

WEST VIRGINIA
LEGISLATURE

2017 BILL SUMMARIES

SENATE COMMITTEE ON THE JUDICIARY



COMMITTEE ON THE JUDICIARY

WEST VIRGINIA SENATE

EIGHTY-THIRD LEGISLATURE

FIRST SESSION



MAY 2017

Printed for the use of the Committee on the Judiciary

SENATE COMMITTEE ON THE JUDICIARY

2017 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 at the top, and "MONTANI SEMPER LIBERI" is written in an arc at the bottom. The seal is rendered in a light gold or yellow color.

<u>NAME</u>	<u>TITLE</u>	<u>EMPLOYMENT STATUS</u>
Jennifer Greenlief	Counsel	Full Time
Elizabeth Lovell	Executive Assistant	Full Time
Jared Wyrick	Analyst & LRMRC	Full Time
Priscila Santos ¹	Analyst/Clerk	Full Time
<hr/>		
Evelyn Ciccarello	Receptionist	Per Diem
Ben Spurlock	Rollins Scholar	Per Diem
Tom Smith	Chief Counsel	Per Diem
Debra Graham	Counsel	Per Diem
Tom Kleeh	Counsel	Per Diem
Andrew Robey	Counsel	Per Diem

¹ Cover art created by Priscila Santos. Picture provided by Will Price, Photographer, West Virginia Legislature's Office of Reference and Information.

WEST VIRGINIA LEGISLATURE
SENATE COMMITTEE ON THE JUDICIARY
STATISTICS 2017

**TOTAL NUMBER OF BILLS AND RESOLUTIONS
INTRODUCED DURING THE 1ST SESSION OF THE 83RD
LEGISLATURE:**

TOTAL BILLS:	1,802
RESOLUTIONS:	93
CONCURRENT RESOLUTIONS:	206
JOINT RESOLUTIONS:	36
TOTAL:	2,137

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

SENATE BILLS:	694
SENATE RESOLUTIONS:	74
SENATE CONCURRENT RESOLUTIONS:	64
SENATE JOINT RESOLUTIONS:	10
TOTAL:	842

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

HOUSE BILLS:	1,108
HOUSE RESOLUTIONS:	19
HOUSE CONCURRENT RESOLUTIONS:	142
HOUSE JOINT RESOLUTIONS:	26
TOTAL:	1,295

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

BILLS:	6
RESOLUTIONS:	3
TOTAL:	9

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

SENATE BILLS:	320
HOUSE BILLS:	63
SENATE CONCURRENT RESOLUTIONS:	3
SENATE JOINT RESOLUTIONS:	9
HOUSE CONCURRENT RESOLUTIONS:	0
HOUSE JOINT RESOLUTIONS:	0
TOTAL:	395

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

SENATE BILLS:	116
HOUSE BILLS:	50
RULES BILLS:	83
RESOLUTIONS:	6
TOTAL:	255

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

SENATE BILLS:	130
HOUSE BILLS:	132
TOTAL:	262²

² Of the 262 bills that completed legislative action during the 1st Session of the 83rd Legislature, 17 were vetoed (S.B. 28, S.B. 172, S.B. 239, S.B. 248, S.B. 255, S.B. 330, S.B. 347, S.B. 437, S.B. 441, S.B. 606, S.B. 622, S.B. 656, H.B. 2018, H.B. 2196, H.B. 2446, H.B. 2589, and H.B. 2646) and 1 was overridden (S.B. 330).

TOTAL NUMBER OF CONCURRENT RESOLUTIONS THAT COMPLETED LEGISLATIVE ACTION:

SENATE CONCURRENT RESOLUTIONS:	21
HOUSE CONCURRENT RESOLUTIONS:	45
TOTAL:	66

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

SENATE BILLS:	56
HOUSE BILLS:	40
TOTAL:	96³

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

SENATE JOINT RESOLUTION:	1
TOTAL:	1

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

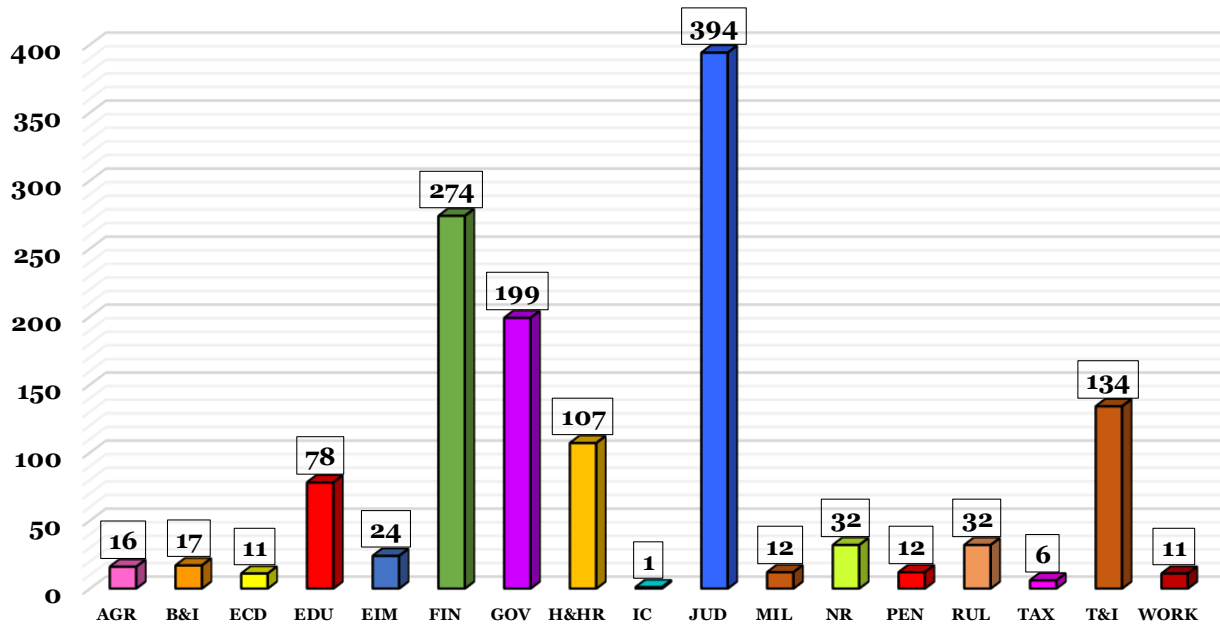
SENATE BILLS:	52
HOUSE BILLS:	40
TOTAL:	92⁴

³ Of the 96 bills that were reported from the Senate Committee on the Judiciary during the 1st Session of the 83rd Legislature, 5 were vetoed (S.B. 239, S.B. 248, S.B. 255, S.B. 330, and S.B. 606) and 1 was overridden (S.B. 330).

⁴ Of the 96 bills that were reported from the Senate Committee on the Judiciary during the 1st Session of the 83rd Legislature, 92 became law – which amounts to approximately 95.9 percent of all the bills reported by the Committee.

STATISTICS 2017

2017 Regular Legislative Session
Bills and Resolutions Referred to Committees



2017 Regular Legislative Session
Bills and Resolutions Reported from Committees

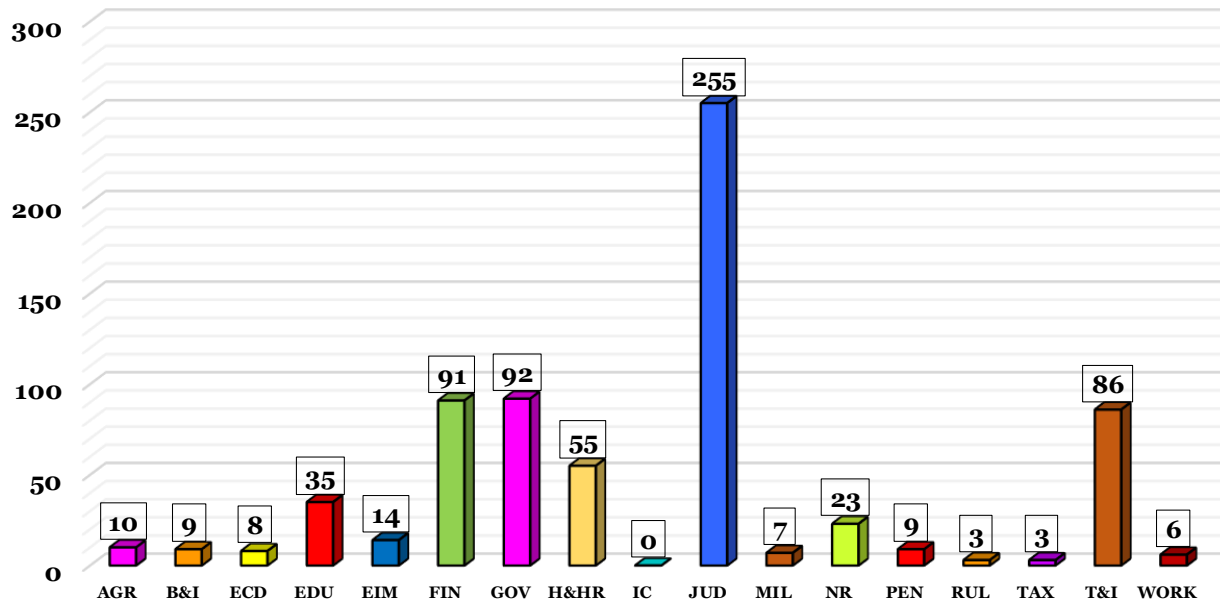


TABLE OF CONTENTS

<u>BILL NO.</u>	<u>SHORT TITLE</u>	<u>PAGE NO.</u>
SB 5	Disqualifying CDL for DUI conviction in certain cases.....	1
SB 41	Extending time person may be subject to probation.....	2
SB 76	Creating WV Second Chance for Employment Act	3
SB 113	Authorizing DEP promulgate legislative rules	5
SB 116	Authorizing MAPS promulgate legislative rules	9
SB 125	Authorizing DHHR and Health Care Authority promulgate legislative rules	12
SB 127	Authorizing certain Department of Revenue to promulgate legislative rules	27
SB 134	Authorizing Bureau of Commerce to promulgate legislative rules	30
SB 151	Authorizing Department of Administration promulgate legislative rules	33
SB 173	Relating generally to autocycles	35
SB 187	Providing for confidentiality of patients' medical records	36
SB 206	Relating generally to criminal offense of kidnapping	37
SB 214	Adopting Uniform Electronic Legal Material Act.....	38
SB 219	Relating to conspiracy to commit crimes under Uniform Controlled Substances Act	39
SB 220	Relating to offenses and penalties under Uniform Controlled Substances Act.....	41
SB 222	Relating to disqualification for unemployment benefits.....	42
SB 224	Repealing requirement for employer's bond for wages and benefits	43

SB 225	Allowing magistrates to conduct proceeding for temporary emergency protective order dealing with temporary custody by family court.....	44
SB 230	Relating to certain WV officials carrying concealed firearm nationwide ..	45
SB 233	Excluding from protection oral communications uttered in child care center under Wiretapping and Electronic Surveillance Act.....	46
SB 239	Limiting use of wages by employers and labor organizations for political activities	47
SB 240	Creating crime of nonconsensual distribution of sexual images	49
SB 247	Authorizing prosecuting attorney designate and deliver grand jury records for investigative purposes	50
SB 248	Clarifying composition and chairmanship of Commission on Special Investigations	51
SB 255	Relating generally to filling vacancies in elected office	52
SB 256	Relating to prohibiting aiding and abetting of sexual abuse by school personnel.....	54
SB 261	Relating to increasing salary or wages of judgment debtor	55
SB 288	Increasing penalty for crime of child abuse causing death by parent, guardian, custodian or other person	56
SB 330	Relating to WV Workplace Freedom Act.....	57
SB 333	Requiring all DHHR-licensed facilities access WV Controlled Substances Monitoring Program Database	58
SB 337	Hiring correctional officers without regard to placement on correctional officer register	60
SB 338	Relating to medical professional liability	61
SB 344	Relating to application of payments on consumer credit sale and loans...	62
SB 345	Allowing certain hunting and trapping on private lands on Sundays	63

SB 358	Relating generally to trustee sale of timeshare estates	64
SB 386	Creating WV Medical Cannabis Act.....	65
SB 388	Relating to dangerous weapons	69
SB 402	Relating to covenants not to compete between physicians and hospitals .	70
SB 442	Relating generally to crimes against persons	71
SB 445	Amending definition of "abused child"	72
SB 454	Providing more efficient collection and submission of state moneys received from court transactions or court services	73
SB 455	Relating generally to commitment of persons to custody of Commissioner of Corrections	74
SB 456	Relating to standards for termination of parental rights in child abuse and neglect cases	75
SB 490	Clarifying standard of liability for officers of corporation	76
SB 497	Relating to liability for health care providers who provide services at school athletic events	78
SB 515	Relating to parole requirements for hearings and release	79
SB 554	Relating to false swearing in legislative proceeding.....	80
SB 563	Relating to Consumer Credit and Protection Act.....	81
SB 575	Relating generally to shooting ranges	84
SB 581	Relating generally to administration of trusts.....	85
SB 606	Relating to minimum wage and maximum hours for employees	87
SB 608	Clarifying lawful business structures are unaffected by enactment of prohibitory legislation.....	88
SB 637	Relating to private club operations requirements.....	89

SB 667	Limiting authority of Attorney General to disclose certain information provided by Tax Commissioner	90
SB 684	Relating generally to WV State Police	91
SB 690	Authorizing WV State Police impose and collect fees for agencies and entities using their facilities	92
SJR 6	Roads to Prosperity Amendment of 2017	93
HB 2001	Relating to ethics and transparency in government	94
HB 2006	Increasing the penalties for violating the Whistle-blower Law	96
HB 2083	Increasing the felony criminal penalties for exposing children to methamphetamine manufacturing.....	97
HB 2219	Authorizing miscellaneous boards and agencies to promulgate legislative rules	98
HB 2303	Increasing criminal penalties for littering.....	110
HB 2318	Relating generally to human trafficking.....	111
HB 2319	Relating to candidates or candidate committees for legislative office disclosing contributions.....	114
HB 2329	Prohibiting the production, manufacture or possession of fentanyl	115
HB 2359	Relating to offenses and penalties for practicing osteopathic medicine without a license.....	116
HB 2364	Prohibiting electioneering within or near early voting locations during early voting periods.....	117
HB 2367	Establishing a criminal offense of organized retail crime	118
HB 2373	Authorizing school bus drivers trained in administration of epinephrine auto-injectors to administer autoinjectors	119
HB 2404	Barring persons who are convicted of certain criminal offenses from acquiring property from their victims	120

HB 2447	Renaming the Court of Claims the state Claims Commission	122
HB 2479	Uniform Deployed Parents Custody and Visitation Act	124
HB 2486	Providing that when a party's health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order	126
HB 2506	Relating to the permit limit calculations and allowing overlapping mixing zones for calculating permit limits for drinking water criteria	128
HB 2509	Relating to the practice of telemedicine	129
HB 2526	Classifying additional drugs to Schedules I, II, IV and V of controlled substances	130
HB 2548	Relating to the use of outside speakers by persons licensed to manufacture, sell, possess for sale, transport or distribute nonintoxicating beer	131
HB 2579	Increasing the penalties for transporting controlled substances.....	132
HB 2585	Creating felony crime of conducting financial transactions involving proceeds of criminal activity	134
HB 2619	Risk Management and Own Risk and Solvency Assessment Act.....	135
HB 2620	West Virginia Drug Overdose Monitoring Act	137
HB 2674	Relating to access to and receipt of certain information regarding a protected person	138
HB 2678	Changing the amounts of prejudgment and post-judgment interest to reflect today's economic conditions.....	139
HB 2679	Relating to the possession of firearms in parks and park facilities.....	141
HB 2683	Relating to West Virginia Insurance Guaranty Association Act	142
HB 2684	Imposing penalties for repeat violations of the prohibition against driving under the influence on a suspended license	143

HB 2704	Prohibiting persons convicted of sexual offenses against children with whom they hold positions of trust from holding certification or license valid in public schools	144
HB 2726	Authorizing home incarceration officers to arrest participants for violating the terms and conditions of his or her supervision with or without a court order	145
HB 2731	Clarifying civil actions heard in circuit court	146
HB 2781	Requiring a person desiring to vote to present documentation identifying the voter to one of the poll clerks.....	147
HB 2797	Codifying statutory immunity for government agencies and officials from actions of third-parties using documents or records	148
HB 2850	Relating to product liability actions.....	149
HB 2857	West Virginia Safer Workplaces Act.....	151
HB 2898	Authorizing the Joint Committee on Government and Finance to request and obtain criminal background checks of employees of the Legislature.....	155
HB 2980	Relating to civil lawsuit filing fees for multiple defendant civil action.....	156
HB 3018	Adding definition of correctional employee to the list of persons against whom an assault is a felony	157
HB 3022	Relating to the reporting of fraud, misappropriation of moneys, and other violations of law to the commission on special investigations.....	158

TOPICAL INDEX

ACTIONS, SUITS, AND LIENS

SB 261	Relating to increasing salary or wages of judgment debtor	55
SB 338	Relating to medical professional liability	61
SB 497	Relating to liability for health care providers who provide services at school athletic events	78
SB 575	Relating generally to shooting ranges	84
HB 2678	Changing the amounts of prejudgment and post-judgment interest to reflect today's economic conditions.....	139
HB 2980	Relating to civil lawsuit filing fees for multiple defendant civil action.....	156

ALCOHOLIC LIQUORS AND BEERS

SB 637	Relating to private club operations requirements.....	89
--------	---	----

BOARDS AND COMMISSIONS

HB 2509	Relating to the practice of telemedicine	129
HB 3022	Relating to the reporting of fraud, misappropriation of moneys, and other violations of law to the commission on special investigations.....	158

CHILD WELFARE

HB 2083	Increasing the felony criminal penalties for exposing children to methamphetamine manufacturing.....	97
---------	--	----

CONSUMER PROTECTION

SB 344	Relating to application of payments on consumer credit sale and loans...	62
SB 563	Relating to Consumer Credit and Protection Act.....	81

CORPORATIONS

SB 490	Clarifying standard of liability for officers of corporation	76
--------	--	----

CORRECTIONS

SB 337	Hiring correctional officers without regard to placement on correctional officer register	60
SB 515	Relating to parole requirements for hearings and release	79
HB 3018	Adding definition of correctional employee to the list of persons against whom an assault is a felony	157

COUNTIES

SB 255	Relating generally to filling vacancies in elected office	52
HB 2679	Relating to the possession of firearms in parks and park facilities.....	141

COURTS

SB 41	Extending time person may be subject to probation.....	2
SB 214	Adopting Uniform Electronic Legal Material Act.....	38
SB 247	Authorizing prosecuting attorney designate and deliver grand jury records for investigative purposes	50
SB 445	Amending definition of "abused child"	72
SB 454	Providing more efficient collection and submission of state moneys received from court transactions or court services	73
SB 455	Relating generally to commitment of persons to custody of Commissioner of Corrections	74
SB 456	Relating to standards for termination of parental rights in child abuse and neglect cases	75
HB 2486	Providing that when a party's health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order	126
HB 2684	Imposing penalties for repeat violations of the prohibition against driving under the influence on a suspended license	143

HB 2731	Clarifying civil actions heard in circuit court	146
HB 2850	Relating to product liability actions.....	149

CRIME

SB 41	Extending time person may be subject to probation.....	2
SB 206	Relating generally to criminal offense of kidnapping	37
SB 219	Relating to conspiracy to commit crimes under Uniform Controlled Substances Act	39
SB 220	Relating to offenses and penalties under Uniform Controlled Substances Act.....	41
SB 233	Excluding from protection oral communications uttered in child care center under Wiretapping and Electronic Surveillance Act.....	46
SB 240	Creating crime of nonconsensual distribution of sexual images	49
SB 288	Increasing penalty for crime of child abuse causing death by parent, guardian, custodian or other person	56
SB 388	Relating to dangerous weapons	69
SB 442	Relating generally to crimes against persons	71
HB 2083	Increasing the felony criminal penalties for exposing children to methamphetamine manufacturing.....	97
HB 2303	Increasing criminal penalties for littering.....	110
HB 2318	Relating generally to human trafficking	111
HB 2329	Prohibiting the production, manufacture or possession of fentanyl	115
HB 2367	Establishing a criminal offense of organized retail crime.....	118
HB 2526	Classifying additional drugs to Schedules I, II, IV and V of controlled substances	130
HB 2579	Increasing the penalties for transporting controlled substances.....	132

HB 2585	Creating felony crime of conducting financial transactions involving proceeds of criminal activity	134
HB 2684	Imposing penalties for repeat violations of the prohibition against driving under the influence on a suspended license	143
HB 2704	Prohibiting persons convicted of sexual offenses against children with whom they hold positions of trust from holding certification or license valid in public schools	144
HB 2726	Authorizing home incarceration officers to arrest participants for violating the terms and conditions of his or her supervision with or without a court order	145
HB 3018	Adding definition of correctional employee to the list of persons against whom an assault is a felony	157

DOMESTIC RELATIONS

SB 225	Allowing magistrates to conduct proceeding for temporary emergency protective order dealing with temporary custody by family court.....	44
SB 445	Amending definition of "abused child"	72
SB 456	Relating to standards for termination of parental rights in child abuse and neglect cases	75
HB 2479	Uniform Deployed Parents Custody and Visitation Act.....	124

EDUCATION (K-12)

SB 256	Relating to prohibiting aiding and abetting of sexual abuse by school personnel.....	54
--------	--	----

ELECTIONS

HB 2364	Prohibiting electioneering within or near early voting locations during early voting periods.....	117
---------	---	-----

HB 2781	Requiring a person desiring to vote to present documentation identifying the voter to one of the poll clerks.....	147
---------	---	-----

ENVIRONMENT

HB 2506	Relating to the permit limit calculations and allowing overlapping mixing zones for calculating permit limits for drinking water criteria	128
---------	---	-----

ENVIRONMENTAL PROTECTION

HB 2303	Increasing criminal penalties for littering.....	110
---------	--	-----

ESTATES AND TRUSTS

SB 358	Relating generally to trustee sale of timeshare estates	64
SB 581	Relating generally to administration of trusts.....	85
HB 2404	Barring persons who are convicted of certain criminal offenses from acquiring property from their victims	120
HB 2674	Relating to access to and receipt of certain information regarding a protected person	138

ETHICS

HB 2001	Relating to ethics and transparency in government	94
HB 2319	Relating to candidates or candidate committees for legislative office disclosing contributions.....	114

HEALTH

SB 187	Providing for confidentiality of patients' medical records	36
SB 333	Requiring all DHHR-licensed facilities access WV Controlled Substances Monitoring Program Database	58
SB 386	Creating WV Medical Cannabis Act.....	65
SB 402	Relating to covenants not to compete between physicians and hospitals .	70

HB 2373 Authorizing school bus drivers trained in administration of epinephrine auto-injectors to administer autoinjectors 119

HB 2620 West Virginia Drug Overdose Monitoring Act137

INSURANCE

HB 2619 Risk Management and Own Risk and Solvency Assessment Act.....135

HB 2683 Relating to West Virginia Insurance Guaranty Association Act 142

JUVENILES

SB 445 Amending definition of "abused child" 72

SB 456 Relating to standards for termination of parental rights in child abuse and neglect cases 75

LABOR

SB 76 Creating WV Second Chance for Employment Act 3

SB 222 Relating to disqualification for unemployment benefits..... 42

SB 224 Repealing requirement for employer's bond for wages and benefits 43

SB 330 Relating to WV Workplace Freedom Act..... 57

SB 606 Relating to minimum wage and maximum hours for employees 87

HB 2857 West Virginia Safer Workplaces Act 151

LEGISLATURE

SB 248 Clarifying composition and chairmanship of Commission on Special Investigations51

SB 554 Relating to false swearing in legislative proceeding.....80

SB 608 Clarifying lawful business structures are unaffected by enactment of prohibitory legislation.....88

HB 2319 Relating to candidates or candidate committees for legislative office disclosing contributions..... 114

HB 2447	Renaming the Court of Claims the state Claims Commission	122
HB 2898	Authorizing the Joint Committee on Government and Finance to request and obtain criminal background checks of employees of the Legislature.....	155

MOTOR VEHICLES

SB 5	Disqualifying CDL for DUI conviction in certain cases.....	1
SB 173	Relating generally to autocycles	35

NATURAL RESOURCES

SB 345	Allowing certain hunting and trapping on private lands on Sundays	63
HB 2679	Relating to the possession of firearms in parks and park facilities.....	141

PROFESSIONS AND OCCUPATIONS

HB 2359	Relating to offenses and penalties for practicing osteopathic medicine without a license.....	116
---------	---	-----

PUBLIC SAFETY

SB 684	Relating generally to WV State Police	91
SB 690	Authorizing WV State Police impose and collect fees for agencies and entities using their facilities.....	92
HB 2620	West Virginia Drug Overdose Monitoring Act	137

REAL AND PERSONAL PROPERTY

SB 358	Relating generally to trustee sale of timeshare estates	64
--------	---	----

RECORDS AND PAPERS

SB 187	Providing for confidentiality of patients' medical records.....	36
HB 2797	Codifying statutory immunity for government agencies and officials from actions of third-parties using documents or records	148

ROADS AND TRANSPORTATION

SJR 6 Roads to Prosperity Amendment of 2017..... 93

RULES

SB 113 Authorizing DEP promulgate legislative rules 5

SB 116 Authorizing MAPS promulgate legislative rules 9

SB 125 Authorizing DHHR and Health Care Authority promulgate legislative
rules12

SB 127 Authorizing certain Department of Revenue to promulgate legislative
rules 27

SB 134 Authorizing Bureau of Commerce to promulgate legislative rules30

SB 151 Authorizing Department of Administration promulgate legislative
rules 33

HB 2219 Authorizing miscellaneous boards and agencies to promulgate legislative
rules 98

SALARIES

SB 239 Limiting use of wages by employers and labor organizations for political
activities 47

STATE PERSONNEL

SB 230 Relating to certain WV officials carrying concealed firearm nationwide .. 45

SB 337 Hiring correctional officers without regard to placement on correctional
officer register60

HB 2006 Increasing the penalties for violating the Whistle-blower Law 96

TAXATION

SB 667 Limiting authority of Attorney General to disclose certain information
provided by Tax Commissioner90

HB 2548 Relating to the use of outside speakers by persons licensed to
manufacture, sell, possess for sale, transport or distribute nonintoxicating
beer 131

UNIFORM LAWS

SB 581 Relating generally to administration of trusts..... 85

Senate Bill 5

COMMITTEE SUBSTITUTE

SHORT TITLE: Disqualifying CDL for DUI conviction in certain cases.

CODE REFERENCE: §17E-1-9 and §17E-1-13 (Amends and Reenacts)

SUMMARY:

This bill provides that a conviction for driving a motor vehicle under the influence of alcohol or a controlled substance that occurs before the initial issuance of a commercial driver's license does not permanently disqualify a person from obtaining a commercial driver's license. This is accomplished by amending two sections of the West Virginia Code. First, the bill provides that if a person became subject to disqualification by committing an otherwise disqualifying offense prior to obtaining a commercial driver's license is not permanently disqualified, so long as s/he has completed the mandatory revocation period for that offense and has completed the required Safety and Treatment program. Any person who commits such an offense more than ten years before s/he applies for a commercial driver's license, and who has taken the required safety and treatment course is deemed to have served the period of disqualification and be eligible to obtain a commercial driver's license, so long as other requirements are satisfied.

