. The operation of drones over these facilities is prohibited when the purpose is to release a substance or other projectile, conduct surveillance with the intent to harm the facility or the public, obtain proprietary information or trade secrets, or to obtain protected governmental information.

The bill also clarifies that, in general, restrictions on drone use do not constrain law enforcement agencies so long as they comply generally with the provisions of this article and do not violate the protection against unreasonable search and seizure provided by the state and federal constitutions (the Fourth Amendment of the U. S. Constitution and West Virginia’s state-level analog, Art. III, §6 of the West Virginia Constitution).

It contains a proviso establishing that landowners who wish to operate, or hire third parties to operate, drones in the airspace over their own land, can do so without violating the regulations set forth in this article.

Finally, the bill provides an exception from these regulations for newsgathering activity conducted by a drone flying at an altitude of greater than 400 feet, the ceiling for most commercially available drones (400 feet is also the floor for manned aviation). Practically speaking, this exception permits newsgathering activity conducted by drones that are analogous/equivalent to manned helicopters and thus are subject to Federal Aviation Administration regulation.

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed on March 29, 2023

House Bill 3499

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: To permit joint tenancy with rights of survivorship when transfer on death deeds specify a joint tenancy with right of survivorship.

CODE REFERENCE: §36-12-11 and §36-12-13 (Amends and Reenacts)

SUMMARY:

The bill makes several changes to West Virginia's codification of the Uniform Real Property Transfer on Death Act.

First, the bill provides clarification regarding what happens when the designated beneficiary of a transfer on death deed predeceases the transferor. Namely, when the sole beneficiary predeceases the transferor, the transfer on death deed lapses. that possessory interest.

The bill also permits transfer on death deeds to transfer an interest in real property with a right of survivorship. Prior to enactment, if multiple beneficiaries were named in a transfer on death deed, they could only receive "equal and undivided shares with no right of survivorship." The bill changes the law to permit (but does not require) the transferor to grant his or her interest to multiple beneficiaries with the right of survivorship.

The bill also clarifies that the interest conveyed by a transferor depends on his or her interest in the conveyed property. Thus, if the transferor is one of multiple owners and they share the right of survivorship, if the transferor predeceases the other owners with survivorship rights, the transfer on death deed is superseded by the survivorship rights of the other owners, and the deed conveys nothing. If the transferor is one of multiple owners as a tenant in common, the transfer on death deed is effective, but only conveys the portion of the tenancy that the transferor possessed to the beneficiaries named in the deed.

Finally, the bill provides that when real property that is the subject of a transfer on death deed is sold by the same transferor prior to the transferor's death, the *inter vivos* transfer operates to revoke the transfer on death deed even in the absence of specific revocation language.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed on March 29, 2023

House Bill 3559

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to defining a newborn safety device.

CODE REFERENCE: §49-4-201 (Amends and Reenacts)

SUMMARY:

This bill authorizes a person to anonymously place a child, within 30 days of the child's birth, in a newborn safety device with the intent to leave the child and for a licensed emergency medical services provider to remove the child from the device and take custody of the child. The bill also grants civil and criminal immunity to the emergency medical service provider unless the emergency medical service provider's actions were the result of gross negligence or willful misconduct. Additionally, the bill describes the location of the newborn safety device. The bill also defines the device, the newborn safety device's alarm system, and establishes a maintenance protocol for the alarm. It requires the transportation of the newborn to a medical facility immediately after the child is retrieved.

The bill grants that any person who relinquishes a child in a newborn safety device may remain anonymous and shall not be pursued, unless in cases where evidence of child abuse or neglect is present. Furthermore, the bill waives the rights of notification and standing to the person who relinquishes a child in a newborn safety device.

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3560

ORIGINATING

SHORT TITLE: - Relating to expanding the definitions of land and recreational purposes.

CODE REFERENCE: §19-25-5 (Amends and reenacts)

SUMMARY:

This bill expands the definitions of “land” and “recreational purposes” as they relate to limiting landowner liability. This bill adds rock climbing, bouldering, caving, rappelling, and slacklining to the list of recreational activities. The definition of land was expanded to include rocks, boulders, and caves.

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 28, 2023