The bill also expands the list of offenses for which a lifetime ban from holding a commercial driver's license can be reduced to ten years. Current law provides for lifetime disqualification in the event of certain second offenses of driving offenses, but allows that lifetime period of disqualification be reduced to ten years when the second offenses are for leaving the scene of an accident or operating a commercial motor vehicle when one's privilege to operate has been suspended, revoked, or canceled. Senate Bill 5 expands the list of offenses for which a lifetime revocation can be reduced to ten years, including (1) driving a motor vehicle under the influence of alcohol or a controlled substance, (2) driving a commercial motor vehicle with a blood alcohol content of .04 or more, and (3) refusing to submit to a designated secondary chemical test.

DATE OF PASSAGE: April 1, 2017

EFFECTIVE DATE: June 30, 2017

ACTION BY GOVERNOR: Signed April 11, 2017

Senate Bill 41

INTRODUCED VERSION

SHORT TITLE: Extending time person may be subject to probation.

CODE REFERENCE: §62-12-11 (Amends and Reenacts)

SUMMARY:

This bill changes the length of time a person may be subject to probation from five to seven years.

DATE OF PASSAGE: March 31, 2017

EFFECTIVE DATE: June 29, 2017

ACTION BY GOVERNOR: Signed April 11, 2017

Senate Bill 76

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Creating WV Second Chance for Employment Act.

CODE REFERENCE: §61-11B-1, §61-11B-2, §61-11B-3, §61-11B-4 and §61-11B-5 (New)

SUMMARY:

Titled the Second Chance for Employment Act, the bill creates a procedure to reduce certain non-violent felony offenses to misdemeanors in order to improve the employment opportunities for reformed, law-abiding persons while still providing for public notice of prior convictions.

In particular, the bill allows an individual who was convicted of a non-violent felony to file a petition with the court to have his or her conviction reduced to a misdemeanor. The procedure models the expungement process, which directs notice of a petition to be sent to the prosecuting attorney, state police and other law enforcement entities. The prosecuting attorney is also responsible to notify any victims in the matter. The bill provides that the Court has the discretion to decide the petition and may conduct a hearing and take testimony if there is objection from any entity that has been given notice.

If granted, the Court would reduce the felony conviction to a misdemeanor and the conviction would be noticed on all future records as a “reduced misdemeanor”. The crime itself and the initial felony conviction would remain in the criminal records. Hence, if there was a background check by an employer, the conviction would still show up on the report. This is how it is distinguished from an expungement.

The effect of the reduction would be that the individual would be restored to the position he or she was in prior to the felony conviction. The bill additionally makes clear that in order to be qualified for this reduced misdemeanor, the person needs to have had a clean record and no further offenses for more than 10 years.

Finally, the bill provides certain employer protections. Specifically, the bill provides that an employer, general contractor, premises owner or other third party employing a person or independent contractor may not be liable for the hiring of a person who has had his or her conviction reduced pursuant to the provisions of this bill.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

Senate Bill 113

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing DEP promulgate legislative rules.

CODE REFERENCE: §64-3-1 (Amends and Reenacts)

SUMMARY:

This Committee Substitute contains nine bills which constitute Bundle 3, Department of Environmental Protection. Each rule is discussed below.

SENATE BILL NO. 105

Agency: Department of Environmental Protection

Rule: Alternative emission limitations during startup, shutdown and maintenance operations, 45-01

This rule is a new rule that sets forth the criteria for establishing an alternative emission limitation (AEL) during periods of startup, shutdown, or maintenance for stationary sources (periods outside of normal operations). The rule adopts the alternative emission limitation provisions already contained in a series of state implementation plans. The rule applies to a set of sources that have excess emissions during these specified periods and thus, cannot meet the allowable emissions limits at all times. The rule provides criteria for establishing these alternative emissions limitations and includes the reporting requirements in accordance with corresponding federal regulation. The rule does not apply to sources of emissions that are subject to a NSPS or MACT regulation with specific start-up and shutdown provisions.

The rule implements modifications to WV Rules which are necessary to maintain compliance with federal Clean Air Act (CAA) guidelines as interpreted by the Environmental Protection Agency (EPA), and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.

SENATE BILL NO. 106

Agency: Department of Environmental Protection

Rule: Permits for construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits, permission to commence construction and procedures for evaluation, 45-13

This rule modifies an existing DEP rule which establishes a series of procedures for reporting by stationary sources of air pollution, and defines the criteria necessary for

obtaining permits to construct, modify, or relocate a non-major stationary source, consistent with the CAA.

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.

SENATE BILL NO. 107

Agency: Department of Environmental Protection

Rule: Permits for construction and modification of major stationary sources for prevention of significant deterioration of air quality, 45-14

This rule modifies an existing DEP rule which establishes a preconstruction state permit program consistent with the federal CAA and implementing regulations for the prevention of significant deterioration of air quality. The program sets forth criteria for issuing permits for the construction or major modification of major stationary sources of air pollution.

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016. 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. The promulgation history of the rule is also updated.

SENATE BILL NO. 108

Agency: Department of Environmental Protection

Rule: Standards of performance for new stationary sources, 45-16

This rule modifies an existing DEP rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the EPA pursuant to the federal CAA.

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016. 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. The promulgation history of the rule is also updated.

SENATE BILL NO. 109

Agency: Department of Environmental Protection

Rule: Control of air pollution from hazardous waste treatment, storage and disposal facilities, 45-25

This rule modifies an existing DEP rule which establishes and adopts emission standards for controlling air pollution from Hazardous Waste Treatment, Storage, and

Disposal Facilities, as promulgated by the EPA in accordance with the federal Resource Conservation and Recovery Act (RCRA).

The modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016. These modifications are necessary to maintain consistency with applicable federal laws and allow West Virginia to continue as the primary enforcement authority of the federal hazardous waste management system (RCRA) in the State.

The modifications also incorporate by reference annual updates to provisions contained in the State Hazardous Waste Management System Rule, 33CSR20, promulgated as of June 1, 2016. The promulgation history of the rule is also updated.

SENATE BILL NO. 110

Agency: Department of Environmental Protection

Rule: Emission standards for hazardous air pollutants, 45-34

This rule modifies an existing DEP rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the EPA pursuant to the CAA.

The modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016.

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.

SENATE BILL NO. 111

Agency: Department of Environmental Protection

Rule: Ambient air quality standards, 45-08

This rule modifies an existing DEP rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, incorporating by reference the national primary and secondary ambient air quality standards, as promulgated by the EPA.

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016. 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.

SENATE BILL NO. 112

Agency: Department of Environmental Protection

Rule: Voluntary remediation and redevelopment, 60-03

This Rule is being promulgated in order to bring State Rules into conformity with the federal EPA rule which recently made changes to exposure factors, toxicity criteria, and physiochemical parameters, as well as risk-based groundwater de minimis values now including exposure via dermal contact.

This rule amends Table 60-3B (the “Deminimis Table”) and incorporates some minor changes. The table is used extensively during risk-based cleanups to determine whether or not environmental contamination at a site being evaluated under the rule exceeds levels that would be protective of human health.

SENATE BILL NO. 113

Agency: Department of Environmental Protection

Rule: Awarding of matching grants for local litter control programs, 33-41

This Rule is being promulgated in order to replace 58-06. This entire Rule is new.

The Litter Control Grant Program was originally established by the legislature under the jurisdiction of the Division of Natural Resources. During the 2005 regular session of the legislature, the creation of the A. James Manchin Rehabilitation Environmental Action Plan (“REAP”) moved the Litter Control Program from the DNR to the DEP. This rule simply clarifies that the program is under the jurisdiction of the DEP.

DATE OF PASSAGE: March 30, 2017

EFFECTIVE DATE: March 30, 2017

ACTION BY GOVERNOR: Signed April 8, 2017

Senate Bill 116

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing DMAPS promulgate legislative rules.

CODE REFERENCE: §64-6-1, §64-6-2 and §64-6-3 (Amends and Reenacts)

SUMMARY:

This Committee Substitute contains three bills which constitute Bundle 6, Department of Military Affairs and Public Safety. Each rule is discussed below.

SENATE BILL NO. 115

Agency: Fire Marshal

Subject: Regulation of fireworks and related explosive materials, 103-04

This is a new rule proposed by the Fire Marshal following passage of House Bill 2852 during the 2016 Regular Session. The bill expanded the regulation of the sale and use of certain types of fireworks. It repealed four existing statutes and created a new article (W.Va. Code § 29-3E- 1 *et seq.*). More specifically, the new statute makes it unlawful to manufacture, wholesale, distribute, import, sell or store, for the purpose of sale or resale, consumer fireworks, sparkling devices, novelties or toy caps without a license, registration, certificate or permit from the State Fire Marshal.

Pursuant to an express mandate in the statute to promulgate legislative rule, the Fire Marshal proposes this rule setting forth in detail the regulations, fees, and enforcement of the provisions of the statute. The rule specifies the enforcement and applicability of the rule (§2); defines numerous terms and standards (§3); expressly adopts certain NFPA codes and standards (§4); sets forth criteria for a consumer fireworks certificate (§5); sets forth criteria for the storage of fireworks and related explosive materials (§6); sets forth criteria for a public fireworks display permit (§7); sets forth criteria for pyrotechnic licensing and examination (§8); sets forth the criteria for the registration of manufacturers, wholesalers and distributors of explosive material (§9); requires the registration of sparkling devices and novelties (§10); sets forth prohibited conduct (§11); denotes exemptions (§12); requires reporting of firework injuries (§13); establishes penalties (§14); and contains a severability clause (§15).

Based on the recent numbers generated from temporary and permanent consumer fireworks certificates, storage fees, licenses, and other permitting, the agency anticipates the program to generate \$170,000. Based on the increased risk to the public, the overtime and administrative costs, and public education efforts, the agency anticipates the cost to be \$318,782.

SENATE BILL NO. 116

Agency: Governor’s Committee on Crime, Delinquency and Correction

Subject: Law enforcement training and certification standards, 149-02

The Law Enforcement Professional Standards Subcommittee, a statutory subcommittee of the Governor’s Committee on Crime, Delinquency and Correction, proposes to amend the current rule series relating to the certification and training of law enforcement officers.

The rule amendments are part of the Subcommittee’s annual review and update of the rules governing law enforcement certification and standards. The substantive changes include adding a new section clarifying that the responsibility of the Subcommittee to determine the need, type and location of entry level certification training academies/programs (§3.3); authorizing licensed medical employment testing companies to perform medical evaluations for applicants and defining the term “licensed” (§8.4); and limiting the ability to appeal for dismissal from a training academy for scholastic reasons (§20).

Further, in accordance with the reorganization of the Governor’s Committee in Senate Bill 370 from the 2015 Legislative Session, several portions of the Rule were amended to reflect the delegation of duties to the Subcommittee and its relationship to the Governor’s Committee.

The 2017 Legislature during the Regular Session directed the Division of Justice and Community Services to promulgate former SENATE BILL NO. 117

Agency: Division of Justice and Community Services

Subject: William R. Laird IV – Second Chance Driver’s License Program, 224-01 (formerly 149-09; however, was re-promulgated during the 2017 Regular Session by the correct agency and added to bundle 6)

This is a new rule proposed by the DJCS following passage of Senate Bill 634 during the 2016 Regular Session. The bill created a program whereby an individual whose driver’s license is suspended due to outstanding court costs may establish a payment plan and obtain a driver’s license. The program is administered by the DJCS who retains 5% administrative fee from the monies collected.

This rule also creates a mechanism or framework for SCDL Program execution; and, coordination among the Division of Justice and Community Services (DJCS); Division of Motor Vehicles (DMV) and the court(s). The purpose of this coordination is to allow an individual who has had their driver’s license suspended or revoked because of unpaid court costs, and meets the requirements set forth in statute and this rule, to be accepted for participation in the SCDL and to receive a temporary stay of the suspension or revocation from the Commissioner of DMV while the unpaid court costs are being paid.

Pursuant to an express mandate in the statute to promulgate this legislative rule, the DJCS proposes this rule setting forth in detail the regulations, fees, and enforcement

of the provisions of Senate Bill 634. The rule includes establishment of a sunset date (§1.5); defines terms (§2); sets forth the eligibility requirements to participate in the program (§3); establishes the general program structures and functions (§4); establishes the payment, compliance and non-compliance processes (§5); states policy for data use and retention (§6); and states the appellate rights of individuals applying or removed from the program.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: April 8, 2017

ACTION BY GOVERNOR: Signed April 18, 2017

Senate Bill 125

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing DHHR and Health Care Authority promulgate legislative rules.

CODE REFERENCE: §64-5-1 and §64-5-2 (Amends and Reenacts)

SUMMARY:

This Committee Substitute contains nine bills which constitute Bundle 5, Department of Health Human Resources. Each rule is discussed below.

SENATE BILL NO. 118

Agency: Department of Health Human Resources

Subject: Expedited partner therapy, 64-103

This is a new rule made necessary by the passage of Senate Bill No. 123 during the 2016 Regular Session of the Legislature. That bill created the practice of expedited partner therapy in West Virginia. That practice allows a physician to prescribe medication for a sexually transmitted disease to both or all partners in a sexual relationship if only one of the parties is the patient of the physician.

The rulemaking authority granted to the Department of Health and Human Resources was very specific. It provides that the Secretary should list those sexually transmitted diseases which may be treated by expedited partner therapy. In rendering this list, the Secretary is required to consider recommendations from the United States Department of Health and Human Services, the Centers for Disease Control and Prevention and other nationally recognized medical authorities.

The rule as presented contains two definitions – both of which are a mirror image of the definitions contained in the code. These are “expedited partner therapy” and “health care professional”. As for the diseases, which may be listed, the Secretary has listed two sexually transmitted diseases which may be treated in this method. These are chlamydia and gonorrhea.

SENATE BILL NO. 119

Agency: Department of Health Human Resources

Subject: Clinical laboratory technician and technologist licensure and certification, 64-

57

This is an amendment to existing rule of the Bureau for Public Health. The rule sets out licensing requirements for clinical laboratory technicians. The rule contains the standard General section. The only modification to this section pertains to the newly required Sunset Date. In this rule that is set for 10 years.

Throughout the rule - including the title the word “technologists” has been replaced with “scientist”. This is an update to current industry standards. Additionally, in the Definition section was amended to delete the definition of “Certified” and replace it with a definition of “Certifying Agency” which is a list of agencies which offer certification of clinical laboratory technicians. This change simply rewrites the current certification requirements. No new requirements are added.

The section pertaining to licensing requirements has been updated. Clarity has been added to ensure that persons seeking a license renewal have notified the Secretary of the successful completion of currently required continuing education requirements. Additionally, conforming amendments were made for terminology such as “scientist” and “certifying agency”. Of a more substantive nature is the addition of successful completion of a proficiency examination. Additionally, the education section has been rewritten for clarity and organization. Added to this section is the ability to allow a high school graduate with appropriate clinical training approved by the United States Department of Health and Human Services or the United States Military to apply for a license.

Finally, the rule has been renumbered to account for the changes made to the rule.

SENATE BILL NO. 120

Agency: Department of Health Human Resources

Subject: Clandestine drug laboratory remediation, 64-92

This is an amendment to an existing rule that updates the requirements for remediation of a clandestine drug laboratory. The rule makes a number of stylistic changes. The majority of the changes are to bring the rule into compliance with current practice and technological advances.

The rule clarifies that the provisions of the rule apply to law enforcement. The current rule had provisions applicable to law enforcement they had previously been inadvertently left out of the Application section.

There have been three (3) additions to the definitions. These make a distinction between types of samples required for testing. They are “composite samples” and “discrete samples”. The third new definition defines a term that was already used in the rule, but had not been defined. That term is “play review” which is the review of a plan for remediation of a drug laboratory.

The licensing requirements have been updated to include a requirement for a criminal background check for anyone applying for a license. There has also been some clarification of the duties of a licensee. These include use of a waste disposal dumpster and third party testing upon project completion.

A new section has been added regarding licensed technician duties. These include on-site wipe sampling, submission of a preliminary report to the program, final Clarence sampling and required sampling of any vehicle used as a drug laboratory. Additionally, law enforcement is given authority to impound vehicles which have been used as a drug lab. Residential property owners also have new duties which include securing and vacating areas adjacent to a motel or hotel used for a drug laboratory and contracting for demolition, if necessary.

Finally, there have been modifications to the final report. The report is now required to include copies of licenses and training certificates, documentation of waste disposal dumpsters, a list of items removed and disposed from residential property, submission of results of testing by a third party and photographs of decontaminated sites and destroyed items.

A number of conforming amendments were also included.

SENATE BILL NO. 121

Agency: Department of Health Human Resources

Subject: Medication-assisted opioid treatment programs, 69-11

This is a new rule. It is necessary as a result of the passage of Senate Bill No. 454 during the 2016 Regular Session of the Legislature. That bill required regulation of all medication assisted treatment facilities.

This rule pertains to regulation of opioid treatment programs, more commonly referred to as methadone clinics. It contains the standard scope, authority and purpose sections. It also defines terms. It sets out the powers and duties of the state oversight authority which is designated as the Office of Health Facility Licensure and Certification. The powers and duties center on a licensing, compliance and monitoring process.

There are standard licensing requirements. These include notice and certification requirements. They also allow the oversight agency to inspect the facilities as a condition of the application. The rule also has an application process and application and inspection fees.

The rule contains conditions under which the Secretary may deny a license. These include application deficiencies, required adherence to federal and state rules and laws, the inability to conduct an inspection and failure to meet all requirements as set forth in the rule. There are notice requirements for a denial. Provisions in the rule set out a procedure for renewal and amendment of a license.

Annual inspections are allowed to maintain oversight of the facilities. There are also specific organizational and management requirements. This includes specific staffing requirements that include a program administrator, which includes his or her duties, background and educational requirements and a medical director, which includes his or her duties. There are also background and certification requirements for professional,

medical and counseling staff. Various committees are set out such as peer review, advisory and admissions.

The environment requirements and operation of the facilities is provided in the rule. These include operation schedules, payment parameters, space and equipment requirements, security, infection control, community relations and emergency preparedness. There are also requirements for approval of construction and renovation and provisions for “for cause” inspections. These would result from complaints and may lead to a plan of correction. The rule also sets out a procedure for requesting waivers and variances. The circumstances for which a variance or wavier may be appropriate are set out in the rule.

The manner in which reports and records are filed, stored and open for inspection are set out. These include statistical reports and records and incident reports of adverse events. There are requirements for staff training and credentialing. These requirements include job descriptions, orientation requirements, training and confidential personnel files. There is also a requirement that all programs develop a policy for termination of staff.

Extensive risk management requirements are set forth in the rule. These include consent forms from patients, required elements which each patient is to be informed throughout his or her treatment, informing patients of all legal requirements such as HIPPA and informing patients of all patient rights and responsibilities.

The manner in which medication is to be stored, administered and accounted for through appropriate documentation is included in the rule. It requires programs to develop policies with respect to storage and management of drugs. These shall be in accordance with state and federal regulations, including DEA regulations. These policies are also to account for take-home medication and anything necessary to prevent diversion. There are also specific requirements for administration of medications, instrument calibration, dosage ordering and medication documentation.

The rule provides for random drug screenings on a monthly basis. Drug tests are also required prior to entry into any program. Patients are to be notified at the outset of treatment that drug screenings are a necessary part of the treatment program.

Medication used by all programs is limited to that which is approved by the FDA. Dosage levels are to be discussed with patients. Levels shall be based on the clinical evaluation of a physician. Administration and level adjustments shall be set by the desired outcome for a patient. Included in the outcomes are cessation and withdrawal. The rule allows for electronic prescribing and requires full identifying information on prescriptions. Review of the Controlled Substances Monitoring Database is required upon admission and at least every 90 days. There are also requirements for the administration of Methadone. These limit it to oral form and also sets forth initial dosage limitations.

MAT programs are required under the rule to develop and maintain quality assurance and control plans. These are to account for staff education, interaction with the

various review committees set forth in the rule, review of patient treatment plans, internal policy reviews, development of patient satisfactory surveys, ongoing assessments of patient outcomes, diversion and criminal activity reduction, assessments of medical related issues and a means to improve the quality of life of all patients.

There are very stringent controls on diversion that include a “Diversion Control Plan” which requires review and approval by the governing body, advisory council and peer review council. Required elements of the plan are spelled out in the rule.

The rule contains a section specific to patient rights. These include keeping the patient informed of a myriad of issues relative to the patient’s treatment, the need for an individualized treatment plan, patient protection, a grievance procedure and the right to only be subjected to administrative withdrawal as a case of last resort. There are also extensive patient record keeping requirements that include maintenance and storage requirements, the right to a confidentiality, the necessity of keeping the patient records up to date, and what is to be included within the patient record. There is also a requirement to record in the patient’s record all instances of patient contact. The requirements for this, including a timeframe, are set forth in the rule.

The admission process is set out with all pre-admission requirements and the criteria for admission. These requirements include a physical assessment, age requirements for admission (18 years is the minimum with the ability to make exceptions), necessary documentation, a behavioral analysis, and a list of high risk individuals who may be admitted without the need for a positive drug screen. There is a preclusion against obtaining treatment in more than one program and a requirement to be seen by a physician prior to dosing. Requirements for an interview and observation with a physician prior to admission, a review of all data on patient with the patient that includes a diagnosis of substance abuse disorder, the requirement for a recognition of voluntary maintenance treatment, the ability to enter a detoxification program and various requirements for non-admission and any exceptions to the admission policy are set out in the rule. There are also requirements for patient transfers from other programs. Transfers are allowed in-state only, out of state patients shall be treated as new admissions.

Specific preclusions regarding enrollment in multiple programs is set forth. This contains a requirement that upon enrollment programs are required to obtain a patient release and check for enrollment of all programs within a 100-mile radius. Additionally, the specific requirements for accessing the Controlled Substances Monitoring Database are also included.

The rule spells out the requirements for patient orientation. This includes notification of patient rights and responsibilities, patient grievance procedures, an explanation of services, an explanation about reports from the Controlled Substances Monitoring Database, financial obligations, program and facility familiarization, program policies, counselor identification, and a copy of all program rules.

There is a list of the services which are required to be offered by MAT programs. These include medical, counseling, vocational, educational, and recovery. There is a requirement for a physical assessment, a biopsychosocial assessment, and follow-up patient assessments. There is a list in the rule of what each patient shall receive upon admission including various agreements to submit to treatment. The rule contains procedures for educating patients regarding medication, the extent of their substance abuse disorder, and a requirement for individualized patient assessments and plans of treatment. There are also screening/drug testing requirements and extensive counseling requirements. These include educational and background requirements for counselors, matters that should be addressed during counseling, the ability to contract with counselors, caseload ratios, required number of sessions, record keeping and exceptions.

The rule sets out patient care following the initial assessment and admission. These include a post-admission assessment, a physical and psychological assessment, various health screens, drug screens, laboratory testing documentation and continued post admission testing requirements. There are also requirements for an initial plan of care. Requirements for the physical and biopsychosocial examinations are set out in the rule.

Each patient is to have an individualized plan of care. The rule provides that this is to be developed pursuant to national standards. It is required to be reviewed and, if necessary, revised every 90 days. The required elements of the plan of care are set forth in the rule. The plan is required to reflect the needs of the patient and provide for involvement of family members, if appropriate. In preparing the plan of care, the program must discuss in detail the patient's desire to remain in care and given other treatment options. There is also coordination of care agreements that are to be signed by the patient and his or her physician or counselor.

A significant portion of the rule deals with the procedures for unsupervised take home medication. Development of internal policies regarding the take-home medication is required for every program. These must adhere to federally approved guidelines and those approved by the Secretary. There is a procedure for application to the Secretary for additional authorities to be approved. There are also operational requirements for programs which allow take-home medication. Factors to be considered in making a determination as to the readiness for a patient to participate in the take-home program are set out. The list includes a number of elements surrounding the environment in which the patient lives, adherence to rules, the needs of the patient and hardship on the patient in traveling.

Other requirements for take-home include doses amounts, educational requirements for allowing the patient to participate, specified exclusions, drug screening requirements, allowances for guest dosages at nearby programs and the ability to apply for exemptions from the oversight agency.

In addition to other treatment options, there are also requirements for detoxification. The physician or physician extender shall oversee this as an option, and patients are required to be given this as an option. Detoxification requires a separate

treatment plan and what must be addressed in the plan is included in the rule. There are limitations on the applicability of detoxification as an option based upon the patient's wishes, the clinical judgment of the physician or extender and drug screening requirements. Each MAT is required to develop policies surrounding detoxification treatment and the rule lists what is required to be included. There are provisions for both short and long term detoxifications. Required counseling services for patient's in detoxification are set forth in the rule.

There are procedures for administrative withdrawal and involuntary discharge from the program. Policies for the use of this are required to be adopted by each MAT. Incidents which would result in administrative withdrawal are set forth in the rule. Likewise, there are procedures for medical withdrawal. This is a voluntary therapeutic withdrawal. The requirements for this include a schedule of dosage reduction, supportive treatment, an allowance for readmittance to the program within 30 days if a patient leaves against medical advice, continuing care following the final dose and a relapse prevention plan. All aspects of the program make specific allowances for female patients who are pregnant.

The procedures for the required drug testing are set forth in the bill. These are required to be conducted monthly. There are standards for collection and testing that include both blood and urine tests. Screening procedures are to be determined on a patient by patient basis. There is included, a list of substances which are required to be tested for in the required drug screens. There are also provisions for a breathalyzer test for possible alcohol abuse. Results are to be documented and used to determine additional treatment courses of action. There are allowances for legally prescribed substances. There are procedures for actions that are allowable upon a positive drug screen. These include from increased counseling and revocation of take-home privileges. The severity increases based upon the number of positive tests. Discharge from the program may result from a third failed drug test within the prescribed time period of the rule.

The manner in which special populations shall be dealt with are spelled out. These populations range from patients with alcohol and polysubstance abuse, behavioral health need, HIV patients, patients with chronic pain, pregnant patients and persons in the criminal justice system. Procedures relative to treatment of these types of populations are set forth in the rule.

There are specific requirements for the manner in which MAT programs may advertise.

Provisions to allow the Department to deny an application, revoke an application or suspend an application are included in the rule. Also, there is a list of reasons set forth that include fraud and illegal activity, practices that jeopardize patient safety, refusal to allow access to the oversight agency, operating a facility without the appropriate license, and failure to have the necessary personnel on site. The Secretary is given the authority to suspend revocation to allow the MAT to gain the necessary compliance. Upon denial suspension or revocation, the rule sets out what procedures must be followed by the MAT.

The final sections of the rule provide for penalties and injunctions, administrative due process and a means for an appeal and judicial review. These are standards as in other rules of this nature.

SENATE BILL NO. 122

Agency: Department of Health Human Resources

Subject: Medication – assisted treatment – office based medication assisted treatment, 69-12

This is a new rule. It is necessary due to the passage of Senate Bill No. 454 during the 2016 Regular Session of the Legislature. That bill required regulation of all medication assisted treatment facilities.

This rule pertains to regulation of office based treatment, traditionally this type of treatment is suboxone. It contains the standard scope, authority and purpose sections. It also defines terms. Definitions were also set out in the statute and those definitions were not duplicated here. It sets out the powers and duties of the state oversight authority which is designated as the Office of Health Facility Licensure and Certification. The powers and duties center on a licensing, compliance and monitoring process.

There are standard registration and licensing requirements which are nearly identical to the above rule, 69 CSR 11. These include notice and certification requirements. They also allow the oversight agency to inspect the facilities as a condition of the application. The rule also has an application process and application and inspection fees.

The rule contains conditions under which the Secretary may deny registration. These include application deficiencies, required adherence to federal and state rules and laws, the inability to conduct an inspection and failure to meet all requirements as set forth in the rule. There are notice requirements for a denial. Provisions in the rule set out a procedure for renewal and amendment of a license.

Annual inspections are allowed to maintain oversight of the facilities. There are also specific organizational and management requirements. This includes specific staffing requirements that include a program administrator, which includes his or her duties, background and educational requirements and a medical director, which includes his or her duties. There are also background and certification requirements for professional, medical and counseling staff.

The environment requirements and operation of the facilities is provided in the rule. These include operation schedules, payment parameters, space and equipment requirements, security and infection control. There are also requirements for safe medication administration and provisions for “for cause” inspections. These would result from complaints and may lead to a plan of correction. The rule also sets out a procedure for requesting waivers and variances. The circumstances for which a variance or wavier may be appropriate are set out in the rule.

The manner in which reports and records are filed, stored and open for inspection are set out. These include inspection reports, statistical reports and records and incident reports of adverse events. There are requirements for staff training and credentialing. These requirements include job descriptions, orientation requirements, training and confidential personnel files. There is also a requirement that all programs develop a policy for termination of staff.

Extensive risk management requirements are set forth in the rule. These include consent forms from patients, required elements which each patient is to be informed throughout his or her treatment, informing patients of all legal requirements such as HIPPA and informing patients of all patient rights and responsibilities.

The manner in which medication is to be stored, administered and accounted for through appropriate documentation is included in the rule. It requires programs to develop policies with respect to storage and management of drugs. These shall be in accordance with state and federal regulations, including DEA regulations. These policies are also to provide for only using FDA approved medication assisted drugs and reviewing alternative treatments as they become available. There are also specific requirements for adjustment of dosages. There is also a requirement that each program have a policy about diversion and quality improvements. The rule also provides for a random call back program on a monthly basis.

The rule contains a requirement that all programs develop policies with respect to patient rights. These include certain notice requirements, fair and impartial treatment, an individualized plan of care and to be made aware of all aspects of their treatment plan. Additionally, the rule sets out requirements for establishing and maintaining patient records. This includes adherence to all state and federal record keeping requirements, confidentiality requirements, updating requirements and retention requirements. There is also a section on what is required to be maintained in a patient's plan of care, which includes a record of significant contacts with the patient.

Admission criteria and an admission process is set forth in the rule. This includes an initial physical assessment which includes a medical history and a history of the patient's substance abuse. There is an age restriction of 18, but an allowance for a variance from this in rare occasions. There is required documentation and a requirement for an analysis of the behavioral signs of the patient which support a diagnosis of substance use disorder. All of this information is to be reviewed and considered prior to making an admission. High risk populations such as pregnant women, prisoners and former patients are given a higher priority. There is a preclusion against obtaining treatment in more than one program. There are also requirements for patient transfers from other programs. Transfers are allowed in-state only, out of state patients shall be treated as new admissions.

Specific preclusions regarding enrollment in multiple programs is set forth. This contains a requirement that upon enrollment programs are required to obtain a patient release and check for enrollment of all programs within a 100-mile radius. Additionally,

the specific requirements for accessing the Controlled Substances Monitoring Database are also included.

The rule spells out the requirements for patient orientation. This includes notification of patient rights and responsibilities, patient grievance procedures, an explanation of services, an explanation about reports from the Controlled Substances Monitoring Database, financial obligations, program and facility familiarization, program policies, counselor identification and a copy of all the program rules.

There is a list of the services which are required to be offered by MAT programs. These include medical, counseling, vocational, educational and recovery. There is a requirement for a physical assessment, a biopsychosocial assessment and follow-up patient assessments. Also, the rule lists what each patient shall receive upon admission including various agreements to submit to treatment. The rule contains procedures for educating patients regarding medication, the extent of their substance abuse disorder and a requirement for individualized patient assessments and plans of treatment. There are screening/drug testing requirements and extensive counseling requirements. These include educational and background requirements for counselors, matters that should be addressed during counseling, the ability to contract with counselors, caseload ratios, required number of sessions, record keeping and exceptions.

The rule sets out patient care following the initial assessment and admission. These include a post-admission assessment, a physical and psychological assessment, various health screens, drug screens, laboratory testing documentation and continued post admission testing requirements. There are also requirements for an initial plan of care. Requirements for the physical and biopsychosocial examinations are set out in the rule.

Each patient is to have an individualized plan of care. The rule provides that this is to be developed pursuant to national standards. It is required to be reviewed and, if necessary, revised every 90 days. The required elements of the plan of care are set forth in the rule. The plan is required to reflect the needs of the patient and provide for involvement of family members, if appropriate. In preparing the plan of care, the program must discuss in detail the patient's desire to remain in care and given other treatment options. There is also coordination of care agreements that are to be signed by the patient and his or her physician or counselor.

In addition to other treatment options, there are also requirements for detoxification. The physician or physician extender shall oversee this as an option. Patients are required to be given this as an option.

There are procedures for administrative withdrawal and involuntary discharge from the program. Policies for the use of this are required to be adopted by each OBMAT. Incidents which would result in administrative withdrawal are set forth in the rule. Likewise, there are procedures for medical withdrawal. Also, there is a voluntary therapeutic withdrawal. The requirements for this include a schedule of dosage reduction, supportive treatment, an allowance for readmittance to the program within 30 days if a

patient leaves against medical advice, continuing care following the final dose and a relapse prevention plan. All aspects of the program make specific allowances for female patients who are pregnant.

The procedures for the required drug testing are set forth in the bill. These are required to be conducted monthly. There are standards for collection and testing that include both blood and urine tests. Screening procedures are to be determined on a patient by patient basis. Included is a list of substances which are required to be tested by drug screens. There are also provisions for a breathalyzer test for possible alcohol abuse. Results are to be documented and used to determine additional treatment courses of action. There are allowances for legally prescribed substances. There are procedures for actions that are allowable upon a positive drug screen. These include from increased counseling to revocation of take-home privileges. The severity increases based upon the number of positive tests. Discharge from the program may result from a third failed drug test within the prescribed time period of the rule.

The manner in which special populations shall be dealt with are spelled out. These populations range from patients with alcohol and polysubstance abuse, behavioral health need, HIV patients, patient with chronic pain, pregnant patients and persons in the criminal justice system. Procedures relative to treatment of these types of populations are set forth in the rule.

There are specific requirements for the manner in which MAT programs may advertise.

Provisions to allow the Department to deny an application, revoke an application or suspend an application are included in the rule. There is a list of reasons set forth that include fraud and illegal activity, practices that jeopardize patient safety, refusal to allow access to the oversight agency, operating a facility without the appropriate license, and failure to have the necessary personnel on site. The Secretary is given the authority to suspend revocation to allow the MAT to gain the necessary compliance. Upon denial suspension or revocation, the rule sets out what procedures must be followed by the MAT.

The final sections of the rule provide for penalties and injunctions, administrative due process and a means for an appeal and judicial review. These are standards as in other rules of this nature.

SENATE BILL NO. 123

Agency: Health Care Authority

Subject: Exemption from certificate of need, 65-29

This is a new rule from the Health Care Authority. It was made necessary with the passage of House Bill No. 4365 during the 2016 Regular Session of the Legislature. That bill streamlined the Certificate of Need process in West Virginia.

The newly rewritten Certificate of Need (CON) statute provided for an exemption process that required approval from the Health Care Authority (HCA), but does not

subject the exempted service to the often cumbersome CON process. Services and equipment are exempt from the process, but still require HCA approval. These are specified in statute; however, the process of gaining that authority was relegated to rulemaking. This rule details that process.

The rule contains the standard General section and defines necessary terms. It sets out the General Requirements which provide that services and charges for these services subject to an exemption approval may not be offered prior to HCA approval. There is included an Application section which provide the data elements necessary for an application. These include identifying information and information offering detail regarding the service or project for which the application applies.

The rule requires a fee of \$1000. This fee is set out in statute. The rule also provides a Review Process which the HCA must follow upon receipt of an application. These include notice, the inability of an affected party to object, the inability of the HCA to have an administrative hearing and time frames for the approval. These time frames are set out in statute. There is also a provision for automatic approval should the HCA fail to act within the required 45 day time frame. The HCA is permitted to deny the application if the application fails to include the necessary financial disclosure as required by West Virginia Code §16-5F-1 relating to Health Care Financial Disclosure, or is incomplete pursuant to the rule.

Adverse decision regarding an approval may be appealed to the Office of Judges. This is permitted by West Virginia Code §16-2D-11(b) and the process is set out in West Virginia Code §16-2D-16. The final provision simply requires that the HCA be notified upon completion of the project.

SENATE BILL NO. 124

Agency: Health Care Authority

Subject: Rural health systems grant program, 65-30

This rule is new and was made necessary with the passage of House Bill No. 4365 during the 2016 Regular Session of the Legislature. That bill simplified the Certificate of Need process at the Health Care Authority, but also made changes to the rulemaking authority of the agency by requiring previously allowable administrative rules be filed as legislative rules.

This rule sets out the procedure for filing for a grant by rural health systems with the Health Care Authority. It does not substantially alter the current practice. It defines key terms – most notable is the definition of an “underserved area”. It establishes a cap on grants and loans at \$50,000 but grants an allowance for a variance under “special circumstances”. It sets out the types of loans which may given. These include collaborative and crisis or essential infrastructure grants and loans. The criteria for each loan is set forth in the rule.

The cycle for awarding the grants and loans are set at six (6) and twelve (12) months for collaborative grants and loans and allows crisis/essential grants and loans to

be awarded at any time based upon need. The rule also establishes criteria for grants and loans which include being an underserved area and being a registered state vendor. There is an application process, an approval process and a notification process set out in the rule. Matching requirements for collaborative grants are also set out.

The manner in which a grant or loan may be awarded, a required agreement and a requirement that all expenditures be within the grant period are also set out. There is also an extensive methodology for repayment of grant funds. This sets out that reimbursement may be monthly or quarterly and allows for a schedule of payments. Provisions for a change of the grant order are set forth as well the ability to monitor grants. The Health Care Authority has the authority to request reimbursement of unspent or unreconciled funds. Procedures for closing out the grant are also included.

In addition to the agreements and repayment required for grants, there are similar agreements and repayment requirements for loans. Required provisions of the loan agreement are set out in the rule. Finally, there is a provision which allows the Health Care Authority to approve or deny grant or loan applications.

SENATE BILL NO. 125

Agency: Health Care Authority

Subject: Hospital assistance grant program, 65-31

This rule is new and was made necessary with the passage of House Bill No. 4365 during the 2016 Regular Session of the Legislature. That bill simplified the Certificate of Need process at the Health Care Authority, but also made changes to the rulemaking authority of the agency by requiring previously allowable administrative rules be filed as legislative rules.

This rule sets out the procedure for filing for a grant by hospitals in West Virginia with the Health Care Authority. It does not substantially alter the current practice. It establishes a cap on grants at \$50,000 but grants an allowance for a variance under “special circumstances”. The rule allows the Health Care Authority to give grants to “financially vulnerable” hospitals. That term is defined in the rule.

The cycle for awarding the grants are set at twelve (12) months. The rule also establishes criteria for grants and requires that a hospital meet the definition in the rule of a financially vulnerable institution. The applicant is required to be a registered state vendor. There is an application process, an approval process and a notification process set out in the rule.

The manner in which a grant may be awarded, a required agreement and a requirement that all expenditures be within the grant period are also set out. There is also an extensive methodology for repayment of grant funds. This sets out that reimbursement may be monthly or quarterly and allows for a schedule of payments. Provisions for a change of the grant order are set forth, as well as the ability to monitor grants. The Health Care Authority has the authority to request reimbursement of unspent or unreconciled

funds. Procedures for closing out the grant are also included. Finally, there is a provision which allows the Health Care Authority to approve or deny grant or loan applications.

SENATE BILL NO. 126

Agency: Health Care Authority

Subject: Certificate of need, 65-32

This rule sets out the procedures for filing for a Certificate of Need (CON) with the Health Care Authority (HCA). The rule is new and is needed to comply with the provisions of House Bill 4365 passed during the 2016 Regular Session of the Legislature. That bill simplified the procedure for a CON application.

The bill sets out definitions in addition to the ones which are contained in Article 2B of Chapter 16 of the Code. Requirements for obtaining a CON are set out and mirror the language in the statute. There are also requirements for an application. A list of required elements for the application are included. These include the requisite approval from the governing body, a description of the project, a timetable for implementation and various documents such as policies for patient admission/relationship to the state health plan/analysis of the relationship of the project to the existing health care system. There is also a requirement to all the Health Care Authority access to information/records/sites and facilities during the pendency of the project.

Procedures are set out for supplying the HCA with additional information during the application process, a procedure for withdrawal of an application and a procedure for the HCA to review the application. The review process includes a letter of intent from the applicant to place other parties on notice. There is also a fee – which is set out in code. The HCA is required to review the application for completeness and notice to the applicant. This notice is required to include identifying information, a description of the project and necessary deadlines for the project.

The application process includes a requirement for a public hearing in contested cases. There are extensive requirements regarding the hearing set out in the rule. These include notice requirements, a timeframe order, documentation requirements, discovery requirements, the ability to have representation, testimony, a preclusion regarding *ex parte* communications and a procedure for review of uncontested applications that do not require a hearing. There are also timeframe requirements for hearings and uncontested cases. The timeframes may be extended for good cause.

The criteria for issuing a CON is set forth in the rule. These include the need for the service, the potential threat to the public – if any, are there alternatives, are their similar services currently available, available alternatives to new construction, will patients have trouble obtaining the service in the absence of the CON and specific requirements for expansion of skilled nursing beds. There are also requirements for approval, denial and approval with conditions.

Adverse decisions regarding a CON application may be appealed to the Office of Judges with the Insurance Commission. There are provisions for notice of appeal, a stay

pending appeal, specific requirements for notice and assignment of error and the ability for the Office of Judges to enter an order, remand or continue the matter. There is also a procedure for appeal of the order to the circuit court. This includes timelines.

The rule requires progress reports to the HCA during the pendency of a project for which a CON has been granted. The requirements for the report are set out in the rule. There is also a requirement that failure to submit a report may impact future applications. These reports may be used by the HCA to grant an extension of a CON. There is also a requirement for an application for an extension prior to expiration and for a renewal for incomplete projects.

Substantial changes to a project for which a CON has been granted are not allowed by the rule unless approved by the HCA. What constitutes a substantial change is defined as a change in service area, change of location, change in the number of beds, major medical equipment which was not listed in the application, additional health services, change in square footage or an unapproved capital expenditure. There is also a preclusion for transferability of a CON.

Once a CON has been issued the HCA is required to a substantial compliance review. The HCA is required to issue their findings within 45 days. If they find that the project is not in compliance they may withdraw the CON. They are also permitted to impose fines or seek injunctive relief. There are also provisions for allowing conditional substantial compliance pending receipt of sufficient financial data.

The provides for withdrawal of a CON by the HCA if they find noncompliance, substantial change in the details of the project for which the CON was issued or a material misrepresentation. An applicant may appeal a withdrawal to the Office of Judges as set forth in the rule.

As provided in the statute, the rule allows for an application to determine if any proposed new service is required to have a CON. There is a \$100 fee. The HCA has 45 days to issue an order. They are also required to publish their decision regarding reviewability on their webpage.

The final provisions of the rule provide that applications for a CON are open for public inspection. There is also a list of reviewable services which is carried over from the statute.

DATE OF PASSAGE: April 4, 2017

EFFECTIVE DATE: April 4, 2017

ACTION BY GOVERNOR: Signed April 20, 2017

Senate Bill 127

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

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

CODE REFERENCE: §64-7-1, §64-7-2, §64-7-3, §64-7-4 and §64-7-5 (Amends and Reenacts)

SUMMARY:

The Committee Substitute authorizes four rules and repeals eighteen current legislative rules and one procedural rule promulgated by the Insurance Commissioner, the Banking Commissioner and the Tax Division which are obsolete or no longer authorized.

SENATE BILL NO. 127

Agency: Insurance Commissioner

Subject: Adoption of Valuation Manual, 114-98

This rule is a new rule. It requires insurers to use the Valuation Manual that was adopted by the National Association of Insurance Commissioners, as required by WV Code §33-7-9 standard valuation law. This statute requires the Insurance Commissioner to adopt the Valuation Manual adopted by the National Association of Insurance Commissioners for the valuation of reserves for life insurance and related insurance products of insurers.

The West Virginia Standard Valuation Law, WV Code §33-7-9 establishes a principle-based valuation methodology that is applicable, subject to specified exceptions to life, health, and annuity business written after the operative date of the uniform valuation manual adopted by the National Association of Insurance Commissioners (NAIC). To enable uniform and simultaneous implementation by the participating states, the Standard Evaluation law provides that the valuation manual only becomes operative after a supermajority of states have adopted substantially similar laws and that other requirements are met, which are set forth in the Standard Evaluation law.

The rule is amended to adopt the most recent changes to the Valuation Manual adopted by the NAIC on December 2, 2012. On June 10, 2016, the NAIC voted to recognize that all the requirements have been met for the adoption of the Valuation Manual as adopted by the NAIC operative. The adoption of the Valuation Manual becomes effective January 1, 2017.

SENATE BILL NO. 128**Agency:** Lottery Commission**Subject:** Limited Video Lottery, 179-05

The rule amends a current legislative rule by adding a definition for the term “Licensed limited video lottery location approved by the commission”. Currently that term is defined in an interpretive rule. The rule: (1) reduces the minimum straight-lined distance allowed between a business that sells petroleum products and a licensed limited video lottery location from 300 feet to 150 straight-line feet from the exterior wall; and (2) authorizes certain “West Virginia Truck Stops” to be licensed limited video lottery locations.

SENATE BILL NO. 146**Agency:** Racing Commission**Subject:** Thoroughbred Racing, 178-01

The rule is an amendment to an existing legislative rule. The main purpose of the amendment is to update references throughout the rule to the most recent Association of Racing Commissioners International (RCI) rules. In addition, the rule implements an explicit duty to cooperate, makes changes to the claiming race procedures and changes references to “coupled entries” to instead refer to “entries of horses having common ties,”. It also amends the rule to reflect an amendment adopted by RCI to the model rule for the point system for medication violations. It reduces the number of points awarded, the suspension periods and the time before expungement.

SENATE BILL NO. 147**Agency:** Racing Commission**Subject:** Pari-Mutuel Wagering, 178-05

This legislative rule amends the current pari-mutuel wagering rule in two ways. It lowers the minimum wagers and payouts and amends one of the six approved methods of apportioning the Pick (n) pool in a Pick (n) wager.

The following rules were repealed:

- Insurance Commission, Utilization management, 114-51
- Insurance Commission, Medicare supplement insurance coverage, 114-17
- Tax Division, Listing of interests in natural resources for purposes of first statewide appraisal, 110-01B
- Tax Division, Guidelines for assessors to assure fair and uniform nonutility personal property values, 110-01C
- Tax Division, Review by circuit court on certiorari, 110-01D
- Tax Division, Review of appraisals by the county commission sitting as an administrative appraisal review board, 110-01E
- Tax Division, Additional review and implementation of property appraisals, 110-01F
- Tax Division, Review by circuit court on certiorari, 110-1G

- Tax Division, Revision of levy estimates, 110-08
- Tax Division, Inheritance and transfer tax, 110-11
- Tax Division, Annual tax on incomes of certain carriers, 110-12A
- Tax Division, Telecommunications tax, 110-13B
- Tax Division, Tax credit for employing former members of Colin Anderson Center 110-13I
- Tax Division, Tax credits for new value-added, wood manufacturing facilities 110-13M
- Tax Division, Tax credits for new steel, aluminum and polymer manufacturing operations, 110-13N
- Tax Division, Business investment and jobs expansion tax credit, corporation headquarters relocation tax credit and small business tax credit, 110-13C
- Tax Division, Appraisal of property for periodic statewide reappraisals for ad valorem property tax purposes, 110-01
- Banking Commissioner, West Virginia Consumer Credit and Protection Act, 106-8
- Banking Commissioner, West Virginia Board of Banking and Financial Institutions, 107-5 (procedural rule)

DATE OF PASSAGE: March 24, 2017

EFFECTIVE DATE: March 24, 2017

ACTION BY GOVERNOR: Signed April 6, 2017

Senate Bill 134

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

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

CODE REFERENCE: §64-10-1, §64-10-2 and §64-10-3 (Amends and Reenacts)

SUMMARY:

The Committee Substitute authorizes six rules, directs the Board of Coal Mine Health and Safety to amend a current rule and repeals one current legislative rule promulgated by the Division of Natural Resources. The Committee Substitute is referred to as Bundle 10, the Department of Commerce.

SENATE BILL NO. 133

Agency: Division of Natural Resources

Subject: Revocation of Hunting and Fishing Licenses, 58-23

The rule reflects recent statutory changes. A person who illegally kills a bear will be assessed six points on his or her license. The death of a bear results in a two-year suspension for a first offense; five years for a second offense and 10 years for a third or subsequent offense.

The rule clarifies that any additional revocations begin at the conclusion of any previous revocation period. Also, persons must surrender their hunting and fishing licenses to the Division or the clerk of the county commission within 10 days of having knowledge of the revocation.

Lastly, the rule was updated to reflect statutory changes regarding the use of artificial light and night vision technology, such as image intensification and thermal imaging, to hunt, trap, etc. Ten points are assessed for violations.

SENATE BILL NO. 134

Agency: Division of Natural Resources

Subject: Point System for the Revocation of Hunting, 58-24

The rule repeals the current legislative rule. The point system is now addressed in DNR rule, Revocation of Hunting and Fishing Licenses, 58-23.

SENATE BILL NO. 135

Agency: Division of Natural Resources

Subject: Special Waterfowl Hunting, 58-58

The rule modifies current a current legislative rule. Specifically, the revisions to this rule relate to hunting on Sundays and to the Youth Waterfowl Hunting Season.

SENATE BILL NO. 136

Agency: Division of Natural Resources

Subject: Commercial Sale of Wildlife, 58-63

The rule modifies a current legislative rule. Specifically, modifications to this rule include the removal of language pertaining to captive cervids, which are now regulated by the W.Va. Department of Agriculture. Also, the definition of “wildlife” is revised to be consistent with the definition in W.Va. Code § 20-1-2.

SENATE BILL NO. 137

Agency: Division of Natural Resources

Subject: Miscellaneous Permits and Licenses, 58-64

The rule was removes captive cervid licensing language, which is now under the purview of the W.Va. Department of Agriculture. Language relating to Commercial Fishing Preserve licenses was also modified to conform to statutory changes. Several technical changes were made, including changes to the definitions of “wild animals” and “wild birds”. Also, the rule struck provisions relating to escaped wildlife becoming property of the state, but kept current provisions that allow the division to dispose of escaped wildlife.

SENATE BILL NO. 132

Agency: Office of Miners’ Health, Safety and Training

Subject: Certification, Recertification and Training of EMT-Miners and the Certification of EMT-M Instructors, 56-22

The Coal Jobs and Safety Act of 2016 transferred the training of miners EMTs from the Office of Emergency Services to the Director of the Office of Miners’ Health Safety and Training. The rule conforms to the Act. It adds a definition of “National DOT Curriculum for First Responders.”; extends the period of time accepted for recognition as an EMT-M under the Grandfather Clause; and lists 2 new requirements for certification.

An initial applicant has up to one year to retake the parts of the test that he or she failed in order to obtain the EMT-M certification. After one year, if the applicant fails to obtain his or her certification, he or she must repeat the entire EMT-M course. The EMT-M curriculum in conjunction with the National DOT Curriculum for First Responders must be followed when teaching the sixty (60) hour EMT-M certification course. Updates in the DOT curriculum will also apply to the EMT-M curriculum.

The 2017 Legislature during the Regular Session directed the Board of Coal Mine Health and Safety to amend the below rule:

Agency: Board of Coal Mine Health and Safety

Subject: Rules governing proximity detection systems and haulage safety generally, 36-57

The Legislature directed the Board to amend its current rules to remove the July 1 2017, deadline and insert instead the timeframe set forth in the federal rule relating to proximity detection systems.

The following rule was repealed:

- Natural Resources, Litter control grant program, 58-06

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: April 8, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

Senate Bill 151

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing Department of Administration promulgate legislative rules.

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

SUMMARY:

This Committee Substitute contains three bills constituting Bundle 2, the Department of Administration. This Committee Substitute authorizes the Department of Administration to promulgate the following rules:

SENATE BILL NO. 151

Agency: Board of Risk and Insurance Management

Subject: Patient Injury Compensation Fund, 115-07

The rule amends an existing rule relating to the Patient Injury Compensation Fund, created in 2004 to provide compensation to claimants in medical malpractice actions for any portion of certain economic damages awards that are uncollectable as a result of statutory limitations on economic damages. The rule is necessary to implement the recent statutory changes.

The rule amendments reflect the statutory changes which closed the Fund to claims filed after June 30, 2016, and which closed the Fund from further claims exposure on and after July 1, 2016. The rule also allows BRIM to determine whether or not a payment from the fund to a qualified claimant is in the best interest of the fund and other claimants and sets forth those issues which BRIM may consider in making the determination.

The amendments expand the options available to BRIM in the event claims received by BRIM through June 30, 2016, cannot be paid in full at the beginning of the next fiscal year. The options include periodic installments, periodic installments other than via a structured settlement, prorating claims and placing claims in nonpayment status pending receipt of additional money during the four-year funding stream created in the bill. Any amounts due and unpaid may be carried forward.

The rule also provides that: attorney's fees may not be paid from the fund; adds a provision to specify that BRIM may retain qualified experts in the fields of accounting, economics, medicine, life care planning, or other fields relevant to one or more claims as necessary to implement the authority of BRIM to review claims; and specifically provides that at an administrative hearing to appeal the decision of the executive review committee

a claim, that BRIM shall be afforded the opportunity to review the evidence, cross examine witnesses, and present evidence in support of its position.

SENATE BILL NO. 150

Agency: Board of Risk and Insurance Management

Subject: Mine subsidence insurance, 115-01

The rule amends an existing rule to reflect recent statutory changes.

Under W. Va. Code §33-30-1 et seq., insurers issuing policies to cover structures in the state (with the exception of certain designated counties) are required to provide mine subsidence insurance, unless coverage is waived by the insured. The premium charged is set by the Board of Risk and Insurance Management. The total insured value is currently limited to \$75,000. The Board is a reinsurer on this program.

This rule increases the available coverage for mine subsidence coverage to \$200,000.00 by increasing the total value that the Board can reinsure from \$75,000.00 to \$200,000.00. The amendment also amends Appendix C of the rule, which sets the premium rates, to set premium rates for the increased coverage of up to \$200,000 provided in the bill.

SENATE BILL NO. 114

Agency: Ethics Commission

Subject: Private gain, 158-06

The rule changes are the first recommended changes to this rule since 1992, and are intended to bring certain aspects of the rule into alignment with advisory opinions and other guidelines that have been approved by the Ethics Commission.

The changes include updating and clarifying the nepotism prohibitions; clarifying the prohibitions to include private gain for another person; clarifying the need for an exemption from the prohibitions for certain categories of public officials or employees; and making clear that the Ethics Acts sets a minimum standard of conduct.

DATE OF PASSAGE: April 4, 2017

EFFECTIVE DATE: April 4, 2017

ACTION BY GOVERNOR: Signed April 18, 2017

Senate Bill 173

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to autocycles.

CODE REFERENCE: §17B-1-1 and §17B-2-7b (Amends and Reenacts); §17C-1-69 (New); §17C-15-44 (Amends and Reenacts)

SUMMARY:

This bill creates a new category of vehicle under the motor vehicle codes called the “autocycle.” Twice, the bill defines an “autocycle” as a “fully or partially enclosed motorcycle that is equipped with safety belts, rollover protection, a rearview mirror, automotive seating, a steering wheel and equipment otherwise required on a motorcycle and which has no more than three wheels in contact with the roadway at any one time.” Next, the bill exempts persons operating autocycles who hold a valid driver’s license from the requirement to complete motorcycle examination, licensing and endorsement. Finally, the bill clarifies that a person holding a valid driver’s license who is operating an autocycle is exempt from the requirement to wear a helmet. The bill also made technical corrections and cleaned up out-of-date language.

DATE OF PASSAGE: April 4, 2017

EFFECTIVE DATE: July 3, 2017

ACTION BY GOVERNOR: Signed April 18, 2017

Senate Bill 187

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Providing for confidentiality of patients' medical records.

CODE REFERENCE: §27-3-1 (Amends and Reenacts)

SUMMARY:

This bill amends W.Va. Code §27-3-1, which pertains to confidentiality of mental health records. The bill adopts certain Health Insurance Portability and Accountability Act disclosure exceptions and eliminates a 30-day requirement which is not mandated by federal law. The amendments, thus, bring West Virginia in line with federal law.

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

Senate Bill 206

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to criminal offense of kidnapping.

CODE REFERENCE: §61-2-14a (Amends and Reenacts)

SUMMARY:

This code section prohibits kidnapping. This bill expands current language regarding the means by which the perpetrator gains custody of the victim. The bill returns provisions previously deleted in code to close a possible loophole.

DATE OF PASSAGE: April 3, 2017

EFFECTIVE DATE: July 2, 2017

ACTION BY GOVERNOR: Signed April 11, 2017

Senate Bill 214

COMMITTEE SUBSTITUTE

SHORT TITLE: Adopting Uniform Electronic Legal Material Act.

CODE REFERENCE: §39-6-1, §39-6-2, §39-6-3, §39-6-4, §39-6-5, §39-6-6, §39-6-7, §39-6-8, §39-6-9, §39-6-10 and §39-6-11 (New)

SUMMARY:

The Uniform Electronic Legal Material Act establishes an outcomes-based, technology-neutral framework for providing online legal material with the same level of trustworthiness traditionally provided by publication in a law book. The goals of the authentication and preservation program outlined in this bill are to enable end-users to verify the trustworthiness of the legal material they are using and to provide a framework for the state to preserve legal materials in perpetuity in a manner that allows for permanent access.

The Act requires that official electronic legal material be: (1) authenticated, by providing a method to determine that it is unaltered; (2) preserved, either in electronic or print form; and (3) accessible, for use by the public on a permanent basis.

The law is technology-neutral, meaning the act does not require specific technologies, leaving the choice of technology for authentication and preservation up to the custodian.

DATE OF PASSAGE: April 3, 2017

EFFECTIVE DATE: July 2, 2017

ACTION BY GOVERNOR: Signed April 11, 2017

Senate Bill 219

COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to conspiracy to commit crimes under Uniform Controlled Substances Act.

CODE REFERENCE: §60A-4-414 (New)

SUMMARY:

This bill amends chapter sixty-a (Controlled Substances Act) by adding a general conspiracy offense and a number of drug specific, weight specific conspiracy offenses.

General drug felony conspiracy, subsection (a): any felony violation of §60A-4-401 schedule I, II, III & IV - determinate sentence of 2 years up to 10 years.

Note: the provisions of this subsection do not apply to violations of W.Va. Code §60A-4-401, which prohibits the manufacture, delivery or possession with the intent to manufacture or deliver marijuana.

Specific Conspiracy drug/weight offenses:

Subsection (b), determinate sentence of 2 - 30 years:

- 1 or more kilograms of heroin
- 5 or more kilograms of cocaine
- 100 or more grams of PCP
- 10 or more grams of LSD
- 50 or more grams of methamphetamine

Subsection (c), determinate sentence of 2 - 20 years:

- 100 – 999 grams of heroin
- 500 – 4,999 grams of cocaine
- 10 – 99 grams of PCP
- 1 – 9 grams of LSD
- 5 – 49 grams of methamphetamine

Subsection (d), determinate 2 - 15 years:

- 10 – 100 grams of heroin
- 50 – 500 grams of cocaine

- 2 – 10 grams of PCP
- 200 micrograms – 1 gram of LSD
- 499 milligrams – 5 grams of methamphetamine or 20 – 50 grams of a mixture containing methamphetamine

Example: 2-year sentence without enhancement for a firearm makes one eligible for parole after service of 6 months – 10-year sentence makes one parole eligible after services of 2.5 years.

Subsection (d) is any amount of the aforementioned drugs over the life of conspiracy with no minimum amounts but with ceiling amounts. Determinate sentence of at least 2 years, but not more than 15 years.

The bill also notes that nothing in the section may be construed to limit available sentencing options and other interpretive provisions.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

Senate Bill 220

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to offenses and penalties under Uniform Controlled Substances Act.

CODE REFERENCE: §60A-4-414 (New)

SUMMARY:

The purpose of this bill is twofold: (1) to criminalize drug delivery causing death and (2) to criminalize failure to seek medical attention for another while engaged in the illegal use of a controlled substance. The bill creates two offenses:

- 1) Delivering a controlled substance or counterfeit controlled substance, in violation of W.Va. Code §60A-4-401, for an illicit purpose resulting in the death of another person: felony – determinate sentence of 3 to 15 years;
- 2) Failing to seek proper medical attention for another person while jointly engaged in the illegal use of a controlled substance, in violation of W.Va. Code §60A-4-401, when such other person suffers and overdose or a significant adverse physical reaction, and death ensues: felony – indeterminate sentence of 1 to 5 years.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

Senate Bill 222

COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to disqualification for unemployment benefits.

CODE REFERENCE: §21A-6-3 (Amends and Reenacts)

SUMMARY:

This bill addresses the standards for disqualification from unemployment compensation benefits in circumstances involving a strike or bona fide labor dispute. The bill provides that an individual is disqualified from benefits for any week or portion thereof in which he or she did not work as a result of a strike or bona fide labor dispute. A lockout is not considered a strike or bona fide labor dispute and no person may be disqualified due to a lockout.

An employee can show he or she has been displaced from employment because of a lockout by presenting himself or herself physically for work at the workplace on the first day of the lockout or the first day he or she is able to be present at the workplace and the employer denied the individual the opportunity to perform work.

Employees are not entitled to benefits if non-striking employees or contractors operate the facility or perform the employees' duties unless they are permanent replacements. A permanent replacement is an employee currently employed and has been notified that he or she is permanently replacing the striking worker. Employees or contractors hired for shorter periods of time such as the length of the strike or bona fide labor dispute may not be determined to have permanently replaced the striking employee.

DATE OF PASSAGE: April 3, 2017

EFFECTIVE DATE: July 2, 2017

ACTION BY GOVERNOR: Signed April 8, 2017

Senate Bill 224

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Repealing requirement for employer's bond for wages and benefits.

CODE REFERENCE: §21-5-14 and §21-5-15 (Amends and Reenacts)

SUMMARY:

The purpose of this bill is to remove the requirement that certain employers within the State of West Virginia must post a wage bond for the first five years of their operation. In §21-5-14, the bill shortens the length of time that a construction or mineral severance, production or transportation business must be in operation to be exempt from the wage bond requirement from five years to one year. Additionally, certain other businesses are exempted from the wage bond requirement if they satisfy one of three conditions: (1) it has been in business in another state for at least five years, (2) it has at least \$100,000 in assets, or (3) it is a subsidiary of a parent company that has been in business for at least five years. In §21-5-15, the penalties for knowingly, willfully and fraudulently disposing of or relocating assets with the intent to deprive employees of their wages and benefits are increased, with the possible fine increasing from \$30,000 to \$60,000.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

Senate Bill 225

COMMITTEE SUBSTITUTE

SHORT TITLE: Allowing magistrates to conduct proceeding for temporary emergency protective order dealing with temporary custody by family court.

CODE REFERENCE: §48-27-402 (Amends and Reenacts)

SUMMARY:

This bill allows magistrates to modify, via a domestic violence protective order, a temporary order of the Family Court relating to custody of minor children, but only in circumstances alleging violence against a minor child or children. The bill closes a loophole in existing law related to unmarried persons with a child in common.

DATE OF PASSAGE: April 3, 2017

EFFECTIVE DATE: April 3, 2017

ACTION BY GOVERNOR: Signed April 11, 2017

Senate Bill 230

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to WV officials carrying concealed firearm nationwide.

CODE REFERENCE: §7-4-1 (Amends and Reenacts); §30-29-12 (New)

SUMMARY:

This bill provides statutory authority necessary to give prosecuting attorneys and assistant prosecuting attorneys the option to carry firearms nationwide for self-defense pursuant to 18 USC §926B, upon completion of required training and annual background check, and requires law-enforcement agencies to provide qualified retired law-enforcement officers of their department the opportunity to be certified to carry concealed firearms nationwide, under 18 USC §926C. The bill authorizes law enforcement agencies, but does not require them to offer firearms training to retirees of other agencies and sets fee limits for such training. The bill also grants prosecutors and assistant prosecutors arrest powers for violations of law committed within the office of the prosecuting attorney. The possession of arrest powers combined with compliance with certification requirements is designed to bring prosecuting attorneys and assistant prosecuting attorneys into the ambit of 18 U.S.C. §926B, which overrides certain state laws to allow law enforcement personnel to carry a concealed weapon for self-defense purposes throughout the country. The new §30-29-12 also requires law enforcement agencies to facilitate personnel in obtaining necessary identification and certifications under 18 USC §926B. The new §12 also addresses honorably retired law-enforcement officer's ability to get training and certification necessary to carry a concealed weapon nationwide.

DATE OF PASSAGE: April 4, 2017

EFFECTIVE DATE: July 3, 2017

ACTION BY GOVERNOR: Signed April 20, 2017

Senate Bill 233

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Excluding from protection oral communications uttered in child care center under Wiretapping and Electronic Surveillance Act.

CODE REFERENCE: §62-1D-2 (Amends and Reenacts)

SUMMARY:

This bill creates an exception to the prohibition against intercepting communications if at least one participant in the communication agrees thereto. The exception is applicable to child care facilities if written notice is posted of the recordation. The bill also amends the definition of “child care center” by requiring that a facility must be licensed by the Department of Health and Human Resources in order to fall within the definition.

DATE OF PASSAGE: April 1, 2017

EFFECTIVE DATE: June 30, 2017

ACTION BY GOVERNOR: Signed April 11, 2017

Senate Bill 239

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Limiting use of wages by employers and labor organizations for political activities.

CODE REFERENCE: §3-8-12, §21-1A-4, §21-5-1 and §21-5-3 (Amends and Reenacts)

SUMMARY:

First, in §3-8-12, the bill broadens the class of employees protected from coercion or intimidation as it relates to political contributions and activity. Current code only covers nonelective salaried and nonsalaried employees in the public sector. The bill strikes those limitations so that all employees, whether public or private, are protected from being coerced or intimidated into making a political contribution or engaging in political activity.

Next, also in §3-8-12, a new subsection (o) is added that prohibits employers or any other person or entity responsible for the disbursement of wages or salaries from withholding any portion of an employee's wages or salary for use as contributions to any candidate or political committee, or for any other political activities, unless the employee has provided his or her express, written request to do so. The subsection contains internal effective dates. A violation of this subsection is not subject to criminal or civil penalties, but is instated governed by the provisions of §21-5-1 *et seq.*

In §21-1A-4, which addresses unfair labor practices, a new subsection (f) is added. This subsection makes it an unfair labor practice for a labor organization to use agency shop fees paid by a non-member to make contributions or expenditures to influence an election or operate a political committee, unless affirmatively authorized by the individual. The scope of the authorization is limited to twelve months from the date it is made. The term "agency shop fees" is defined as "any dues, fees, assessments or other similar charges, however denominated, of any kind or amount to the labor organization." This new subsection contains an internal effective date to prohibit retroactive application to provisions in effect on or before June 30, 2017.

Certain definitions are updated in §21-5-1. First, the definition for "deductions" is clarified to include "only those amounts required by law or Court order to be withheld, and those amounts required by the terms of an employer-sponsored or employer-provided plan or program providing fringe benefits in which the employee is a participant." Next, the term "fringe benefits" is updated and expanded by including a non-exclusive list of benefits that fall within the scope of the term.

Changes to §21-5-3 are made in subsection (e), which addresses assignments of future wages. Assignments of wages are required to be in writing, but a current requirement for them to be notarized is eliminated. Additionally, a proviso expanding the right of employers and employees to otherwise agree to deductions to be made from payroll is eliminated. Internal effective dates are added to make the provisions of this section inapplicable to contracts or agreements entered into on or before June 30, 2017.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Vetoed April 26, 2017

Senate Bill 240

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Creating crime of nonconsensual distribution of sexual images.

CODE REFERENCE: §61-8-28a (New)

SUMMARY:

This bill criminalizes the nonconsensual disclosure of privately taken images of another that show intimate parts of the depicted person or show the depicted person engaged in sexually explicit conduct where the depicted person did not consent to their disclosure.

The bill contains definitions of “disclose,” “image,” “intimate parts,” and “publicly disclose.” The bill criminalizes a situation in which a person knowingly and intentionally discloses, causes to be disclosed or threatens to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce, an image of another person that shows the intimate parts of the depicted person or shows the depicted person engaged in sexually explicitly conduct. The image must have also been captured in a circumstance in which the person depicted had a reasonable expectation that the image would not be publicly disclosed.

A person who is convicted of such a crime for the first time is guilty of a misdemeanor and, upon conviction, shall be confined in jail for not more than one year and/or fined between \$1,000 and \$5,000. A person who is convicted of a second or subsequent violation is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not more than three years and/or fined between \$2,500 and \$10,000.

Subsection (d) of the bill provides explicit exceptions for circumstances in which the provisions of this newly created section do not apply and subsection (e) clarifies that the intent of this bill is not to impose liability on the providers of an interactive computer service, information service, or telecommunications service.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

Senate Bill 247

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing prosecuting attorney designate and deliver grand jury records for investigative purposes.

CODE REFERENCE: §52-2-11 (New)

SUMMARY:

This bill:

- 1) Allows prosecuting attorneys to designate certain law enforcement officers and investigators to receive materials subpoenaed and received by a prosecuting attorney under the authority of a grand jury;
- 2) Requires law-enforcement officers and investigators to execute a nondisclosure statement acknowledging the evidence to be secret (confidential) under West Virginia Rules of Criminal Procedure 6(e);
- 3) Allows designated law-enforcement officers and investigators to keep, review and analyze the subpoenaed materials and to use such materials for investigative purposes;
- 4) Defines “prosecuting attorney”, “investigator”, “law-enforcement officer” and “subpoenaed material”;
- 5) Clarifies that law-enforcement officers and investigators may retain subpoenaed materials or other evidence in their custody until investigation is terminated or until the subpoenaed matter is presented to the grand jury;

Part of the rationale for this bill is to standardize practices in prosecutors’ offices relating to the use of materials subpoenaed by a grand jury.

DATE OF PASSAGE: April 1, 2017

EFFECTIVE DATE: April 1, 2017

ACTION BY GOVERNOR: Signed April 11, 2017

Senate Bill 248

COMMITTEE SUBSTITUTE

SHORT TITLE: Clarifying composition and chairmanship of Commission on Special Investigations.

CODE REFERENCE: §4-5-1, §4-5-2, §4-5-3, §4-5-4 and §4-5-5 (Amends and Reenacts); §4-5-7 and §4-5-8 (New)

SUMMARY:

Under current law, the Commission on Special Investigations is composed of five members from each house. The bill specifies that the President of the Senate and the Speaker of the House of Delegates are to be one of the members from each of their respective houses and that they are to serve as chairs of the Commission. The bill clarifies that any action taken by the Commission requires a majority vote.

Under current law, the Commission may employ necessary staff. The bill states that the investigative staff is to consist of a director, a deputy director, senior investigators and investigators approved by the co-chairs.

The bill requires a majority vote to enter into executive session. The bill also removes the requirement that the Joint Committee on Government and Finance approve payment of the Commission's Expenses. The bill allows the Commission to request rather than subpoena records for state, county, and local government entities.

A new section has been added making it a felony to impersonate a Commission member or staff. The penalty is the same as for making a false statement, except for the fine which is up to \$2,500.

Lastly, the bill adds a new section eight which allows the Commission to award duty weapons to certain retiring members and provides for the disposal of surplus duty weapons.

DATE OF PASSAGE: April 1, 2017

EFFECTIVE DATE: June 30, 2017

ACTION BY GOVERNOR: Vetoed April 13, 2017

Senate Bill 255

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to filling vacancies in elected office.

CODE REFERENCE: §3-10-3, §3-10-5 and §3-10-7 (Amends and Reenacts)

SUMMARY:

This bill amends three sections of code related to filling vacancies in elected office. First, with respect to vacancies in the offices of statewide elected officials on the Board of Public Works (Secretary of State, Auditor, Treasurer, Attorney General and Commissioner of Agriculture), the bill requires the Governor to fill a vacancy from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the previous officeholder was affiliated at the time the vacancy occurred. That list must be submitted within fifteen days after the vacancy occurs, and the Governor must make the appointment within five days of receiving the list. Should a list not be submitted, the Governor must select a replacement from the prior officeholder's political party at the time the vacancy occurred.

For vacancies in the state Legislature, language was added to clarify that the vacancy was to be filled from a list of three persons submitted by the party executive committee of the same party with which the person holding the office immediately preceding the vacancy was affiliated "at the time the vacancy occurred," or, if no list is submitted, then the Governor must select an appointee who, in addition to meeting other statutory and constitutional requirements, must be of that same political party.

Finally, the bill changes the procedure for filling vacancies on county commissions. It imposes a requirement on the county commission to fill a commission vacancy by a person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The person selected to fill the vacancy must have been a member of the required political party for at least sixty days prior to the occurrence of the vacancy. Should the remaining quorum of the county commission fail to appoint a replacement within thirty days, then the county executive committee of the vacating commissioner's political party shall submit a list of three legally qualified persons. The commission shall then select from that list of names within fifteen days. If the commission is unable to select from the list, a process of elimination begins, whereby the most senior commissioner eliminates one name, followed by the second-most senior commissioner eliminating one name. The remaining name is deemed to be selected to fill the vacancy. The bill also addresses the situation where vacancies on a county commission leave it without a quorum. In that case, the Governor would have to fill enough vacancies to create a quorum. Those appointments

would be made from a list of three legally qualified persons prepared by the county executive committee for the vacating commissioner's political party at the time the vacancy occurred. The Governor is directed to fill vacancies in the order they were created, beginning with the vacancy first created, until a quorum existed. After a quorum was reestablished, the remaining vacancies would be filled by the county commission as provided.

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Vetoed April 26, 2017

Senate Bill 256

INTRODUCED VERSION

SHORT TITLE: Relating to prohibiting aiding and abetting of sexual abuse by school personnel.

CODE REFERENCE: §18A-4-22 (New)

SUMMARY:

This bill creates a new section of code to bring West Virginia law and policy related to sexual abuse by school personnel into compliance with federal law. Subsection (a) prohibits school personnel, contractors, agents, or employees of any local educational agency, including employees in both public and private schools, from assisting someone to obtain a new job if that person or entity knows, or has probable cause to believe, that the person engaged in sexual misconduct regarding a minor or student. The law clarifies that routine transmission of administrative or personnel files does not constitute assistance in obtaining a new job. Subsection (b) permits assistance of such persons if certain conditions are met. First, the information about the misconduct must have been properly reported to the appropriate law-enforcement agency. Second, there must be some sort of resolution: the matter must be closed, the person must have been acquitted or exonerated, or four years lapse from the date the charges were filed. Subsection (c) clarifies that any statutes, regulations or policies that provide greater protections are not overridden by this section.

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: July 5, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

Senate Bill 261

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to increasing salary or wages of judgment debtor.

CODE REFERENCE: §38-5A-3 and §38-5B-2 (Amends and Reenacts)

SUMMARY:

The purpose of this bill is to increase the salary or wages of a judgment debtor that may be exempt from execution by a judgment creditor from thirty to fifty times the federal minimum hourly wage then in effect. The bill only applies to employees of the state, state agencies, and political subdivisions of the state.

The bill also adds language that the suggestee execution by the judgment creditor shall include, if possible, the present address and the date of birth of the judgment debtor, for the purpose of identifying the judgment debtor whose salary or wages are being levied upon.

DATE OF PASSAGE: April 3, 2017

EFFECTIVE DATE: July 2, 2017

ACTION BY GOVERNOR: Signed April 11, 2017

Senate Bill 288

COMMITTEE SUBSTITUTE

SHORT TITLE: Increasing penalty for crime of child abuse causing death by parent, guardian, custodian or other person.

CODE REFERENCE: §61-8D-1a (New); §61-8D-2a (Amends and Reenacts)

SUMMARY:

This bill increases the penalty for child abuse causing death from a determinate sentence of 10-40 years to an indeterminate sentence of 15 years to life. Fifteen years must be served before parole eligibility. The amendments made to this article shall be known as “Emmaleigh’s Law”.

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 18, 2017

Senate Bill 330

STRIKE AND INSERT AMENDMENT FOR INTRODUCED VERSION

SHORT TITLE: Relating to WV Workplace Freedom Act.

CODE REFERENCE: §21-5G-1 and §21-5G-7 (Amends and Reenacts)

SUMMARY:

This bill strikes two provisions from the West Virginia Workplace Freedom Act for clarification. The definition of the term “state” is stricken from the Definitions section of the Act. Additionally, a Construction provision is stricken that dealt with collective bargaining agreements in the building and construction industry.

DATE OF PASSAGE: March 17, 2017

EFFECTIVE DATE: June 15, 2017

ACTION BY GOVERNOR: Vetoed March 28, 2017; Overridden April 7, 2017

Senate Bill 333

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Requiring all DHHR-licensed facilities access WV Controlled Substances Monitoring Program Database.

CODE REFERENCE: §60A-9-4, §60A-9-5 and §60A-9-5a (Amends and Reenacts); §60A-9-9 (New)

SUMMARY:

This bill requires medical service providers to report overdoses that resulted from the use of illicit or prescribed medication to the database including the full legal name, address, birthdate of the person being treated, and any known ancillary evidence of the overdose. The Board of Pharmacy shall, in collaboration with the Division of Justice and Community Services and the Office of Drug Control Policy, collect overdose data.

In addition, deans of the state's medical schools or their designees are to monitor prescribing habits of their faculty members, prescribers and residents enrolled in a degree program. The bill also provides access to prescriber level data to a physician reviewer designated by an employer of medical providers to monitor prescribing practices of physicians, advance practice registered nurses or physician assistants in their employ. The bill also provides access to prescriber level information to chief medical officers of a hospital or a physician designated by the chief executive officer of a hospital who does not have a chief medical officer to monitor prescribing practices of prescribers who have admitting privileges to the hospital. Data obtained from accessing the West Virginia Controlled Substances Monitoring Program database shall be recorded in a patient's medical record maintained by a private prescriber or any inpatient facility licensed pursuant to the provisions of W.Va. Code §16.

The bill clarifies the type of information to be collected and maintained by dispensers of controlled substances regarding persons picking up prescriptions other than the patient on behalf of the patient. A licensing board is required to report back to the Board of Pharmacy review committee within thirty days of resolution of any action taken by the licensing board resulting from information provided by the Board of Pharmacy. The bill also allows the Board of Pharmacy to create a "drugs of concern" list with similar reporting requirements to scheduled drugs, but provides exemptions from the penalties contained in the law. Non-reporting would be subject to potential discipline from the appropriate licensing board.

The bill, as introduced, seeks to require all facilities licensed under the provisions of chapter sixteen to access the controlled substances monitoring program.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

Senate Bill 337

COMMITTEE SUBSTITUTE

SHORT TITLE: Hiring correctional officers without regard to placement on correctional officer register.

CODE REFERENCE: §25-1-11f (New)

SUMMARY:

The purpose of the bill is to allow hiring of persons on the Corrections Officer I register, regardless of his or her position on the list, when he or she has passed the Corrections Officer I assessment.

The bill also protects the interests of previously laid off employees on a preferences list. The bill is designed to increase the speed and flexibility in hiring due to severe shortage of officers. This language mirrors that in the West Virginia Regional Jail & Correctional Facility Authority statute.

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: April 5, 2017

ACTION BY GOVERNOR: Signed April 20, 2017

Senate Bill 338

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to medical professional liability.

CODE REFERENCE: §55-7B-2, §55-7B-4, §55-7B-6, §55-7B-10 and §55-7B-11
(Amends and Reenacts)

SUMMARY:

This bill defines “occurrence” as used in the Medical Professional Liability Act, W. Va. Code §55-7B-1 et seq. The bill provides that actions for medical professional liability against nursing home and assisted living facilities must be commenced within one year of the date of injury. Venue for such claims lies in the county in which the facility is located. The bill provides that, if a screening certificate of merit is not available at the time a notice of claim is served upon a nursing home or assisted living facility, it must be served within one hundred eighty days of the date the health care provider receives the notice of claim. The bill addresses the tolling of the statute of limitations. Lastly, the bill provides that the amendments to the MPLA from this session apply to claims that arise or accrue on or after July 1, 2017 and contains specific severability language.

DATE OF PASSAGE: March 31, 2017

EFFECTIVE DATE: June 29, 2017

ACTION BY GOVERNOR: Signed April 8, 2017

Senate Bill 344

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to application of payments on consumer credit sale and loans.

CODE REFERENCE: §46A-2-115, 46A-3-111, 46A-3-112 and 46A-3-113 (Amends and Reenacts)

SUMMARY:

This banking bill specifies that all payments made to a creditor in accordance with the terms of a precomputed consumer credit sale or consumer loan must be applied to installments in the order in which they fall due. The bill eliminates an exception related to the application of payments when delinquency charges are involved, an exception that previously required that payments be applied first to current installments, then to delinquent installments, and then to delinquency and other charges.

The bill provides that all payments made to a creditor that do not comply with the terms of a precomputed consumer credit sale or consumer loan may be held in a suspense or unapplied funds account. The bill provides that the creditor must disclose to the consumer the total amount of funds so held and that, on accumulation of funds sufficient to cover a full payment in accordance with the terms of the precomputed consumer credit sale or consumer loan agreement, the creditor must then apply the payment to installments in the order in which they fall due. This eliminates a current requirement that financial institutions credit upon receipt all payments, even multiple non-conforming payments, in a single payment cycle.

As to delinquency charges on both precomputed and nonprecomputed consumer credit sales or consumer loans, refinancing, or consolidation, the bill retains the limitation that permits a delinquency charge to be collected only once on an installment however long it remains in default.

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: July 4, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

Senate Bill 345

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Allowing certain hunting and trapping on private lands on Sundays.

CODE REFERENCE: §20-2-19a (Repeals); §20-2-5, §20-2-42g and §20-2-42h
(Amends and Reenacts)

SUMMARY:

This bill permits Sunday hunting on private lands with the permission of the landowner. The local option election provisions are removed and all prior elections on the issue are void. W.Va. Code §20-2-19a is repealed as well. Lastly, necessary grammatical corrections were made to the provisions prohibiting Sunday hunting on public lands.

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

Senate Bill 358

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to trustee sale of timeshare estates.

CODE REFERENCE: §36-9-15 (Amends and Reenacts); §36-9-15a (New)

SUMMARY:

This bill amends §36-9-15 to provide for, in addition to existing remedies, the non-judicial sale of timeshare estates to satisfy liens for delinquent assessments. Current law provides that an association or managing entity may (i) institute a judicial foreclosure similar to a mortgage foreclosure, or (ii) file civil suit for a monetary judgment. As such, this bill adds a third remedy. If an association or managing entity elects to proceed with a non-judicial sale of the timeshare estate, then it must follow the procedure outlined in the new section, designated §36-9-15a.

Pursuant to §36-9-15a, an association or management entity may foreclose on a timeshare estate when the owner is delinquent for more than a year for accrued assessments. The process mirrors that used for sale of property under a deed of trust. The section requires notice, publication, public auction and recording with the county commission.

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: April 5, 2017

ACTION BY GOVERNOR: Signed April 18, 2017

Senate Bill 386

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Creating WV Medical Cannabis Act.

CODE REFERENCE: §16A-1-1, §16A-2-1, §16A-3-1, §16A-3-2, §16A-3-3, §16A-3-4, §16A-3-5, §16A-4-1, §16A-4-2, §16A-4-3, §16A-4-4, §16A-4-5, §16A-5-1, §16A-5-2, §16A-5-3, §16A-5-4, §16A-5-5, §16A-5-6, §16A-5-7, §16A-5-8, §16A-5-9, §16A-5-10, §16A-6-1, §16A-6-2, §16A-6-3, §16A-6-4, §16A-6-5, §16A-6-6, §16A-6-7, §16A-6-8, §16A-6-9, §16A-6-10, §16A-6-11, §16A-6-12, §16A-6-13, §16A-7-1, §16A-7-2, §16A-7-3, §16A-7-4, §16A-7-5, §16A-7-6, §16A-8-1, §16A-8-2, §16A-8-3, §16A-9-1, §16A-9-2, §16A-10-1, §16A-10-2, §16A-10-3, §16A-10-4, §16A-10-5, §16A-10-6, §16A-11-1, §16A-11-2, §16A-12-1, §16A-12-2, §16A-12-3, §16A-12-4, §16A-12-5, §16A-12-6, §16A-12-7, §16A-12-8, §16A-12-9, §16A-13-1, §16A-13-2, §16A-13-3, §16A-13-4, §16A-13-5, §16A-13-6, §16A-13-7, §16A-13-8, §16A-14-1, §16A-14-2, §16A-14-3, §16A-15-1, §16A-15-2, §16A-15-3, §16A-15-4, §16A-15-5, §16A-15-6, §16A-15-7, §16A-15-8, §16A-15-9 and §16A-16-1 (New)

SUMMARY:

The bill establishes the medical cannabis program in West Virginia. While delayed until July 1, 2019, the program is modeled after the Pennsylvania medical marijuana program, and the three most recent states to have adopted medical marijuana. In particular, the bill has the following core components:

ADMINISTRATION/ OVERSIGHT:

The bill places the program under the authority of the Bureau of Public Health in the West Virginia Department of Health and Human Resources.

- Creates an Advisory Board to make recommendations to the Bureau
- Bureau has rule-making authority (including emergency rule-making)
- Allows Bureau to enter into agreements with other states for reciprocity of identification card

USE AND POSSESSION:

Authorizes the use and possession of medical cannabis. Cannabis may be dispensed to:

- (A) A patient who receives a certification from a practitioner and is in possession of a valid identification card issued by the bureau; and
- (B) A caregiver who is in possession of a valid identification card issued by the bureau on behalf of a certified patient.

FORM OF MEDICAL CANNABIS:

Subject to rules promulgated under the act, medical cannabis may only be dispensed to a patient or caregiver in the following forms:

- Pill;

- Oil;
- Topical forms, including gels, creams or ointments;
- A form medically appropriate for administration by vaporization or nebulization, excluding dry leaf or plant form until dry leaf or plant forms become acceptable under rules adopted by the bureau;
- Tincture;
- Liquid; or
- Dermal patch.

Not allowed:

- Smoke medical cannabis (dry leaf/raw)
 - Bureau may add/allow by legislative rule upon recommendation from Advisory Board
- Incorporation or selling of edibles
 - Allows patient and caregiver to incorporate into edibles to aid ingestion by the patient
- Homegrown plants

CERTIFICATION/ID CARD

- Utilizes the Controlled Substance Monitoring System to track everything
- Sets up system in which physician may issue certificate to patient which states that the patient has a condition or conditions which allow the use of medical cannabis
 - Required physician training for four hours
- Certificate may recommend particular form and duration
 - Certificate goes to Bureau
 - Bureau issues an identification card
- Patient/Caregiver takes identification card to dispensary
- Dispensary must check monitoring system prior to dispensing to confirm certificate recommendations
 - Sold in sealed/labeled/child-resistant package
 - Include a safety insert with information
 - Must carry warning label as well
- Identification card good for one year

AMOUNT:

- 30-day supply
- Allows renewal for new 30-day supply within last week of 30-day supply

PERMITS:

- Bureau may issue permits for the following Medical Cannabis Organizations
 - Growers up to 10 permits (allow up to 2 locations per permit)
 - Processors up to 10 permits
 - Dispensaries up to 30 permits (split evenly among 3 regions)
- Dispensary may not be grower or processor
- However, grower may be a processor

FEES:

- Patient identification card \$50 processing fee (waiver for financial hardship)
- Grower & Processor
 - Initial Application Fee \$5,000
 - Permit Fee \$50,000
 - Renewal Fee \$5,000
- Dispensary
 - Initial Application Fee \$2,500
 - Permit Fee \$10,000
 - Renewal Fee \$2,500

CONTROLS/ MONITORING

- Utilizes an electronic tracking system for seed-to-sale monitoring
- Requires Laboratory testing by grower/processor
- Local Option
 - County may vote to prohibit operation/location in county
 - Municipality may enact zoning or ordinance prohibiting or limiting number and type of organizations

TAXES:

- No Sales Tax
- Tax on sale between grower/processor and dispensary
 - 10%

MEDICAL CANNABIS PROGRAM FUND

- All fees and taxes collected deposited into new fund
- Allocation as follows:
 - (1) 55% of the revenue in the fund shall be allocated to the bureau.
 - (2) The remaining 45% of the revenue in the fund shall be allocated as follows:
 - (A) 50% shall be allocated to the Fight Substance Abuse Fund
 - (B) 40% shall be allocated to the Division of Justice and Community Services
 - (C) 10% shall be allocated to Law Enforcement Professional Standards/police academy

CRIMINAL OFFENSES

- Diversion of medical cannabis by practitioner
- Diversion of medical cannabis
- Retention of medical cannabis
- Diversion of medical cannabis by patient/caregiver
- Falsification of identification cards
- Adulteration of medical cannabis
- Disclosure of confidential information

CIVIL PENALTIES

- Allows civil penalties for violations

- Expressly authorizes warnings to be given for minor infractions

RESEARCH PROGRAMS

- Directs Bureau to establish and develop a research program to study impact of medical cannabis on treatment and symptom management of medical conditions
- Bureau may register academic clinical research centers for research study

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: July 5, 2017; However, the full implementation (e.g. issuance of identification cards) is delayed until July 1, 2019.

ACTION BY GOVERNOR: Signed April 19, 2017

Senate Bill 388

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to dangerous weapons.

CODE REFERENCE: §61-7-11a and §61-7-14 (Amends and Reenacts)

SUMMARY:

The purpose of this bill is two-fold:

1) Allows persons twenty-one years old or older with valid concealed handgun permits to be at school lots, in driveways, traffic circles, or other areas of vehicular ingress or egress to a public school, with security limitations. The bill allows such persons to possess firearms to be at school lots, driveways, traffic circles, or other areas of vehicular ingress or egress with a concealed handgun; however, the handgun must be out of view from persons outside the vehicle when he or she is occupying the vehicle and, when he or she is not occupying the vehicle, it must be stored out of view from persons outside the vehicle, the vehicle must be locked and the handgun must be stored in a locked trunk, glove box or other interior compartment, or in a locked container securely fixed to the vehicle; and

2) Technical clean-up as to persons who may possess in areas where otherwise proscribed due to their employment while acting in an official capacity.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

Senate Bill 402

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to covenants not to compete between physicians and hospitals.

CODE REFERENCE: §47-11E-1, §47-11E-2, §47-11E-3, §47-11E-4, and §47-11E-5 (New)

SUMMARY:

This bill addresses covenants not to compete between hospitals and physicians in employment contracts. The bill limits such covenants not to compete to thirty road miles and one year in duration. The bill provides that a covenant not to compete is void and unenforceable upon expiration of the contract or the termination of employment by the employer. If the termination of the employment is at the physician's option, a covenant remains valid.

There are provisions in the bill which provide that unless the contract states otherwise, other provisions may remain enforceable. These include:

1. Taking of property, patient lists or records;
2. Repayment for loans, relocation expenses, signing bonuses, inducement to locate in a specific area and recruiting education or training expenses;
3. Nondisclosure about trade secrets;
4. Non-solicitation provisions with respect to patients and employees;
5. Liquidated damages; and,
6. Any other provision not in violation of state law.

There is also a provision that states that the provisions of the bill do not apply to instances when a physician has sold his or her practice to his or her employer and to contracts between physicians who are shareholder's owners, partner, members or directors of a health care practice. The provisions of the bill are effective after July 1, 2017.

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

Senate Bill 442

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to crimes against persons.

CODE REFERENCE: §61-2-9 and §61-2-28 (Amends and Reenacts)

SUMMARY:

This bill redefines the offenses of battery and domestic battery and assault and domestic assault. The language was changed in 2014 to conform with federal firearms law based on a Fourth Circuit case. The decision was reversed. The bill returns the language to pre-2014 form as current law unintentionally omitted certain previous conduct.

DATE OF PASSAGE: March 31, 2017

EFFECTIVE DATE: June 29, 2017

ACTION BY GOVERNOR: Signed April 11, 2017

Senate Bill 445

COMMITTEE SUBSTITUTE

SHORT TITLE: Amending definition of "abused child".

CODE REFERENCE: §49-1-201 (Amends and Reenacts)

SUMMARY:

This bill brings West Virginia's definition of an "abused child" into compliance with Federal Law.

The Rape Survivor Child Custody Act of 2015 (42 USC 14043h, *et. seq.*) provides incentives for states that have or enact legislation about terminating the parental rights of a rapist. Upon the review of West Virginia's current statutes, the Office on Violence Against Women of the United States Department of Justice determined that West Virginia's law did not allow the mother of a child conceived through rape to seek court-ordered termination of the parental rights of the rapist with regard to that child, which the court is authorized to grant upon clear and convincing evidence of rape. For West Virginia's mothers, the hurdle is a child conceived through rape does not meet the definitions of an "abused child" as provided in W.Va. Code §49-1-201 except through the domestic violence definitions. Using the domestic violence definitions creates a very strange argument for individuals whose only contact is the rape. A workgroup of the Data, Statutes and Rules committee of the Supreme Court proposed legislation to modify the definition of "abused child" to address this issue.

DATE OF PASSAGE: April 3, 2017

EFFECTIVE DATE: July 2, 2017

ACTION BY GOVERNOR: Signed April 11, 2017

Senate Bill 454

COMMITTEE SUBSTITUTE

SHORT TITLE: Providing more efficient collection and submission of state moneys received from court transactions or court services.

CODE REFERENCE: §38-5B-8 (Repeals); §29-12D-1a, §38-5B-5, §38-5B-9, §49-4-716 and §51-2A-8 (Amends and Reenacts)

SUMMARY:

The purpose of this bill is to streamline collection and remittance of moneys by the courts. The bill eliminates a fee for suggestee execution by repealing §38-5B-8 (which imposes a fee of either \$1 or 50 cents, depending on the situation) and modifying §38-5B-5 accordingly. Additionally, the bill makes changes to the process for remitting collected moneys in order to avoid the necessity of multiple transactions to get the money to the final intended account. These changes affect moneys collected for the Patient Injury Compensation Fund (§29-12D-1a), judgment executions (§38-5B-9), teen court fees (§49-4-716) and family court duplicate records (§51-2A-8).

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: July 5, 2017

ACTION BY GOVERNOR: Signed April 18, 2017

Senate Bill 455

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to commitment of persons to custody of Commissioner of Corrections.

CODE REFERENCE: §62-7-10 (Amends and Reenacts)

SUMMARY:

This bill updates a statutory form used by circuit courts upon committing a person convicted of a felony to the custody of the Commissioner of the Division of Corrections.

DATE OF PASSAGE: April 1, 2017

EFFECTIVE DATE: June 30, 2017

ACTION BY GOVERNOR: Signed April 11, 2017

Senate Bill 456

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to standards for termination of parental rights in child abuse and neglect cases.

CODE REFERENCE: §49-4-605 (Amends and Reenacts)

SUMMARY:

This section of code relates to circumstances under which the Department of Health and Human Resources is required to initiate termination of parental rights. This bill corrects a printing error from last session.

DATE OF PASSAGE: April 1, 2017

EFFECTIVE DATE: April 1, 2017

ACTION BY GOVERNOR: Signed April 11, 2017

Senate Bill 490

INTRODUCED VERSION

SHORT TITLE: Clarifying standard of liability for officers of corporation.

CODE REFERENCE: §31D-8-842a (New)

SUMMARY:

This bill adopts a provision of the Model Business Corporation Act, which was otherwise adopted in West Virginia in 2002, to address standards of liability for corporate officers. Broadly, the standard adopted mirrors the liability standard already in code for corporate directors and is commonly referred to as the “business judgment rule.”

The bill provides that officers are not liable to the corporation or shareholders for any decision unless certain elements can be satisfied. First, the challenged conduct must not be otherwise protected in state code. Second, the challenged conduct must consist of or be the result of: (1) action taken not in good faith, (2) a decision which the officer did not reasonably believe to be in the best interests of the corporation or as to which the officer was not informed to an extent the officer reasonably believed appropriate under the circumstances, (3) a lack of objectivity due to the officers’ familial, financial or business relationship with another person having a material interest in the challenged conduct which could reasonably be expected to have affected the officer’s judgment and the officer does not establish that the challenged conduct was reasonably believed by the officer to be in the best interest of the corporation, (4) a sustained failure of the officer to devote attention to ongoing oversight of the business and affairs of the corporation, or (5) receipt of a financial benefit to which the officer was not entitled or any other breach of the officers’ duties to deal fairly with the corporations and its shareholders that is actionable under applicable law.

The party seeking to hold the officer liable for money damages must show harm to the corporation or shareholders and that the harm suffered was proximately caused by the challenged conduct. For other money payment under a legal remedy, including compensation for unauthorized use of corporate assets, the party seeking to hold the officer liable has whatever persuasion burden may be called for to establish that the payment sought is appropriate under the circumstances. For other money payment under an equitable remedy including profit recovery by or disgorgement to the corporation, the party seeking to hold the officer liable has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate under the circumstances.

The bill specifically disclaims any intent to alter the burden of proving the fact or lack of fairness otherwise applicable where fairness is at issue, alter the fact or lack of

liability of an officer under another section of chapter 31D, including the provisions governing the consequences of an unlawful distribution under W.Va. Code §31D-8-833 or a transactional interest under W.Va. Code §31D-8-860, or alter any rights to which the corporation or a shareholder may be entitled under another provision of West Virginia Code or United States Code.

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 21, 2017

Senate Bill 497

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to liability for health care providers who provide services at school athletic events.

CODE REFERENCE: §55-7-19 (Amends and Reenacts)

SUMMARY:

This bill revises current code, which addresses the liability for physicians who render services at school athletic events, and extends the liability protections to all licensed, certified or registered health care providers whether licensed or certified in West Virginia or another state. The bill removes the reference to physicians “acting in the capacity of a volunteer team physician” and further removes the requirement that a health care provider agree to provide emergency care or treatment prior to the athletic event such that any health care provider in attendance is afforded the immunity provided under this section. The bill also strikes the limitation on liability tied to the limits of an applicable professional liability insurance policy and the requirement that the care or treatment was rendered in accordance with the applicable standard of care under W. Va. Code §55-7B-3. The bill adds willful misconduct to gross negligence as exceptions to the limitation on liability afforded health care providers under this existing code section.

DATE OF PASSAGE: March 31, 2017

EFFECTIVE DATE: June 29, 2017

ACTION BY GOVERNOR: Signed April 11, 2017

Senate Bill 515

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to parole requirements for hearings and release.

CODE REFERENCE: §62-12-13 and §62-12-23 (Amends and Reenacts)

SUMMARY:

The bill modifies language concerning eligibility for the accelerated parole program to clarify the several requirements an inmate must satisfy to be admitted to the program. The bill further removes outdated or redundant provisions regarding matters to be considered by the Parole Board in making parole decisions.

This bill also modifies the means of notice concerning parole hearings. The bill directs the Parole Board to notify all persons who are listed on the parole hearing notification form, including the circuit court, the prosecuting attorney's office and the law-enforcement agency and officer primarily involved of the date and time of the hearing. That notice is to be made either by mail, electronic mail or facsimile. Notice to victims remains unchanged, and must be accomplished via certified mail.

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

Senate Bill 554

INTRODUCED VERSION

SHORT TITLE: Relating to false swearing in legislative proceeding.

CODE REFERENCE: §4-1-6a (New)

SUMMARY:

This bill makes it a misdemeanor to willfully swear falsely under a lawfully administered oath or affirmation in a legislative proceeding, or to procure or attempt to procure the false testimony of another person. The convicted person is subject to a fine of not more than \$1,000 and confinement in jail for not more than one year. A convicted person may not subsequently hold any office or position of honor, trust of profit in this state or serve as a juror.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

Senate Bill 563

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to Consumer Credit and Protection Act.

CODE REFERENCE: §46A-2-105, §46A-2-122, §46A-2-128, §46A-5-101, §46A-5-102 and §46A-8-101 (Amends and Reenacts); §46A-2-140 and §46A-5-108 (New)

SUMMARY:

This bill revises the state Consumer Credit Protection Act.

First, the bill amends §46A-2-105(2), which addresses balloon payments. In current code, a promissory note which contains a balloon payment must contain very specific language. The amendments to this section provide that promissory notes containing a balloon payment shall be “in form and substance substantially similar to” the language contained in the code provision.

Next, the bill amends the definition of debt collector in §46A-2-122 to exclude attorneys licensed in West Virginia or otherwise authorized to practice law in West Virginia who are representing creditors from the definition of debt collector unless they are operating a debt collection agency under the management of a non-lawyer.

Third, the bill amends §46A-2-128 to require that notification of representation by counsel may not be sent electronically and must be sent by certified mail. It also amends the time period from receipt of the notice of representation to the time to cease direct contact with the consumer from seventy-two hours to three business days. The bill also amends subsection (f) by striking the language “its initial” and inserting the word “all” in relation to written communications to a consumer.

A new section is added, §46A-2-140, which excludes pleadings as the basis of a cause of action under Chapter 46A unless the pleading is a material violation of §46A-2-124(f) (coercion), §46A-2-127(d) (misrepresentation), §46A-2-128(c) (fees), or §46A-2-128(d) (fees not in the contract). It clarifies that seeking an award of costs authorized by the applicable rules of civil procedure shall not be the basis of a cause of action in this chapter. This new section also includes language to clarify that this section is not intended to abolish cause of actions for abuse of process, malicious prosecution, harassment or frivolity.

In §46A-5-101, the bill makes amendments to the statute of limitations provisions. Under this bill, the statute of limitations for these actions will remain at four years unless

the claim relates to setting aside a foreclosure sale, in which case the statute of limitation is one year after the foreclosure is final.

§46A-5-102 is amended to state that any counterclaim brought pursuant to Chapter 46A is subject to the appropriate statute of limitations under this article.

The bill creates a new section, designated §46A-5-108. This section is modeled after the right-to-cure provisions contained in §46A-6-106, and requires consumers to give the creditors or debt collectors a notice of right to cure any violations under Articles 2, 3, 4 and 5 of this chapter prior to filing suit for said violations.

If an alleged violation occurs, the consumer is required to send the creditor or debt collector written notice by certified mail to either its registered agent or its principal place of business if it does not have a registered agent with the West Virginia Secretary of State. The notice must identify the alleged violation and the factual basis for the violation.

Following the issuance of the notice, the creditor or debt collector has forty-five days from receipt of the notice to make a written offer to cure if they choose.

Once the consumer receives the offer to cure, the consumer has twenty days to accept or reject the offer. If the consumer fails to respond to the cure offer, the offer will be deemed rejected.

If the cure offer is accepted, the creditor or debt collector has twenty days to begin effectuating the agreed upon cure and the cure must be completed within a reasonable time.

Any applicable statute of limitations is tolled for the forty-five-day period that the creditor or debt collector is considering the notice of the alleged violation or the period that the accepted cure offer is being implemented - whichever is longer.

This section states that nothing in this section prevents a consumer that has accepted a cure offer from bringing an action for failing to timely effect the cure offer.

If an action is brought pursuant to this right to cure section, it is a complete defense to show that a cure offer was made, accepted and the cure was performed. If the trier of fact concludes that the defense is justified, the creditor or debt collector is entitled to their attorneys' fees and costs associated with defending that action.

A cure offer is generally not admissible at trial.

A creditor or debt collector is not liable for the consumer's attorney's fees and court costs following the delivery of the cure offer unless (i) the actual damages; (ii) civil penalties; and (iii) any other monetary and equitable relief provided for in Articles 2, 3, 4 and 5 of this chapter are found to have been sustained (without consideration of the attorneys' fees and court costs) to exceed the value of the cure offer.

Amendments to §46A-2-105 shall only apply to loan agreements entered into after the effective date of this bill.

Amendments to §46A-2-128 and §46A-2-140 shall apply to all causes of action accruing after the effective date of this bill.

Amendments to §46A-2-122, §46A-5-101 and §46A-5-108 shall apply to all causes of action filed on or after the effective date of this bill.

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: July 4, 2017

ACTION BY GOVERNOR: Signed April 21, 2017

Senate Bill 575

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to shooting ranges.

CODE REFERENCE: §61-6-23 (Amends and Reenacts)

SUMMARY:

The purposes of this bill are:

(1) to limit applicability of noise ordinances for shooting ranges to those ordinances in effect at the time construction of a shooting range began or operation whichever is earlier;

(2) to limit nuisance actions to violations of (1) above;

(3) to allow shooting ranges reopening in the same municipality or county, within two years of the final order of condemnation, to be under standards applicable to the condemned range property; and

(4) to make provisions of the bill retroactive.

DATE OF PASSAGE: April 4, 2017

EFFECTIVE DATE: July 3, 2017

ACTION BY GOVERNOR: Signed April 14, 2017

Senate Bill 581

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to administration of trusts.

CODE REFERENCE: §38-1-13 and §44D-1-103 (Amends and Reenacts); §44D-1-113 (New); §44D-4-405, §44D-4-414, §44D-5-503b, §44D-5-505, §44D-6-604, §44D-8-813, §44D-8-817 (Amends and Reenacts)

SUMMARY:

The purpose of this bill is to make a number of technical corrections and updates to the Code regarding the administration of trusts and estates.

§38-1-13. Substitution of trustees under a trust deed securing a debt. This section addresses the right of a party secured by a trust deed to substitute a trustee in his or her place by following a certain process, including making a writing, recording it with the county clerk, and providing notice to certain persons by mail. Subsection (c), which clarified that there was no obligation to notify a trustee under certain circumstances, is eliminated.

§44D-1-103. Definitions. Two definitions are updated. First, the definition of “Internal Revenue Code” or “Internal Revenue Code of 1986” is made more general to encompass changes to the Internal Revenue Code and “all amendments made to the laws of the United States and amendments which have been adopted and incorporated into West Virginia law by the West Virginia Legislature” in the state tax code. Second, the definition of “qualified beneficiary” is updated.

§44D-1-113. Insurable Interest of Trustee. This is a new section of code. It first defines “grantor” more narrowly, limiting it to a person who “executes a trust instrument”. This section allows a trustee to have an insurable interest in someone’s life so long as the insured person is a grantor of the trust or a person in whom the grantor has, or could have, an insurable interest, and the life insurance proceeds are primarily for the benefit of one or more of the trust beneficiaries.

§44D-4-405. Charitable purposes; enforcement. This section, which authorizes the creation of a charitable purposes trust, is modified by adding a reference to §35-2-2 in subsection (d). The effect of this addition is to clarify that the charitable purposes section does not override other provisions of the Code, specifically §35-1-4 (“Insufficient designations of beneficiaries or objects not to cause failure of trust; acquisition, conveyance, etc., of property”) and now §35-2-2 (“Validation of conveyances, devises,

gifts and bequests to trustees – Appointment of trustee; designation of beneficiaries and objects; administration by chancery court cy pres”).

§44D-4-414. Modification or termination of uneconomic trust. This section allows a trustee of a small trust to terminate it without court approval under certain conditions. One of those conditions is that the value of the trust assets is less than \$100,000. The changes to this section increase that dollar figure to \$200,000.

§44D-5-503b. Definitions. The definitions in this section relate to the creation of self-settled spendthrift trusts, which were approved by the Legislature last year. Changes to this section clarify that a qualified interest in a self-settled spendthrift trust is required to have at least one independent qualified trustee.

§44D-5-505. Creditor’s claim against grantor. References are added to this section, which relates to spendthrift provisions in trust instruments, to the three sections of code that authorize the creation of self-settled spendthrift trusts.

§44D-6-604. Limitation on action contesting validity of revocable trust; distribution of trust property. Throughout this section, the term “beneficiary” is stricken in favor of the phrase “interested person”.

§44D-8-813. Duty to inform and report. First, strict time frame requirements of reporting to beneficiaries, now set at 60 days, are stricken in favor of a “reasonable time” requirement. Second, the term “qualified beneficiary” is replaced throughout with “current beneficiary.” Third, the bill permits a trustee to provide reports or other information to beneficiaries who are not otherwise required to be informed. Last, this section permits, but does not require, a personal representative or guardian to send reports on behalf of a deceased individual who was a trustee, but requires the representative to deliver all relevant materials to the successor trustee.

§44D-8-817. Distribution upon termination. Modifications to this section grant the trustee “all powers appropriate to wind up the administration of the trust” and require the trustee to exercise those powers to wind up the trust administration.

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: July 4, 2017

ACTION BY GOVERNOR: Signed April 18, 2017

Senate Bill 606

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to minimum wage and maximum hours for employees.

CODE REFERENCE: §21-5C-1 (Amends and Reenacts)

SUMMARY:

This bill excludes any person employed by certain recreational establishments from the definition of the term “employee” for purposes of the minimum wage and maximum hour standards law, but requires such person to be compensated at least \$18,200 annually.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Vetoed April 26, 2017

Senate Bill 608

INTRODUCED VERSION

SHORT TITLE: Clarifying lawful business structures are unaffected by enactment of prohibitory legislation.

CODE REFERENCE: §2-2-10 (Amends and Reenacts)

SUMMARY:

The purpose of this bill is two-fold:

- 1) To update agency names, positions, and definitions; and
- 2) Consistent with the provisions of subsection (bb) of this section, to clarify that a business or business structure acting lawfully is unaffected by regulatory noncriminal legislation passed subsequent to the business' formation which would purport to prohibit their operation, unless the particular bill enacted specifically prohibits its future use or continuing operation.

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: April 6, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

Senate Bill 637

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to private club operations requirements.

CODE REFERENCE: §60-7-2, §60-7-6 and §61-8-27 (Amends and Reenacts)

SUMMARY:

This bill creates private club licenses tailored to resort facilities.

1) Private Resort Hotel

- a) Requirements - a private resort hotel must have the following: 5,000 or more members, 50 or more rooms, a restaurant open at least 24 hours per week, and 10 or more acres;
- b) Licenses: Hotels are tiered by number of areas designated to sell and consume alcoholic liquors and non-intoxicating beer:
 - a. 1-5, \$7,500
 - b. 6-10, \$12,500
 - c. 11-15, \$17,500
 - d. 15-20, \$22,500

2) Private Golf Course

- a) Requirements - a private golf course must have the following: 1,000 or more members; one or more 18-hole golf courses; a clubhouse; golf carts; and a restaurant and full kitchen open 15 or more hours a week;
- b) License Fees: \$4,000 per year.

Short term licenses are available up to one week for \$150 per day.

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

Senate Bill 667

INTRODUCED VERSION

SHORT TITLE: Limiting authority of Attorney General to disclose certain information provided by Tax Commissioner.

CODE REFERENCE: §11-10-5s (Amends and Reenacts)

SUMMARY:

Under the 1998 tobacco Master Settlement Agreement (MSA), participating cigarette manufacturers agreed to make annual payments to the states to compensate them for health care costs as a result of smoking-related illnesses. These annual payments could be reduced if the participating manufacturers can demonstrate that they lost market share as a result of the MSA. The MSA, however, provides a safe harbor from the adjustment if a settling state "diligently enforces" the provisions of model statute, which requires non-participating manufacturers to pay an annual escrow payment based on the amount of cigarettes sold in the state for that given year. The model statute is intended to level the playing field between participating and non-participating manufacturers.

The participating manufacturers have sued several of the states to reduce the annual payments because the states failed to diligently enforce the levy against non-participating manufacturers. The dispute was settled, but a third-party data clearing house was established to receive sales data from the states and check it against the data submitted by the participating manufacturers.

Under current law, the Attorney General is not able to disclose certain tax identifiers to the third-party data clearinghouse and, thus, is unable to prove that the state is diligently enforcing the non-participating manufacturers' escrow payments. The bill strikes provisions which disallow the disclosure of required information.

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: April 6, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

Senate Bill 684

ORIGINATING BILL

SHORT TITLE: Relating generally to WV State Police.

CODE REFERENCE: §15-2-10 and §15-2-24 (Amends and Reenacts)

SUMMARY:

§15-2-10 replaces executive director of the workers' compensation commission with West Virginia Insurance Commissioner.

§15-2-24 replaces the current cross reference with chapter sixteen, article forty-nine.

DATE OF PASSAGE: March 31, 2017

EFFECTIVE DATE: March 31, 2017

ACTION BY GOVERNOR: Signed April 11, 2017

Senate Bill 690

ORIGINATING BILL

SHORT TITLE: Authorizing WV State Police impose and collect fees for agencies and entities using their facilities.

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

SUMMARY:

This bill authorizes the Superintendent of the West Virginia State Police to collect a fee for the use of the academy and other facilities which shall not exceed \$100 per day, per venue.

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: April 6, 2017

ACTION BY GOVERNOR: Signed April 18, 2017

Senate Joint Resolution 6

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Roads to Prosperity Amendment of 2017.

CODE REFERENCE: Constitutional Amendment; adds “Road to Prosperity Amendment of 2017”

SUMMARY:

This Resolution creates an amendment to the Constitution of the State of West Virginia which will be submitted to the voters of the state at a special election to be held at a date set by the Governor in 2017.

The amendment gives the Legislature the power to authorize the issuance and selling of state bonds not exceeding 1.6 billion dollars in the aggregate. The bond scheduled is as follows:

- 1) July 1, 2018 – an amount not to exceed \$800 million;
- 2) July 1, 2019 – an amount not to exceed \$400 million;
- 3) July 1, 2020 – an amount not to exceed \$200 million; and
- 4) July 1, 2021 – an amount not to exceed \$200 million.

Bonds not issued in the first three years may be carried forward and issued in a subsequent year until July 1, 2021.

The proceeds of the bonds shall be used and appropriated for the following purposes:

- 1) Matching available federal funds for highway and bridge construction in this state; and
- 2) General highway and secondary road and bridge construction or improvements in each of the fifty-five counties.

DATE OF ADOPTION: April 8, 2017

House Bill 2001

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to ethics and transparency in government.

CODE REFERENCE: §6B-2-1, §6B-2-2, §6B-2-2a, §6B-2-3a, §6B-2-4, §6B-2-5, §6B-2-6 and §6B-2-10 (Amends and Reenacts); §6D-1-1, §6D-1-2, §6D-1-3 and §6D-1-4 (New)

SUMMARY:

§6B-2-1. WV Ethics Commission creation, composition, meetings and quorum

- Authorizes members of Commission and Probable Cause Review Board to attend and participate via videoconferencing when conducting a hearing and taking testimony

§6B-2-2. General powers and duties

- Corrects cross-reference to “chapter” instead of “article”

§6B-2-2a. Probable Cause Review Board

- Makes clear that the Review Board conducts “investigations” and that the Commission conducts hearings

§6B-2-3a. Complaints

- Corrects cross-reference to “chapter” instead of “article”

§6B-2-4. Processing Complaints, dismissal, hearings, disposition, judicial review

- Makes clear that the Commission and Review Board are two distinct bodies and clarifies respective powers
- Corrects subsection (n) to reflect changes in number of members and new threshold for majority vote
 - BACKGROUND: The number of members on Commission was lowered from 12 members to 9 members during the 2013 Regular Session
- Corrects cross-references in subsections (o)
- Corrects cross-reference on subsection (s) to clarify applicability of sanctions throughout “chapter”

§6B-2-5. Ethical Standards for elected and appointed officials and public employees.

- Adds new subdivision (4) under subsection (b) to expressly prohibit nepotism under the Ethics Act:
 - “A public official or public employee may not show favoritism or grant

patronage in the employment or working conditions of his or her relative or a person with whom he or she resides: *Provided*, That as used in this subdivision, “employment or working conditions” shall only apply to government employment: *Provided, however*, That government employment includes only those governmental entities specified in subsection (a) of this section.”

- Re-writes subsection (j)(1)(C) relating to voting on personnel matters involving public officials’ spouse or relative
 - “(C) The employment or working conditions of the public official’s relative or person with whom the public official resides.”
 - Makes consistent with the new nepotism prohibition in (b)(4)
- Adds two provisos to subsection (j)(1)(D) to require recusal of a public official or immediate family member if voting on the appropriations of public money to non-profit in which the official serves as an officer or board member.
 - **NOTE:** The voting prohibitions under (j)(1) do not apply to members of the Legislature

§6B-2-6. Financial disclosure statement; filing requirements

- Clarifies the timeframe in which candidates must file a financial disclosure statement
- Eliminates requirement for an additional financial statement if previously filed for prior year

§6B-2-10. Violations and penalties.

- Corrects multiple cross-references in the penalties section to reflect correct subsections

§6D-1 through §6D-4. Disclosure of Interested Parties to a contract

- Creates new requirement that prior to executing a public contract that has an actual or estimated value of \$100,000 or more, the entity must submit a disclosure of interested parties to the contract
- Requires disclosure form to be filed with Ethics Commission and be publicly available
- Provides disclosure requirements for institutions of higher education

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2006

COMMITTEE SUBSTITUTE

SHORT TITLE: Increasing the penalties for violating the Whistle-blower Law.

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

SUMMARY:

This bill makes any individual who violates the Whistle-blower Law personally liable for the civil fine that may be imposed under that law. The bill also raises the maximum civil fine to \$5,000 from the current maximum of \$500.

The bill strikes provisions related to suspension of public office holders who violate the law. The bill provides that if a court specifically finds a person, while in the employment of a public body, who violates section three of the Whistle-blower Law with the intent to discourage the disclosure of information, then such finding shall be deemed a finding of official misconduct and malfeasance in office and may be relied upon as admissible evidence in any subsequent proceeding or petition to remove the person from public office and may be relied upon by the public body as a basis to discipline the person including but not limited to termination from employment.

Nothing in this new section shall be construed as requiring a civil action, civil penalty or a court finding under this section as a condition or prerequisite for a public body to take disciplinary action against the person.

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: July 4, 2017

ACTION BY GOVERNOR: Signed April 18, 2017

House Bill 2083

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Increasing the felony criminal penalties for exposing children to methamphetamine manufacturing.

CODE REFERENCE: §60A-10-12 (Amends and Reenacts)

SUMMARY:

This bill changes the penalty for knowingly causing or permitting a minor to be present in a location where methamphetamine is manufactured or attempted to be manufactured. The bill clarifies that exposing a minor to methamphetamine manufacturing, and thereby inflicting serious bodily injury on such child, is a felony offense with a penalty of not less than three nor more than fifteen years and/or a fine of not more than \$25,000.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

House Bill 2219

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

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

CODE REFERENCE: §64-9-1, §64-9-2, §64-9-3, §64-9-4, §64-9-5, §64-9-6, §64-9-7, §64-9-8, §64-9-9, §64-9-10, §64-9-11, §64-9-12, §64-9-13, §64-9-14, §64-9-15, §64-9-16, §64-9-17, §64-9-18, §64-9-19, §64-9-20 and §64-9-21 (Amends and Reenacts)

SUMMARY:

The Committee Substitute authorizes forty-eight rules and directs the Board of Pharmacy to amend a current legislative rule. The committee substitute contains a total of forty-nine rules which constitutes Bundle 9, Miscellaneous Boards and Agencies.

HOUSE BILL NO. 2233

Agency: Department of Agriculture

Subject: Animal Disease Control, Rule, 61-01

The rule redefines the term “Virgin Bull” to include certain male cattle not more than eighteen months of age as opposed to the current twenty-four months of age. It is a proactive measure to prevent the spread of Trichomoniasis, which is a sexually transmitted disease.

HOUSE BILL NO. 2218

Agency: Department of Agriculture

Subject: Dangerous wild Animals, Rule, 61-30

The rule repeals a current legislative rule which Agriculture did not have the authority to promulgate.

HOUSE BILL NO. 2219

Agency: Department of Agriculture

Subject: Livestock Care Standards, Rule, 61-31

The rule repeals a current legislative rule. During the 2016 Session, it was determined that the Department of Agriculture does not have the authority to promulgate rules regarding Livestock Care Standards. Instead the authority lies with the Livestock Care Standards Board.

HOUSE BILL NO. 2234**Agency:** Agriculture**Subject:** Captive Cervid, Rule, 61-34

The rule currently requires a renewal application to be submitted 60 days prior to the expiration of the current license. The rule removes the deadline and requires that an updated inventory record, including birth and death records, be filed with the license renewal. It has been amended to require that an updated inventory list and license renewal be submitted to the Department annually by December 31.

The rule requires that an escaped captive cervid be dispatched by DNR. It provides for a review by the Commissioner of Agriculture and the State Veterinarian to determine whether or not the escaped captive cervid presents a health risk to the public, other captive cervids or wildlife. It requires that escaped cervids that are sourced from a known confirmed TB or CWD containment areas be dispatched.

HOUSE BILL NO. 2235**Agency:** Board of Architects**Subject:** Registration of Architects, 2-01

The rule adds language which provides that experience gained in the Armed Services must be of a character equivalent to that which would have been gained in the civilian sector performing similar work, and it shall be a good indicator of equivalence if the applicant served in an architectural or engineering capacity.

The rule also: allows the Board to forward or receive the grades achieved by applicants on the Architect Registration Examination to or from any other state or Canadian architectural registration board. It also provides that any architect who willfully disregards audit reporting and record keeping requirements or falsifies documentation of continuing education may be subject to disciplinary action.

HOUSE BILL NO. 2236**Agency:** Athletic Commission**Subject:** Administrative Rules of the West Virginia State Athletic Commission, 177-01

The changes to this rule are being made to reflect changes made to W.Va. Code §29-5A-1 et seq. in Senate Bill 436 which passed during the 2015 Session and also to reflect the current needs of boxing and kickboxing events. The rule includes several modifications to provide uniform administration and procedures between the rules governing boxing and MMA.

HOUSE BILL NO. 2237**Agency:** Athletic Commission**Subject:** Regulation of Mixed Martial Arts, 177-02

The changes to this rule are being made to reflect changes made to W.Va. Code §29-5A-1 et seq. in Senate Bill 436 which passed during the 2015 Session and also to

reflect the current needs of mixed martial arts (MMA) events. The rule includes several modifications to provide uniform administration and procedures between the rules governing boxing and MMA.

HOUSE BILL NO. 2297

Agency: Auditor's Office

Subject: Standards for Requisitions for Payment Issued by State Officers on the Auditor, 155-01

The amendments to this rule are to update the rule to address the new WVOASIS system, rather than the old WVFIMS system.

HOUSE BILL NO. 2238

Agency: Auditor's Office

Subject: Procedure for Local Levying Bodies to Apply for Permission to Extend Time to Meet as Levying Body, 155-08

This is a new rule that establishes a procedure for local levying bodies to apply for permission to extend the time to meet as a levying body.

The rule allows a levying body to request an extension to May 1, by filing a notice with the Auditor stating the reasons for the delay. The notice is required to explain why good cause exists to grant the extension and the Auditor is required to review it immediately and make a determination within 5 business days of receiving the request. The Auditor's Office is required to notify the levying body of its decision in writing by the most expeditious means, including email or fax. If the Auditor grants the extension, the Auditor is required to inform the levying body also of the date by which it must meet and that the meeting must comply with the open governmental proceedings act set forth in code. If the Auditor denies the extension, he or she must alert the levying body and the levying body is required to meet immediately, file a report, and otherwise comply with code.

HOUSE BILL NO. 2239

Agency: Board of Barbers & Cosmetologists

Subject: Qualifications, Training, Examination and Certification of Instructors in Barbering and Cosmetology, 3-02

The rule amends the current legislative rule to include recent statutory changes regarding scope of practice. Language requiring the Board to interview instructors has been deleted because the Board is no longer licensing the schools.

HOUSE BILL NO. 2220

Agency: Board of Barbers & Cosmetologists

Subject: Licensing Schools of Barbering, Cosmetology, Nail Technology and Aesthetics, 3-03

The rule repeals the current legislative rule because the Board no longer licenses schools.

HOUSE BILL NO. 2240

Agency: Board of Barbers & Cosmetologists, Operational Standards for Schools of Barbering, Cosmetology

Subject: Hair Styling, Nail Technology and Aesthetics, 3-04

The rule amends the current legislative rule to include recent statutory changes. The changes relate to classroom and equipment standards for schools which teach the professions regulated by the Board. The rule also clarifies that schools may not be established within the same physical structure as a salon, spa or similar business licensed by the Board. The rule also clarifies that classrooms for clinical and theory instruction must exist within the same physical structure. The rule also removes the requirement that theory classes be taught at least 12 hours per week.

HOUSE BILL NO. 2241

Agency: Board of Barbers & Cosmetologists

Subject: Operation of Barber, Beauty, Nail and Aesthetic Shops/Salons, and Schools of Barbering and Beauty Culture, 3-05

The rule amends the current legislative rule to include recent statutory changes, modernizes the language and covers the modified scope of practice.

HOUSE BILL NO. 2242

Agency: Board of Barbers & Cosmetologists

Subject: Schedule of Fees, 3-06

The rule amends the current legislative rule to include recent statutory changes which update the costs and types of examinations that are provided by the vendor that administers the examinations.

HOUSE BILL NO. 2298

Agency: Board of Barbers & Cosmetologists

Subject: Continuing Education, 3-11

The rule amends the current legislative rule to include recent statutory changes. The rule provides for barbers that have been licensed for at least 20 years to be exempt from continuing education requirements except for a 3-hour sanitation class every other year for up to 20 years. It also provides for board approval of relevant continuing education credits.

HOUSE BILL NO. 2243

Agency: Board of Barbers & Cosmetologists

Subject: Barber Apprentice, 3-13

The rule amends the current legislative rule to include recent statutory changes. It lowers the age to become a barber apprentice from 18 down to 16, requires the shop in which the apprentice works to be in good standing with the Board and modernizes terminology.

HOUSE BILL NO. 2299

Agency: Board of Barbers & Cosmetologists

Subject: Waxing Specialist, 3-14

The rule amends the current legislative rule to include recent statutory changes expanding scope of practice. It defines terms, sets out the qualifications for certification, specifies the authorized services, requires the specialist to display his or her certificate, provides for annual renewal, specifies the duties of the shop owner, provides for revocation of the permit, and provides for administrative due process.

HOUSE BILL NO. 2244

Agency: Board of Examiners in Counseling

Subject: Licensed Professional Counselor Fees, 27-02

The rule significantly increases several fees charged by the Board. In addition to fee increases, the rule changes licensing renewal from a biennial cycle to an annual renewal cycle.

The rule also creates two new licensing fees. It creates a \$72.50 fee for retirement status application and renewal. It also creates a \$25 fee for certification of supervised clinical experience endorsement.

HOUSE BILL NO. 2245

Agency: Board of Examiners in Counseling

Subject: Licensed Professional Counselor License Renewal and Continuing Professional Education Requirements, 27-03

The primary changes in the rule transfer licensing renewal from a biennial cycle to an annual cycle.

The rule also changes procedures related to reporting continuing education requirements. Although license renewal is being changed to an annual cycle, continuing education reporting is kept on a biennial reporting cycle.

The rule also establishes a new guideline for the approval of continuing education providers. The rule provides that an approved provider who does not pay a fee to re-certify within 30 days of notice forfeits all rights and privileges of an approved provider.

HOUSE BILL NO. 2246

Agency: Board of Examiners in Counseling

Subject: Marriage and Family Therapist Fees, 27-09

The rule significantly increases several fees charged by the Board. In addition to fee increases, the rule changes licensing renewal from a biennial cycle to an annual renewal cycle.

The rule also creates two new licensing fees. It creates a \$72.50 fee for retirement status application and renewal. It also creates a \$25 fee for certification of supervised clinical experience endorsement.

HOUSE BILL NO. 2247

Agency: Board of Examiners in Counseling

Subject: Marriage and Family Therapist License Renewal and Continuing Professional Education Requirements, 27-10

The primary changes in the rule are done to transfer licensing renewal from a biennial cycle to an annual cycle.

The rule also changes procedures related to reporting continuing education requirements. Although license renewal is being changed to an annual cycle, continuing education reporting is kept on a biennial reporting cycle.

The rule also establishes a new guideline for the approval of continuing education providers. The rule provides that an approved provider who does not pay a fee to re-certify within 30 days of notice forfeits all rights and privileges of an approved provider.

HOUSE BILL NO. 2248

Agency: Dangerous Wild Animal Board

Subject: Dangerous Wild Animals, Rule, 74-01

The rule establishes the West Virginia Dangerous Wild Animals List, as well as caging requirements and permit fees to possess any dangerous wild animal on the list. The rule also requires the Board to annually review of the list of prohibited dangerous wild animals by June 1st and requires the Board annually on or before December 1st to review current permits in order to make permits effective for the next calendar year and determine if any other animals should be added to the list.

HOUSE BILL NO. 2249

Agency: Board of Dentistry

Subject: Rule for the West Virginia Board of Dentistry, 5-01

This rule authorizes criminal background checks for applicants and incorporates a sunset date to the rule. It also adds a new subsection related to teaching permits with U.S. specialty training.

HOUSE BILL NO. 2264

Agency: Board of Medicine

Subject: Licensing and Disciplinary Procedures: Physicians and; Podiatrists, 11-01A

The rule permits physicians to prescribe certain drugs to treat binge eating disorder; authorizes criminal background checks for applicants and incorporates a sunset date to the rule. The rule is also modernized, reorganized and consolidated.

HOUSE BILL NO. 2265

Agency: Board of Medicine

Subject: Licensure, Disciplinary and Complaint Procedures; Continuing Education for Physician Assistants, 11-01b

The rule authorizes criminal background checks for applicants and incorporates a sunset date to the rule.

HOUSE BILL NO. 2266

Agency: Board of Medicine

Subject: Dispensing of Legend Drugs by Practitioners, 11-05

This rule modernizes, reorganizes and consolidates the regulation of physicians who dispense prescription drugs.

HOUSE BILL NO. 2272

Agency: Board of Optometry

Subject: Continuing Education, 14-10

This rule clarifies continuing education requirements for optometrists. The continuing education requirements for drug diversion training were confusing licensees on how many hours need to be obtained.

HOUSE BILL NO. 2273

Agency: Board of Osteopathic Medicine

Subject: Licensing Procedures for Osteopathic Physicians, 24-01

The rule authorizes criminal background checks for applicants and incorporates a sunset date to the rule. It also adds a \$125 assessment against physicians to provide funding to the Patient Injury Compensation Fund.

HOUSE BILL NO. 2274

Agency: Board of Osteopathic Medicine

Subject: Licensing Procedures for Osteopathic Physician Assistants, 24-02

The rule authorizes criminal background checks for applicants and incorporates a sunset date to the rule.

HOUSE BILL NO. 2275

Agency: Board of Pharmacy

Subject: Licensure and Practice of Pharmacy, 15-01

The rule permits pharmacists to prescribe certain drugs to treat binge eating disorder; authorizes criminal background checks for applicants and renewals; incorporates a sunset date to the rule; permits a person to designate a location to obtain a prescription; and removes outdated language concerning official prescription paper.

HOUSE BILL NO. 2276

Agency: Board of Pharmacy

Subject: Licensure and Practice of Pharmacy, 15-06

The rule updates mail-order pharmacy definitions and requires a mail order pharmacist to be licensed in this state, if providing product to this state.

The 2017 Legislature during the Regular Session directed the Board of Pharmacy to amend the below legislative rule.

Agency: Board of Pharmacy

Subject: Registration of Pharmacy Technicians, 15-07

The Legislature directed the Board of Pharmacy to amend and promulgate the current legislative rule by adding a 10-year sunset provision and a provision allowing a person who is currently enrolled in a high school competency based pharmacy technician education and training program to be a pharmacy technician trainee. The provisions are in an agency approved rule which was filed with the Secretary of State on March 24, 2017.

HOUSE BILL NO. 2277

Agency: Board of Pharmacy

Subject: Controlled Substances Monitoring, 15-08

The rule: updates reporting requirements of the controlled substance monitoring program; requires opioid antagonists to be inputted into the database; requires drugs to be inputted into the database on the date sold; removes the exemption for distributing less than 20 controlled substance prescriptions; and reduces the amount of time to change inaccurate data from 14 days to 7 days.

HOUSE BILL NO. 2232

Agency: WV Board of Physical Therapy

Subject: Fees for Physical Therapist and Physical Therapist Assistant, 16-04

The rule change eliminates a \$25 fee for online license verification. A license verification done in the Board's office continues to carry a \$25 fee. Therefore, the change reduces expenses to licensees.

HOUSE BILL NO. 2278

Agency: Public Service Commission

Subject: Telephone Conduit Occupancy, 150-37

In the 2016 Regular Session, the Legislature passed a bill that made it unlawful for a telephone public utility to prohibit a customer who provided conduit at the customer's

expense from using it for other purposes. The bill required the PSC to promulgate rules to help implementation and this rule provides a basic implementation of that law.

HOUSE BILL NO. 2281

Agency: Board of Registered Professional Nurses

Subject: Requirements for Registration and Licensure and Conduct Constituting Professional Misconduct, 19-03

The rule authorizes criminal background checks for applicants; incorporates a sunset date to the rule; and reduces a temporary permit from 180 days to 90 days to conform to the statute. It also states that a licensee whose incense has been summarily suspended is entitled to a hearing.

HOUSE BILL NO. 2282

Agency: Board of Registered Professional Nurses

Subject: Limited Prescriptive Authority for Nurses in Advanced Practice, 19-08

The rule updates the prescriptive authority of advanced practice registered nurses in compliance with statutory amendments. Previous prescriptive prohibitions have been removed and prescriptive authority, without a collaborative agreement, is provided to advanced practice registered nurses working within a collaborative relationship for 3 years.

HOUSE BILL NO. 2285

Agency: State Board of Sanitarians

Subject: The Practice of Public Health Sanitation, 20-04

The rule permits a registered sanitarian to complete his or her continuing education hours after the deadline for a 60 day period, if he or she pays a \$50 late fee.

HOUSE BILL NO. 2286

Agency: Secretary of State

Subject: Voter Registration at the Division of Motor Vehicles, 153-03

The rule is new pursuant to statutory changes, which established voter identification requirements and provided for automatic voter registration through the Department of Motor Vehicles. Specifically, the statutory changes required the Secretary of State to promulgate legislative rules to implement changes made to the voter registration process at the Department. The rule deals only with the management and procedures of the Division's voter registration system.

HOUSE BILL NO. 2287

Agency: Secretary of State

Subject: Voter Registration List Maintenance by Secretary of State, 153-05

This is a new rule proposed by the Secretary of State based on changes made to the Election Code during the 2016 Regular Session. Those changes expanded the authority of

the Secretary of State to perform maintenance of voter registration records in instances where a county clerk failed to do so after adequate notice.

HOUSE BILL NO. 2288

Agency: Board of Social Work Examiners

Subject: Continuing Education, 25-05

The changes to rule were necessitated by statutory changes which require each person licensed to practice social work by the Board to complete two hours of continuing education on mental health conditions common to veterans and family members of veterans. The rule also adds an additional hour of ethics education and clarifies the requirements for earning credits online. The rule also adds flexibility in continuing education course offerings by permitting a provider to provide a majority of its classes to the outside community as opposed to all of its classes.

HOUSE BILL NO. 2289

Agency: Board of Examiners of Speech-Language Pathology and Audiology

Subject: Licensure of Speech-Pathology and Audiology, 29-01

The amendments to the rule deal primarily with the Postgraduate Professional Experience (PPE) requirement for licensure of speech-language pathologists and audiologists. The PPE must consist of nine months of full-time employment (30 hours per week) or part-time employment over a longer time-period.

The rule also alters the educational requirement for a provisional license; provides that the purpose of the PPE is to permit a provisional licensee to practice speech-language pathology while working under the supervision of a person fully licensed by the board in the area in which licensure is sought; adds a requirement to supervise applicants during the PPE; eliminates the option for a supervisor to conduct several duties by correspondence; and provides that the supervisor's role throughout the PPE can be considered that of a mentor and shall include mentoring the provisional licensee in all aspects of the professional employment.

HOUSE BILL NO. 2290

Agency: West Virginia State Treasurer

Subject: Procedure for Deposit of Moneys with the State Treasurer's Office by State Agencies, 112-04

The rule updates the current rule to match current technology and practices. The rule also alters the manner in which receipt accounts are set up. The current rule requires the Treasurer to establish a receipt account for an agency upon request. Under the rule, the Treasurer is required to first determine whether an account is appropriate – if it is, then the Treasurer will establish the account; if not, the Treasurer is to work with the agency to make alternative arrangements.

HOUSE BILL NO. 2291**Agency:** West Virginia State Treasurer**Subject:** Selection of State Depositories for Disbursement Accounts Through Competitive Bidding, 112-06

The rule updates the competitive bidding procedures for selection of depositories for disbursement accounts to account for technological advances, as well as makes other technical changes.

HOUSE BILL NO. 2292**Agency:** West Virginia State Treasurer**Subject:** Selection of State Depositories for Receipt Accounts, 112-07

The rule addresses the procedures for selecting a depository account. This rule focuses on the criteria that a depository account must satisfy to be eligible for an award.

HOUSE BILL NO. 2293**Agency:** West Virginia State Treasurer**Subject:** Procedures for Processing Payments from the State Treasury, 112-08

The rule makes only minor modifications to the current legislative rule. The purpose of the rule is to set forth the steps for processing payments from the State Treasury. The rule modifies the definition of “Treasurer” to include a designee of the Treasurer. It also eliminates language concerning reconciliation of the disbursing bank account. That sentence required the disbursement bank to provide the Treasurer with a list of all outstanding checks once the Treasurer had verified the disbursement bank reconciliation. This sentence was eliminated as the practice of “reverse positive pay” is used to enhance fraud protection and the reconciliation is done by the bank.

HOUSE BILL NO. 2294**Agency:** West Virginia State Treasurer**Subject:** Procedure for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment, 112-12

The legislative rule updates the current rule to account for technology and to eliminate outdated procedures.

HOUSE BILL NO. 2295**Agency:** West Virginia State Treasurer**Subject:** Procedures for Providing Services to Political Subdivisions, 112-13

The amendments to this current legislative rule serve primarily to clarify and update the legislative rule to conform to current practice and address more advanced technology.

HOUSE BILL NO. 2296**Agency:** Board of Veterinary Medicine

Subject: Standards of Practice, 26-04

The rule updates the standards of practice and professional conduct of veterinarians. It sets forth practice standards for: prescriptions; lab services; X-rays; surgery, dental Services, anesthesia; and record-keeping.

It also: sets forth standards and times for facility inspections and registrations; sets forth the requirements of a veterinarian in charge; and permits immunization clinics, which must be staffed by a vet, if the clinic is doing more than rabies vaccines.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: April 8, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

House Bill 2303

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Increasing criminal penalties for littering.

CODE REFERENCE: §22-15A-4 (Amends and Reenacts)

SUMMARY:

This bill modifies the criminal penalties for littering as follows:

- 100 pounds/27 cubic feet in size or less
 - Increases the range of the fine from not less than \$100 nor more than \$1,000 to not less than \$100 nor more than \$2,500.
 - Increases community service from not less than 8 nor more than 16 hours to not less than 8 nor more than 100 hours.
- Greater than 100 pounds or 27 cubic feet in size but less than 500 pounds/216 cubic feet in size
 - Increases the range of the fine from not less than \$1,000 nor more than \$2,000 to not less than \$2,500 nor more than \$5,000.
 - Increases community service from not less than 16 nor more than 32 hours to not less than 16 nor more than 200 hours.
- Greater than 500 pounds/216 cubic feet in size
 - Makes the imposition of fines mandatory as opposed to discretionary.

This bill enhances the penalties in all cases for littering the waters of this state. The bill also increases the civil penalty to \$2,000 for every person who is convicted of or pleads guilty to disposing of litter as costs for clean-up, investigation and prosecution of the case. The bill also adds clean-up language reflecting that the Litter Control Fund has been transferred to the Department of Environmental Protection. Finally, the bill exempts a person who litters on his or her own property from the criminal provisions of the section, if the amount does not exceed 50 pounds.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

House Bill 2318

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to human trafficking.

CODE REFERENCE: §61-2-17 (Repeals); §15-9A-2, §15-12-2 and §49-1-201 (Amends and Reenacts); §61-14-1, §61-14-2, §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, §61-14-8 and §61-14-9 (New); §62-1D-8 (Amends and Reenacts)

SUMMARY:

This bill creates, redefines, and strengthens felony offenses and other penalties relating to human trafficking for purposes of forced labor, debt bondage, sexual servitude, and patronizing a victim of sexual servitude.

First, House Bill 2318 repeals §61-2-17. Current law makes human trafficking a felony that is punishable by incarceration in a state correctional facility for an indeterminate sentence of not less than three nor more than fifteen years or fined not more than \$200,000, or both.

The bill amends and reenacts §15-9A-2 by designating the Division of Justice and Community Services as an authorized state entity to seek grant funding relating to human trafficking.

The bill amends and reenacts §15-12-2 by requiring those convicted of sexual offenses relating to human trafficking to register as a sexual offender.

Additionally, House Bill 2318 amends and reenacts §49-1-201 by including “human trafficking of a child, or attempting to traffic a child” in the definition of “abused child” and by adding “a parent, guardian or custodian [who] knowingly maintains or makes available a child for the purpose of engaging the child in commercial sexual activity” under the definitions of “sexual exploitation”.

The bill creates an article designated §61-14 which sets forth five distinct crimes relating to trafficking: (1) trafficking an individual – for labor, debt bondage, and sexual servitude; (2) using forced labor; (3) using victims of debt bondage; (4) using victims of sexual servitude; and (5) patronizing victims of sexual servitude. Each of these crimes contains differing penalties depending on whether the victim is an adult or a minor, with higher penalties where the victim is a minor.

§61-14-1 provides definitions related to human trafficking.

§61-14-2 makes a felony for “any person who knowingly and willfully” traffics an adult or a minor. The new section also provides for increased penalties when the victim is a minor. Penalties Adult Victim: 3 – 15 years and/or \$200,000; Minor Victim: 5 – 20 years and/or \$300,000.

§61-14-3 makes a felony for “any person who knowingly” uses an adult or a minor in forced labor to provide labor or services and imposes fees upon conviction. The new section also provides for increased penalties when the victim is a minor. Penalties Adult Victim: 1 – 5 years and/or \$100,000; Minor Victim: 3 – 15 years and/or \$300,000.

§61-14-4 makes a felony for “any person who knowingly” uses an adult or a minor in debt bondage. The new section also provides for increased penalties when the victim is a minor. Penalties Adult Victim: 1 – 5 years and/or \$100,000; Minor Victim: 3 – 15 years and/or \$300,000.

§61-14-5 makes a felony for “any person who knowingly” uses an adult or a minor in sexual servitude. The new section also provides for increased penalties when the victim is a minor. Subsection (c) clarifies that it is not a defense in a prosecution that the minor consented to engage in the commercial sexual activity or that the defendant believed the minor was an adult. Penalties Adult Victim: 3 – 15 years and/or \$200,000; Minor Victim: 5 – 20 years and/or \$300,000.

§61-14-6 makes a felony for “any person who knowingly” patronizes an adult or a minor to engage in commercial sexual activity knowing, or having reason to know, the minor is a victim of human trafficking. The new section also provides for increased penalties when the victim is a minor. Penalties Adult Victim: 1 – 5 years and/or \$100,000; Minor Victim: 3 – 15 years and/or \$300,000.

§61-14-7 describes general provisions and other penalties, including aggravating circumstance, restitution, forfeiture, victims’ eligibility for compensation fund, and notification of DHHR when a child is involved. This section also clarifies that each victim constitutes a separate offense.

§61-14-8 grants immunity for a minor victim of sex trafficking in a juvenile proceeding for an offense of prostitution in violation of §61-8-5(b) because it is presumed that the minor committed the offense as a direct result of being a victim. The new section also clarifies that a minor may not be immune for any other offenses under §61-8-5(b), including specifically soliciting, inducing, enticing or procuring another to commit an act or offense of prostitution, unless it is established by the court that the minor was coerced into the criminal behavior.

§61-14-9 describes the circumstances under which trafficking victims may petition to vacate their conviction and expunge their criminal record.

Lastly, House Bill 2318 amends and reenacts §62-1D-8 by authorizing law enforcement to intercept wire, oral, or electronic communications if there is reasonable

cause to believe that the interception would provide evidence of the commission of offenses included and prohibited by the newly created human trafficking article.

DATE OF PASSAGE: March 17, 2017

EFFECTIVE DATE: June 15, 2017

ACTION BY GOVERNOR: Signed March 31, 2017

House Bill 2319

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to candidates or candidate committees for legislative office disclosing contributions.

CODE REFERENCE: §3-8-15 (New)

SUMMARY:

This bill adds a new section to the Election Code relating to campaign finance, which places an additional requirement on current members of the Legislature who are candidates for legislative office. If a member of the Legislature who is a candidate for legislative office holds a fund-raising event while the Legislature is in session, s/he is required to disclose (1) the existence of the event and (2) the receipt of all contributions (including source and amounts) within five business days after the event. This reporting requirement also applies to members of the Legislature who hold fund-raising events to retire debt from a prior campaign. This reporting is to be in addition to any other reporting and disclosure requirements set forth in the Election Code. House Bill 2319 directs the Secretary of State to prepare a form for these disclosures and to publish the collected information on the Secretary of State's website within 48 hours of receipt. The Secretary of State may also establish a means for electronic filing of this information. Rule-making authority is given to the Secretary of State for this purpose.

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: July 5, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2329

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Prohibiting the production, manufacture or possession of fentanyl.

CODE REFERENCE: §60A-1-101 and §60A-2-204 (Amends and Reenacts); §60A-4-414 (New)

SUMMARY:

The purpose of this bill is to criminalize the unlawful production, manufacture or possession of fentanyl and fentanyl analogs and derivatives. The bill defines a fentanyl analog or derivative to incorporate chemical combinations that mimic the effects of heroin but present a significantly greater risk of overdose.

The bill classifies fentanyl analogs or derivatives and additional drugs as Schedule I drugs, which reflects their non-existent medicinal value and high potential for abuse. Pure fentanyl and carfentanil remains a Schedule II drug that has lawful medical uses. The bill also defines “controlled substance” and “fentanyl”.

Lastly, the bill creates a felony offense and imposes criminal penalties for the unlawful manufacture, delivery, possession with the intent to manufacture or deliver, transport into state, or possession of fentanyl, as set forth in subsection (a), section four hundred one or section four hundred nine, article four, chapter sixty-a of this code. Criminal penalties vary according to the net weight of fentanyl involved in the offense:

- (1) Less than one gram – imprisoned in a correctional facility for not less than two nor more than 10 years;
- (2) One gram or more but less than five grams – imprisoned in a correctional facility for not less than three nor more than 15 years; and,
- (3) Five grams or more – imprisoned in a correctional facility for not less than four nor more than 20 years.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

House Bill 2359

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to offenses and penalties for practicing osteopathic medicine without a license.

CODE REFERENCE: §30-3-18 (New), §30-14-12 (Amends and Reenacts); §30-14-16 (New)

SUMMARY:

This bill authorizes the Board of Medicine and the Board of Osteopathic Medicine to share duties, functions and staff where appropriate.

The bill also provides that any person who practices medicine without a license is guilty of a felony and, upon conviction, is subject to a fine up to \$10,000 or imprisonment in a state correctional facility for one to five years, or both. The bill makes the penalty for osteopathic physicians the same as that for allopathic physicians.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2364

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Prohibiting electioneering within or near early voting locations during early voting periods.

CODE REFERENCE: §3-1-37 and §3-9-9 (Amends and Reenacts)

SUMMARY:

This bill amends two sections of the code relating to the electioneering-free “buffer” zone around polling places during elections. First, the bill modifies the size of the electioneering-free zone, decreasing it from the current 300 feet from the entrance of a polling place to 100 feet. This same electioneering-free zone applies to locations where early voting is conducted, but is limited to the hours during which early voting is actually being offered. Additionally, the bill clarifies that electioneering may be done by a citizen on his or her own private property, even if that private property falls within the 100-foot electioneering-free zone, so long as that electioneering does not otherwise violate a law or ordinance.

A definition of “electioneering” is also added to the code, defining it as “the displaying of signs or other campaign paraphernalia, the distribution of campaign literature, cards, or handbills, the soliciting of signatures to any petition, or the solicitation of votes for or against any bona fide candidate or ballot question in a manner which expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question.” Certain things, including exit polling and bumper stickers or signs affixed to a voter’s car, are excluded from the scope of electioneering.

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: July 5, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2367

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Establishing a criminal offense of organized retail crime.

CODE REFERENCE: §61-3A-7 (New)

SUMMARY:

This bill creates two new offenses: (1) organized retail theft and (2) knowing purchase of materials from organized retail theft rings.

The bill places the new offenses in the shoplifting article. Three or more people involved in multi-county theft rings may be prosecuted in any county where any part of the common scheme or plan occurred. Cumulation of values of stolen items is authorized. There is a seizure forfeiture provision tied to chapter sixty-a, article seven and, upon conviction, the sentencing court may order for disgorgement to victims.

Penalties:

- \$2,000 of merchandise or more stolen/purchased – Determinate 1-10 years and/or fined not less than \$1,000 nor more than \$10,000. Penalties apply to both subsections (a) and (c);

- \$10,000 of merchandise or more stolen/purchased – Determinate 2-20 years and/or fined not less than \$2,000 nor more than \$25,000. Penalties apply to both subsections (b) and (c).

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2373

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing school bus drivers trained in administration of epinephrine auto-injectors to administer auto-injectors.

CODE REFERENCE: §18-5-22c (Amends and Reenacts)

SUMMARY:

This bill allows trained, authorized, school transportation employees, including bus drivers, to administer an epinephrine auto-injector to a student or school personnel during transportation to or from a school function who is or are experiencing an anaphylactic reaction. An employee may either use the individual's auto-injector or one of the school's. The employee is required to defer to an individual possessing a higher medical degree or a parent if either are present. The employees have limited liability for their actions and are subject to the rules of the State Board of Education.

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: July 5, 2017

ACTION BY GOVERNOR: Signed April 20, 2017

House Bill 2404

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Barring persons who are convicted of certain criminal offenses from acquiring property from their victims.

CODE REFERENCE: §36-1-20 and §42-4-2 (Amends and Reenacts)

SUMMARY:

Current law provides that a joint tenant convicted of murder may not take or acquire any real or personal property by survivorship pursuant to this section when the victim of the offense was a joint owner of the property. This bill provides the same prohibition on a joint tenant who has been convicted of an offense causing the death of an incapacitated person set forth in §61-2-29a of the code or convicted of a similar provision of law of another state or the United States.

Current law provides that a person who has been convicted of feloniously killing another, or of conspiracy in the killing of another, may not acquire any money or property from the one killed or conspired against, either by descent and distribution, or by will, or by any policy or certificate of insurance, or otherwise.

This bill adds a new subsection which provides that a person who has been convicted of an offense of abuse or neglect of an incapacitated adult, a felony offense of financial exploitation of an elderly person, protected person or an incapacitated adult or convicted of a similar provision of law of another state or the United States, may not take or acquire any real or personal property by survivorship pursuant to this section, when the victim of the criminal offense is a joint holder of the title to the property. This subsection does not apply if, after the conviction, the victim of the offense, if competent, executes a recordable instrument, expressing a specific intent to allow the convicted person to retain his or her joint tenancy in the property.

The bill amends the code to provide the same prohibition against a person who has been convicted of an offense causing the death of an incapacitated person set forth §61-2-29a of the code. The section is also amended to provide that a person who has been convicted of an offense of abuse or neglect of an incapacitated adult pursuant to §61-2-29a of the code, a felony offense of financial exploitation of an elderly person, protected person or incapacitated adult pursuant to §61-2-29a of the code, or convicted of a similar provision of law of another state or the United States, may not acquire any property from the victim of the offense, either by descent and distribution, or by will, or by any policy or certificate of insurance, or otherwise. This subsection does not apply if, after the conviction, the victim of the offense, if competent, executes a recordable instrument

expressing a specific intent to allow the person so convicted to inherit or otherwise receive the victim's property.

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: July 5, 2017

ACTION BY GOVERNOR: Signed April 20, 2017

House Bill 2447

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Renaming the Court of Claims the state Claims Commission.

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

SUMMARY:

The bill repeals §14-2-6, §14-2-18 and §14-2A-7. This bill seeks to clarify that the current Court of Claims is a function of the Legislature. The bill therefore renames the West Virginia Court of Claims, the West Virginia Legislative Claims Commission.

This bill does the following:

- Replaces “court and “court’s” with “commission” and “commission’s”, as necessary;
- Replaces “judge” and “judges” with “commissioner” and “commissioners”, as necessary;
- Authorizes the President of the Senate and the Speaker of the House of Delegates to jointly remove any commissioner at any time;
- Transfers certain authority from the Joint Committee on Government and Finance to the President of the Senate and the Speaker of the House of Delegates;
- Increases the monetary limit for certain agency shortened claims from \$1,000 to \$3,000 per claim;
- Authorizes the President of the Senate and the Speaker of the House of Delegates to hire a clerk, chief deputy clerk, deputy clerks, claim investigators, and supporting staff and to set salaries for said positions;
- Updates, modifies, and clarifies procedures and practices of the commission; and

- Adds a new shortened claims process for Division of Highways, road condition claims. The shortened procedure requires that the claim satisfy each of the following:
 - (1) The claim cannot arise under an appropriation for the current fiscal year;
 - (2) The claim must allege that a condition on the state’s highways or roads caused property damage;
 - (3) The Division of Highways concurs in the claim; and
 - (4) The amount claimed does not exceed \$1,000.

Procedurally, if the Division of Highways concurs with the claim—then this section provides that it shall prepare a stipulation concerning the claim and file it with the clerk. Once the stipulation has been properly filed, the State Claims Commission will order that the claim be approved and file its statement with the clerk.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

House Bill 2479

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Uniform Deployed Parents Custody and Visitation Act.

CODE REFERENCE: §48-1-233.3, §48-1-233.4 and §48-9-404 (Repeals); §48-31-101, §48-31-102, §48-31-103, §48-31-104, §48-31-105, §48-31-106, §48-31-107, §48-31-201, §48-31-202, §48-31-203, §48-31-204, §48-31-205, §48-31-301, §48-31-302, §48-31-303, §48-31-304, §48-31-305, §48-31-306, §48-31-307, §48-31-308, §48-31-309, §48-31-310, §48-31-401, §48-31-402, §48-31-403, §48-31-404, §48-31-501, §48-31-502 and §48-31-503 (New)

SUMMARY:

Under current law, West Virginia has little in the way of guidance in the treatment of military parents in Code. Because of the mobile nature of military service, and because a child's other parent will often live in or move to a different state than the deployed service member, taking the child with them, custody issues relating to the child of a service member will often involve two or more states.

This bill mirrors the Uniform Deployed Parents Custody and Visitation Act drafted by the Uniform Law Commission.

The bill contains definitions and provisions that apply generally to custody matters of service members. The bill includes a notice provision requiring parents to communicate about custody and visitation issues as soon as possible after a service member learns of deployment. Another provision in this article integrates with the Uniform Child Custody Jurisdiction and Enforcement Act to declare the residence of the deploying parent not changed by reason of the deployment. The article also provides that when imminent deployment is not an issue, a court may not use a parent's past deployment or possible future deployment itself as a negative factor in determining the best interests of the child during a custody proceeding.

The bill sets out a procedure for parents who agree to a custody arrangement during deployment to resolve these issues by an out-of-court agreement. In the absence of the parents reaching an agreement, the bill provides for an expedited resolution of a custody arrangement in court and declares that no permanent custody order can be entered before or during deployment without the service member's consent.

The bill provides for termination of the temporary custody arrangement following the service member's return from deployment. This bill contains one set of procedures that applies when the parents mutually agree that a temporary custody agreement should

not be terminated; another set applies when the parents mutually agree that a temporary custody order entered by a court should be terminated; a third set applies when the parents reach no agreement regarding the termination of the temporary custody arrangement and requires a court to resolve whether a return to the permanent custody arrangement is appropriate.

Lastly, the bill contains an effective date provision, a transition provision, and boilerplate provisions common to all uniform acts.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

House Bill 2486

COMMITTEE SUBSTITUTE

SHORT TITLE: Providing that when a party's health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order.

CODE REFERENCE: §33-6F-1 (Amends and Reenacts)

SUMMARY:

This bill amends W. Va. Code §33-6F-1 by adding thereto a new subsection, designated subsection (c). Under this new subsection, medical records and medical billing records obtained by insurers in connection with insurance claims or civil litigation must be confidentially maintained by insurers in accordance with state and federal law, including the provisions of Title 114, Series 57 of the Code of State Rules. Under the new subsection, no additional restrictions or conditions may be imposed that contradict or are inconsistent with any applicable policy of insurance or the performance of insurance functions permitted or authorized by state and federal law.

The bill requires the Insurance Commissioner to review the current provisions of Title 114, Series 57 of the Code of State Rules and, if determined necessary, shall propose new rules or modify existing rules by December 31, 2017 to address four specific areas:

- (1) The circumstances under which an insurance company may disclose medical records and medical billing records to other persons or entities;
- (2) The circumstances under which personal identifying information of a person must be redacted before that person's medical records or medical billing records may be disclosed to other persons or entities;
- (3) The steps an insurance company is required to undertake before medical records or medical billing records are disclosed to other persons or entities to assure that any person or entity to which an insurance company is disclosing a person's medical records or medical billing records will be using such records only for purposes permitted by law; and,
- (4) The implementation of the requirement that the insurance company has processes or procedures in place to prevent the unauthorized access by its own employees to a person's confidential medical records or medical billing records.

DATE OF PASSAGE: March 31, 2017

EFFECTIVE DATE: June 29, 2017

ACTION BY GOVERNOR: Signed April 10, 2017

House Bill 2506

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to the permit limit calculations and allowing overlapping mixing zones for calculating permit limits for drinking water criteria.

CODE REFERENCE: §22-11-7b (Amends and Reenacts)

SUMMARY:

This bill allows water quality NPDES permit limits to be calculated using an average design flow as recommended by the United States Environmental Protection Agency (EPA) for the protection of human health, rather than the more restrictive low flow standard that is currently used by the WV Department of Environmental Protection (DEP). Specifically, the bill requires the DEP to calculate a permittee's limit on pollutant discharge by using the harmonic mean flow, a critical design flow that is used to determine the amount of pollution a stream can hold without posing a threat to human health.

The bill also allows for overlapping mixing zones, a practice that has been prohibited in West Virginia. In order to comply with water quality standards set forth by the Federal Clean Water Act (CWA), the WV DEP allows permitted dischargers to use a mixing zone, where concentrations of an emitted pollutant in wastewater are higher than would normally be allowed under the standards because they are allowed to mix with the receiving river or stream. By mixing with the receiving body of water, the pollutant is diluted to an acceptable level. The bill also allows for mixing zones to overlap, which means that permitted dischargers may be located closer in proximity to one another. Even with passage of the bill, the law still mandates that no mixing zone – whether or not it overlaps – reach a point that is less than one-half mile upstream of any water intake.

DATE OF PASSAGE: March 28, 2017

EFFECTIVE DATE: June 26, 2017

ACTION BY GOVERNOR: Signed April 8, 2017

House Bill 2509

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to the practice of telemedicine.

CODE REFERENCE: §30-3-13a and §30-14-12d (Amends and Reenacts)

SUMMARY:

This bill provides an exception to the prohibition for prescribing Schedule II drugs via telemedicine when a physician is providing treatment to patients who are minors, or if eighteen years of age or older, who are enrolled in a primary or secondary education program who are diagnosed with intellectual or developmental disabilities, neurological disease, Attention Deficit Disorder, Autism, or a traumatic brain injury in accordance with guidelines as set forth by organizations such as the American Psychiatric Association, the American Academy of Child and Adolescent Psychiatry or the American Academy of Pediatrics. The physician must maintain records supporting the diagnosis and the continued need of treatment.

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: April 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2526

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Classifying additional drugs to Schedules I, II, IV and V of controlled substances.

CODE REFERENCE: §60A-2-201, §60A-2-204, §60A-2-206, §60A-2-210 and §60A-2-212 (Amends and Reenacts)

SUMMARY:

Under W.Va. Code §60A-2-201, the Board of Pharmacy is responsible for maintaining the list of controlled substances in the schedules in §60A-2 -1 et seq. The Board is required to present the proposed changes to the schedule on the first day of the next Regular Session of the Legislature. The bill contains those proposed changes.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2548

INTRODUCED VERSION

SHORT TITLE: Relating to the use of outside speakers by persons licensed to manufacture, sell, possess for sale, transport or distribute nonintoxicating beer.

CODE REFERENCE: §11-16-18 (Amends and Reenacts)

SUMMARY:

This bill removes the flat prohibition on the use of outdoor loudspeakers by entities licensed to sell nonintoxicating beer. The bill instead permits the use of outdoor loudspeakers by said entities provided that the loudspeakers neither create a public nuisance nor violate local noise ordinances.

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: July 4, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2579

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Increasing the penalties for transporting controlled substances.

CODE REFERENCE: §60A-4-409 (Amends and Reenacts)

SUMMARY:

This bill amends and reenacts §60A-4-409 to criminalize the transporting of illegal substances into West Virginia.

The bill increases the penalties for transporting or causing the transportation of illegal controlled substances into West Virginia.

Schedule I or II narcotics: Indeterminate 1 - 15 years or fined not more than \$25,000, or both.

Schedule I, II or III (non-narcotic): Indeterminate 1 - 10 years or fined not more than \$15,000, or both.

Schedule IV: Indeterminate 1 - 5 years or fined not more than \$10,000, or both.

Note: Marihuana is treated as a Schedule IV for sentencing purposes.

There are separate offenses based on weight as in Senate Bill 219.

Subsection (c), determinate sentence of 2-30 years:

- 1 or more kilograms of heroin
- 5 or more kilograms of cocaine
- 100 or more grams of PCP
- 10 or more grams of LSD
- 50 or more grams of methamphetamine

Subsection (d), determinate sentence of 2-20 years:

- 100 – 999 grams of heroin
- 500 – 4,999 grams of cocaine
- 10 – 99 grams of PCP
- 1 – 9 grams of LSD
- 5 – 49 grams of methamphetamine

Subsection (e), determinate 2 – 15 years:

- 10 – 100 grams of heroin
- 50 – 500 grams of cocaine
- 2 – 10 grams of PCP
- 200 micrograms – 1 gram of LSD
- 499 milligrams – 5 grams of methamphetamine or 20 – 50 grams of a mixture containing methamphetamine

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2585

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Creating felony crime of conducting financial transactions involving proceeds of criminal activity.

CODE REFERENCE: §61-15-1, §61-15-2, §61-15-3 and §61-15-4 (New)

SUMMARY:

This bill creates the offense of money laundering.

The bill criminalizes engaging in financial transactions knowing the monetary instruments are (1) the proceeds of specified criminal conduct, or (2) used to facilitate the offenses, or (3) to conceal that the proceeds are from said crimes, or (4) to avoid any transaction reporting requirement imposed by law.

Offenses include:

- Felony drug offenses
- Felony crimes against the person
- Felony property crimes
- Felony computer and explosives offenses
- Soliciting prostitution
- Child pornography and human trafficking

Penalties are tiered:

- Transactions less than \$1,000: Misdemeanor – Up to 1 year and/or a fine of not more than \$1000;
- Transactions \$1,000 - \$20,000: Felony – 1 - 5 years and/or fined \$1,000 - \$10,000;
- Transactions \$20,000 or more: Felony – 2 - 10 years and/or fined \$5,000 - \$25,000.

Forfeiture and disgorgement are authorized.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2619

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Risk Management and Own Risk and Solvency Assessment Act.

CODE REFERENCE: §33-40B-1, §33-40B-2, §33-40B-3, §33-40B-4, §33-40B-5, §33-40B-6, §33-40B-7, §33-40B-8, §33-40B-9, §33-40B-10 and §33-40B-11 (New)

SUMMARY:

This is an agency bill and accreditation requirement for the Insurance Commissioner. This bill adopts the National Association of Insurance Commissioners' Risk Management and Own Risk Solvency Assessment Model Act (Model #505; Model Regulation Service Oct. 2012), for implementation by West Virginia insurers, so that they are better equipped to assess their financial conditions and remain solvent.

The bill provides requirements for an insurer (including an insurance group of which the insurer is a member) to maintain a risk management framework and for completing an own risk and solvency assessment (ORSA). The article applies to all insurers domiciled in this state, subject to certain exemptions.

Section one expresses the purpose and scope of the article. Section two states definitions. "Owns risk and solvency assessment" or "ORSA" means a confidential internal assessment, appropriate to the nature, scale and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer or insurance group's current business plan and the sufficiency of capital resources to support those risks.

Section three requires insurers to maintain a risk management framework. Section 4 requires an ORSA annually and at any time when there are significant changes to the risk profile. Section 5 provides that, upon the Insurance Commissioner's (IC) request, and no more than once each year, an insurer shall submit to the IC an ORSA summary report. An insurer may comply with this section by providing the most recent and substantially similar report(s) provided by the insurer to another jurisdiction.

Section six provides exemptions from the ORSA requirements. Notwithstanding these exemptions the IC may require an insurer to comply with the article requirements based on unique circumstances if the insurer meets one or more standards of an insurer considered to be in hazardous financial condition or otherwise exhibits qualities of a troubled insurer.

Section seven provides that the ORSA summary report shall be prepared consistent with the ORSA Guidance Manual, subject to certain requirements. Section 8 provides that documents or other information in the possession of the IC or obtained via any other person under this article, including the ORSA summary report, are recognized as being proprietary and to contain trade secrets and shall be confidential and privileged. This section also sets forth several requirements and limitations related to confidentiality of information provided pursuant to this article.

Section nine provides sanctions. Any insurer failing to timely file the ORSA summary report, without just cause, shall, after notice and hearing, pay a penalty of \$2,500 for each day's delay, up to a maximum penalty of \$75,000. The IC may reduce the penalty if the insurer demonstrates to the commissioner that the penalty would constitute a financial hardship to the insurer.

Section ten sets forth a severability clause and Section 11 states that the requirements of this article shall become effective on January 1, 2018.

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: January 1, 2018

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2620

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: West Virginia Drug Overdose Monitoring Act.

CODE REFERENCE: §16-5T-1, §16-5T-2, §16-5T-3, §16-5T-4 and §16-5T-5 (New)

SUMMARY:

This bill creates the Office of Drug Control Policy within the Department of Health and Human Resources. The bill requires the Office to create a state drug control policy in coordination with the Bureaus of the Department and other state agencies. The bill sets forth the duties of the Office, including developing a strategic plan to reduce the prevalence of drug and alcohol abuse and smoking by at least 10% by July 1, 2018, applying for grants and filing semi-annual reports with the Joint Committee on Health. It allows the exchange of information between various agencies. The bill also requires the Office to develop a plan, prior to July 1, 2018, to expand the number of treatment beds in locations throughout the states.

This bill requires the Office to establish a central repository to store information required by the Act. The bill sets forth the information required to be reported and specifies those entities that are required to report.

Finally, this bill authorizes the Office to propose rules for promulgation and authorizes emergency rules.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2674

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to access to and receipt of certain information regarding a protected person.

CODE REFERENCE: §27-3-1 (Amends and Reenacts); §44A-3-17 and 44A-3-18 (New)

SUMMARY:

This bill provides relatives access to certain information regarding protected persons. The bill: (1) defines the term “relative”; (2) allows a relative to apply to gain access to a “protected person”; (3) sets forth time frames for holding a hearing after a petition is filed; (4) provides for an emergency hearing under particular circumstances; (5) provides that service of the petition must be made upon a guardian within certain frames; (6) provides standards for a court to observe and implement in issuing a ruling on an application; (7) allows court to award court costs and attorney’s fees to the prevailing party; and (8) requires a guardian to inform relatives about a protected person’s change in health or residence.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

House Bill 2678

COMMITTEE SUBSTITUTE

SHORT TITLE: Changing the amounts of prejudgment and post-judgment interest to reflect today's economic conditions.

CODE REFERENCE: §56-6-31 (Amends and Reenacts)

SUMMARY:

This bill modifies the manner in which prejudgment and post-judgment interest on a court judgment or decree is calculated. To accomplish this, §56-6-31 is substantially rewritten. Subsection (a) clarifies that, unless otherwise provided by law, all judgements and decrees for the payment of money shall bear simple interest that does not compound.

With respect to prejudgment interest, subsection (b) provides that prejudgment interest may be permitted by a court for any special damages or liquidated damages. Interest on these special and liquidated damages is simple, not compounding, interest. The term “special damages” is defined to include “lost wages and income, medical expenses, damages to tangible personal property and similar out-of-pocket expenditures, as determined by the court.” Additionally, the terms of any written agreement giving rise to the obligation govern the rate and terms of prejudgment interest.

The prejudgment interest rate is set at 2% above the Fifth Federal Reserve District secondary discount rate in effect on January 2 of the year in which the right to bring the action has accrued. Once established, the rate does not change during the prejudgment time period. The prejudgment rate has a floor of 4% and is capped at 9%. The bill directs the administrative office of the Supreme Court of Appeals to determine the rate and notify appropriate parties, including courts and members of the West Virginia State Bar. A provision is included to govern the rate for cases where the right to bring the action accrued prior to 2009, in which case the court may award damages at the rate in effect at the time the cause of action accrued.

For post-judgment interest, addressed in subsection (c), the rate is set at two percentage points above the Fifth Federal Reserve District secondary discount rate in effect on January 2 of the year in which the judgment or decree is entered. This marks a one percent decrease from the prior rate. Additionally, the rate of post-judgment interest must remain between 4% and 9%. As with prejudgment interest, the administrative office of the Supreme Court of Appeals is directed to determine the rate and notify appropriate parties, and the rate remains constant for each case once established.

DATE OF PASSAGE: March 17, 2017

EFFECTIVE DATE: January 1, 2018

ACTION BY GOVERNOR: Signed March 30, 2017

House Bill 2679

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to the possession of firearms in parks and park facilities.

CODE REFERENCE: §20-2-19a (Repeals); §7-11-5, §20-2-5, §20-2-42g and §20-2-42h (Amends and Reenacts)

SUMMARY:

This bill accomplishes the following:

- 1) Prohibits county Parks and Recreation commissions from promulgating or enforcing rules which prohibit firearm possession in county parks;
- 2) Exempts from the prohibition against carrying an uncased or loaded firearm in the woods of their state:
 - (A) Possessing handgun for self-defense if not prohibited by law;
 - (B) Possessing a rifle or shotgun for self-defense if not prohibited to possess firearms. This does not apply to uncased rifles or shotguns specifically in state parks, forests or state forest recreational facilities and on marked trails in State Parks or forests.
- 3) Licensed hunters in season where hunting is lawful; and
- 4) Incorporates the provisions of the committee substitute for committee substitute for Senate Bill 345 (Sunday Hunting) and House Bill 3101 (Unlawfully taking fish within 200 feet of DNR personnel actively stocking fish), both of which passed their respective houses.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2683

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to West Virginia Insurance Guaranty Association Act.

CODE REFERENCE: §33-26-2, §33-26-3, §33-26-4, §33-26-5, §33-26-8, §33-26-9, §33-26-10, §33-26-11, §33-26-12, §33-26-13, §33-26-14 and §33-26-18 (Amends and Reenacts)

SUMMARY:

The West Virginia Insurance Guaranty Association Act has not been amended since its enactment in 1970. The Act provides a mechanism for payment of covered claims under certain insurance policies to avoid excessive delay and financial loss to claimants or policyholders resulting from the insolvency of an insurer. The Act does not apply to life, title, surety, disability, credit, mortgage guaranty and ocean marine insurance. The bill updates the provisions of the Act based on two model insurance acts. Excluded insurance now additionally includes the following: annuity and health; fidelity or surety bonds; insurance of warranties or service contracts; and insurance provide by or guaranteed by a government entity or agency.

Current law and the bill do not cap workers' compensation claims. This bill caps a claim for deliberate intention at \$300,000. The bill maintains the current \$300,000 cap for all non-workers' compensation claims. The bill states that the Association is not obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer. The bill also specifies a cap of \$10,000 per policy for a covered claim for the return of unearned premiums.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

House Bill 2684

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Imposing penalties for repeat violations of the prohibition against driving under the influence on a suspended license.

CODE REFERENCE: §17B-4-3 (Amends and Reenacts)

SUMMARY:

This bill creates enhanced penalties for driving a motor vehicle while under suspension for operating a motor vehicle with a Blood Alcohol Content of 0.2% but less than 0.8% while under the age of twenty-one.

Upon second offense, the individual is charged with a misdemeanor, with a penalty of thirty days to six months in jail and a \$100 - \$500 fine.

Upon third offense and subsequent offenses, the individual is charged with a felony, with a penalty of one to three years and fined \$1,000 to \$5,000.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

House Bill 2704

COMMITTEE SUBSTITUTE

SHORT TITLE: Prohibiting persons convicted of sexual offenses against children with whom they hold positions of trust from holding certification or license valid in public schools.

CODE REFERENCE: §18A-3-6 and §18A-3-10 (Amends and Reenacts)

SUMMARY:

This bill imposes additional penalties for persons in a position of trust in relation to a child under his or care, custody or control who is convicted of the several existing felony offenses in W.Va. Code §61-8D-5, the criminal statute that applies to sexual abuse by a parent, guardian, custodian or person in a position of trust to a child.

The bill addresses only the additional penalties of ineligibility for and revocation of any existing certificate or license valid in the public schools and a lifetime prohibition from being employed by any preschool facility, kindergarten, elementary, middle or high school or any other educational, training, vocational, day care, group home, foster care program, or rehabilitation facility licensed to operate or otherwise exist under the authority of this state.

These professional penalties are imposed for: (a) convictions for engaging in or attempting to engage in sexual exploitation, intercourse, intrusion or contact with the child; (b) convictions for knowingly procuring, authorizing or inducing another person to engage in or attempt in these illegal acts; and (c) convictions for knowingly procuring authorizing or inducing another person to engage in or attempt to engage in these illegal acts when the child is sixteen years of age or older.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

House Bill 2726

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing home incarceration officers to arrest participants for violating the terms and conditions of his or her supervision with or without a court order.

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

SUMMARY:

This bill authorizes home confinement officers to arrest persons on home confinement for violation without having to obtain a warrant first. Prompt presentment is required.

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: July 4, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2731

COMMITTEE SUBSTITUTE

SHORT TITLE: Clarifying civil actions heard in circuit court.

CODE REFERENCE: §51-2-2 (Amends and Reenacts)

SUMMARY:

This bill raises the threshold dollar amount in controversy for the circuit courts of the state to have jurisdiction. Current law requires a minimum amount in controversy of \$2,500. This bill increases that minimum amount to \$7,500.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2781

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Requiring a person desiring to vote to present documentation identifying the voter to one of the poll clerks.

CODE REFERENCE: §3-2-11 (Amends and Reenacts)

SUMMARY:

This bill amends and reenacts one section of code for the purpose of delaying implementation of automatic voter registration with the Division of Motor Vehicles. As passed by the Legislature in 2016, automatic voter registration was set to become effective July 1, 2017. This bill delays that implementation until July 1, 2019. The bill requires the Division of Motor Vehicles to make a presentation to the Joint Committee on Government and Finance if it is unable to meet this new deadline, and include in that presentation any changes that should be made to the code. Additionally, the Division of Motor Vehicles shall report to the Joint Committee on Government and Finance by January 1, 2018, providing a “full and complete list of all infrastructure they require” to implement automatic voter registration.

Lastly, House Bill 2781 struck language from the code that would have required the Division of Motor Vehicles to submit certain information to the Secretary of State for any person who affirmatively declined to register to vote. That information would have included name, address, date of birth and electronic signature.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: April 8, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2797

COMMITTEE SUBSTITUTE

SHORT TITLE: Codifying statutory immunity for government agencies and officials from actions of third-parties using documents or records.

CODE REFERENCE: §5A-8-23 (New)

SUMMARY:

This bill merely seeks to clarify that the sovereign immunity for government agencies and officials continues to exist to shield them from liability for actions of third-parties using documents or records which governmental agencies are required to maintain and preserve or make available, for intervening unlawful acts, such as identity theft or other malicious or criminal behavior.

There shall be no:

“. . . liability upon any person acting in his or her capacity as a state officer, employee, or retiree or former employee of the State of West Virginia; or upon the legal dependents, heirs and assignees of any such person; nor, upon any agency of the executive, legislative, or judicial branch of government of the State of West Virginia, for any transaction which is compromised by any third party’s illegal act or inappropriate use associated with information regulated by this article.”

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: July 5, 2017

ACTION BY GOVERNOR: Signed April 14, 2017

House Bill 2850

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to product liability actions.

CODE REFERENCE: §55-7-31 (New)

SUMMARY:

This bill establishes and codifies the “innocent seller” defense to a product liability cause of action based in whole or in part on the doctrine of strict liability. The bill provides that no product liability action may be brought or maintained against a seller other than a manufacturer of the product.

The bill includes thirteen (13) exceptions from the application of the doctrine. Those exceptions include:

- The seller had actual knowledge of the defect in the product that was a proximate cause of the harm for which recovery is sought;
- The seller exercised substantial control over the aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, labeling, warnings or instructions of the product that was a proximate cause of the harm for which recovery is sought;
- The seller made an express warranty regarding the product that was independent of any express warranty made by the manufacturer regarding the product, the product failed to conform to that express warranty by the seller and that failure was a proximate cause of the harm for which recovery is sought;
- The manufacturer cannot be identified or the manufacturer is not subject to service of process under the laws of the state; or
- The manufacturer is insolvent.

Finally, the bill defines certain key terms, specifically the following:

“Seller” means a wholesaler, distributor, retailer, or other individual or entity other than a manufacturer, that is regularly engaged in the selling of a product, whether the sale is for resale by the purchaser or is for use or consumption by the ultimate consumer.

The provisions of this bill apply to any civil action involving a product sold on or after the effective date of this bill.

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2857

COMMITTEE SUBSTITUTE

SHORT TITLE: West Virginia Safer Workplaces Act.

CODE REFERENCE: §21-3E-1, §21-3E-2, §21-3E-3, §21-3E-4, §21-3E-5, §21-3E-6, §21-3E-7, §21-3E-8, §21-3E-9, §21-3E-10, §21-3E-11, §21-3E-12, §21-3E-13, §21-3E-14, §21-3E-15 and §21-3E-16 (New)

SUMMARY:

This bill creates a new article entitled the “West Virginia Safer Workplace Act”, a short title that is given to the article in §21-3E-1.

§21-3E-2 defines a number of terms. “Alcohol” means ethanol, isopropanol or methanol. “Drugs” is defined as any substance considered unlawful for nonprescribed consumption or use under the United States Controlled Substances Act, 21 U.S.C. 812. For purposes of this article, an “employer” includes any person, firm, company, corporation, labor organization, employment agency or joint labor-management committee, which has one or more full-time employees. The term “employer” expressly excludes the United States, the state or other public-sector incorporated municipalities, counties or districts or any Native American tribes. Other terms defined include “employee,” “good faith,” “prospective employee,” “sample,” and “split sample.”

In §21-3E-3, the article sets forth the public policy of the act. It includes a legislative declaration that the State’s public policy is to advance the confidence of workers that they are in a safe workplace and to enhance the viability of their workplaces by permitting employers to require mandatory drug testing of both applicants and current employees. This section includes language to preserve the right to privacy, but to state that the public policy of drug testing outweighs the right to privacy in this area under certain circumstances. The article is made applicable to employers who are not otherwise subject to drug and alcohol testing provisions in other areas of the Code.

§21-3E-4 declares it lawful for employers to test employees or prospective employees for the presence of drugs or alcohol as a condition of continued employment or hiring, but requires employers to adhere to certain safeguards in order to qualify for a bar from being subjected to legal claims for acting in good faith on the results of those tests.

§21-3E-5 permits employers to require samples from employees and prospective employees, and sets forth requirements for the collection of samples to test reliably. An employer may require individual identification, and the collection of samples must be

done in conformity with the provisions of this article. The employer may designate the type of sample to be used for testing.

In §21-3E-6, the article imposes obligations on the employer with respect to timing and costs of any testing conducted under the new article. Testing shall occur during, immediately before or after a regular work period. Testing time is work time for purposes of compensation and benefits for current employees. Employers must pay all actual costs for drug and/or alcohol testing for current and prospective employees. Finally, if required tests are conducted at a location other than the normal work site, the employer must provide transportation or pay reasonable transportation costs to current employees.

Testing procedures are set forth in §21-3E-7. Collection of samples must be performed under reasonable and sanitary conditions. Any observer of urine sample collection must be of the same sex as the employee from whom the sample is being collected. Sample collections must be documented. The documentation requirements include labeling to reasonably preclude the possibility of misidentification and the handling of samples in accordance with reasonable chain of custody and confidentiality procedures. Employees must also be afforded an opportunity to provide notification of any information which may be considered relevant to the test, such as identification of currently or recently used prescription drugs, nonprescription drugs or other relevant medical information. Sample collection, storage and transportation shall be performed in a manner to preclude the possibility of sample contamination, adulteration or misidentification. Confirmatory drug testing must be conducted at a laboratory either certified by the United States Department of Health and Human Services' Substance Abuse and Mental Health Services Administration, approved by the Department of Health and Human Services under the Clinical Laboratory Improvement Acts, or approved by the College of American Pathologists. Drug and alcohol testing must include confirmation of any positive test results. For drug testing, confirmation will be conducted by use of a chemical process different than the one used in the initial drug screen. The second confirming test must be a chromatographic technique. An employer may take adverse employment action based only on a confirmed positive drug or alcohol test. Should a person wish to challenge the results of the initial test, the employee has a right to a split sample, but he or she will be responsible for the associated costs.

§21-3E-8 addresses the requirements of testing policies. Testing or retesting must be carried out within the terms of a written policy which has been distributed to every employee subject to testing and available for review by prospective employees. Upon request or as otherwise appropriate, employers must provide information about the existence and availability of counseling, employee assistance, rehabilitation and/or other drug abuse treatment programs which the employer offers, if any. However, the bill does not require any such programs to be offered.

Within the terms of the written policy, employers may require the collection and testing of samples for (1) deterrence or detection of possible illicit drug use, possession, sale, conveyance, or distribution or manufacture of illegal drugs, intoxicants or controlled substances in any amount or in any manner or on or off the job or the abuse of alcohol or prescription drugs; (2) investigation of possible individual employee impairment; (3)

investigation of accidents in the workplace or incidents of theft or other employee misconduct; (4) maintenance of safety for employees, customers, clients or the public at large; or (5) maintenance of productivity, quality of products or services or security of property or information. The collection of samples and testing of samples shall be conducted in accordance with the Act and need not be limited to circumstances where there are indications of individual, job-related impairment of an employee or prospective employee. The employer's use and disposition of all drug or alcohol test results are subject to the limitations of this article and applicable federal and state law. Language is included in subsection (f) to clarify that nothing in the article may be construed to encourage, discourage, restrict, limit, prohibit or require on-site drug or alcohol testing.

After a confirmed positive drug or alcohol test result that indicates a violation of the employer's written policy, or an employee's refusal to provide a testing sample, the provisions of §21-3E-9 permits the employer to then use the test result or refusal to submit as a valid basis for disciplinary and/or rehabilitative action. Such actions may include a requirement that the employee enroll in an approved counseling or treatment program, suspension of the employee, termination of employment, refusal to hire a prospective employee or other adverse employment action in conformity with the employer's written policy including any applicable collective bargaining agreement.

§21-3E-10 addresses employees in sensitive positions where an accident could cause loss of human life, serious bodily injury or significant property or environmental damage. After a confirmed positive test of an employee in a sensitive position, the employer may permanently remove the employee from the sensitive position and transfer or reassign the employee to an available nonsensitive position with comparable pay and benefits or may take other action consistent with the employer's policy provided there are not applicable contractual provisions that expressly prohibit such action. Employers obligated to perform drug testing under a federal or state mandated drug testing statute will be required to follow any additional requirements mandated under those laws.

§21-3E-11 provides legal protections from civil claims to employers who comply with the provisions of the West Virginia Safer Workplace Act. No cause of action can be brought against any employer who has established a policy and initiated a testing program in accordance with the new article for: (1) actions based on the results of a positive drug or alcohol test or the refusal of an employee or job applicant to submit to a drug test, (2) failure to test for drugs or alcohol or failure to test for a specific drug or other controlled substance, (3) failure to test for, or if tested for, failure to detect, any specific drug or other substance, any medical condition or any mental, emotional or psychological disorder or condition, or (4) termination or suspension of any substance abuse prevention or testing program or policy.

In §21-3E-12, the bill provides that no cause of action exists against an employer who has an established drug or alcohol testing program in accordance with this new article unless the employer's action was based on a "false positive" test result and the employer had actual knowledge the result was in error and ignored the true test result because of disregard for the truth and/or the willful intent to deceive or be deceived. Should a claim be made under this article where the allegation is based on a claim of a

false positive test, there is a rebuttable presumption that the test was valid if the employer complied with the provisions of the article, and the employer is not liable for monetary damages if it relied on a false positive test reasonably and in good faith. No liability exists for any action taken based on a “false negative” drug or alcohol test.

Likewise, §21-3E-13 provides that no cause of action for defamation or similar claims exists against employers with an established testing program under this article, unless the results of a test were disclosed to a person other than the employer, an authorized agent or representative, the tested employee or the tested prospective employee and all elements of the cause of action are satisfied.

§21-3E-14 clarifies that this article does not create a cause of action against an employer who does not establish a program or policy on substance abuse prevention or implement drug or alcohol testing.

§21-3E-15 addresses confidentiality, providing that all communications related to the drug or alcohol testing program are confidential and may not be used in any proceeding except in a proceeding related to an action taken by an employer under this new article.

Finally, §21-3E-16 provides that employees who test positive at levels above those set forth in the employer’s policy may be terminated and forfeit his or her eligibility for unemployment compensation benefits and indemnity benefits under the Workers’ Compensation Laws. The drug-free workplace program must notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in his or her body and that policy must also state that employees risk forfeiture of unemployment and/or workers’ compensation benefits. Employers who fail to provide this notice waive their right to assert that eligibility for benefits is entirely forfeited.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2898

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing the Joint Committee on Government and Finance to request and obtain criminal background checks of employees of the Legislature.

CODE REFERENCE: §4-3-6 (New)

SUMMARY:

Currently, there are issues with the ability of the Legislature to perform necessary criminal background checks on employees. The Legislative Auditor's office must now initiate the background check process with the West Virginia State Police. The West Virginia State Police cannot release this information to anyone other than the custodian of such records within the Legislative Auditor's office—currently the Fiscal Officer. Additionally, information about criminal acts outside the state cannot be accessed. In order to access the National Crime Information Center database, the procedural requirements of the National Crime Information Center regarding information security must be set forth by a specific enabling document.

This bill allows the House of Delegates and the Senate to designate an individual, captioned as the legislative manager in the bill, who shall, by statute, have the requisite authority to access the appropriate databases and obtain the needed information on individual applicants and limited authority to share offenses disclosed with the hiring authority.

DATE OF PASSAGE: April 5, 2017

EFFECTIVE DATE: July 4, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2980

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to civil lawsuit filing fees for multiple defendant civil action.

CODE REFERENCE: §15-2-24d (New); §59-1-11 (Amends and Reenacts)

SUMMARY:

This bill creates a new fund within the treasury called the “State Police Forensic Laboratory Fund.” The bill provides that the fund is to be administered by the superintendent and shall consist of all moneys made available for the operations of the State Police forensic laboratory. Expenditures made from the fund must be for the operations of the State Police forensic laboratory.

The bill also requires circuit clerks to charge and collect a new fee in civil actions, except civil in actions within the jurisdiction of the family courts, involving two or more named defendants. For each defendant, and for each additional defendant, respondent or third-party defendant subsequently named in a pleading filed in a civil action, the clerk shall collect a fee of \$15 payable upon the filing of the initial pleading that names the additional defendant, respondent or third-party defendant.

Of each \$15 fee, \$10 shall be deposited in the general fund of the county in which the office of the circuit clerk is located and \$5 shall be deposited in the State Police Forensic Laboratory Fund. John or Jane Doe defendants are excluded from payment of the per-defendant fee.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

House Bill 3018

STRIKE AND INSERT AMENDMENT FOR INTRODUCED VERSION

SHORT TITLE: Adding definition of correctional employee to the list of persons against whom an assault is a felony.

CODE REFERENCE: §61-2-10b (Amends and Reenacts)

SUMMARY:

This section imposes a higher penalty for malicious and unlawful wounding, battery and assault against certain persons acting in their official capacities. This bill adds “correctional employees” to the list of persons to whom the criminal penalties for malicious assault, unlawful assault, battery and assault as provided for in W.Va. Code §61-2-10b apply. The bill requires that sentences imposed upon adult defendants convicted of such offenses against correctional employees must be consecutive. The definition of correctional employee includes contractors to correctional entities.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 3022

STRIKE AND INSERT AMENDMENT FOR INTRODUCED VERSION

SHORT TITLE: Relating to the reporting of fraud, misappropriation of moneys, and other violations of law to the commission on special investigations.

CODE REFERENCE: §7-1-16, §8-9-4 and §30-1-5a (New)

SUMMARY:

§7-1-16. Reporting of fraud and misappropriation of funds.

- Imposes obligation on members of county boards, committees and other county entities to report in a timely manner to the County Prosecutor's office information learned about a county employee, county board member or county board officer's misappropriation of funds, fraud or violation of public trust.
- Clarifies that reporting obligation does not prevent, relieve or replace any other reporting obligation to a law enforcement agency.

§8-9-4. Reporting of fraud and misappropriation of funds.

- Imposes obligation on members of municipal boards, committees and other municipal entities to report in a timely manner to the County Prosecutor's office information learned about a municipal employee, municipal board member or municipal board officer's misappropriation of funds, fraud or violation of public trust.
- Clarifies that reporting obligation does not prevent, relieve or replace any other reporting obligation to a law enforcement agency.

§30-1-5a. Reporting of fraud and misappropriation of funds.

- Imposes obligation on members of professional licensing boards to report in a timely manner to the Commission of Special Investigations information learned about a board member, officer or employee's misappropriation of funds, fraud or violation of public trust.
- Clarifies that reporting obligation does not prevent, relieve or replace any other reporting obligation to a law enforcement agency.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017