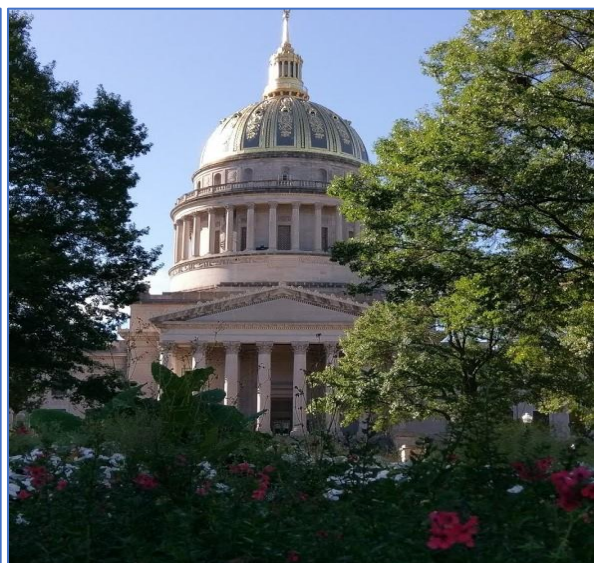


# WEST VIRGINIA LEGISLATURE SENATE COMMITTEE ON THE JUDICIARY



## 2018 BILL SUMMARIES





COMMITTEE ON THE JUDICIARY  
WEST VIRGINIA SENATE

EIGHTY-THIRD LEGISLATURE  
SECOND SESSION



MARCH 2018

# SENATE COMMITTEE ON THE JUDICIARY

## 2018 Regular Legislative Session

### Staff Members

The seal of the Senate of West Virginia 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 "SENATE OF WEST VIRGINIA" are inscribed around the top inner edge, and "MONTANI SEMPER LIBERI" is at the bottom. There are stars around the perimeter.

<u>Name</u>	<u>Title</u>	<u>Employment Status</u>
Sarah Canterbury	Counsel	Full Time
Beverly Douglas	Committee Clerk	Full Time
Jared Wyrick	Analyst/LRMRC	Full Time
<hr/>		
Evelyn Ciccarello	Receptionist	Per Diem
Darla Davidson	Secretary to Chairman	Per Diem
Debra A. Graham	Counsel	Per Diem
Andrew Robey	Counsel	Per Diem
Isaiah Smith	Herndon Fellow	Per Diem
Tom Smith	Chief Counsel	Per Diem

\*Cover photographs and art by Beverly Douglas.\*



**Robert Karnes**  
(R – Upshur, 11)



**Richard Ojeda**  
(D – Logan, 07)



**Patricia Rucker**  
(R – Jefferson, 16)



**Mike Azinger**  
(R – Wood, 03)



**Mike Romano**  
(D – Harrison, 12)



**Mark Maynard**  
(R – Wayne, 06)



**Robert Beach**  
(D – Mongolia, 13)



**Ryan Weld**  
Vice Chair  
(R – Brooke, 01)

83<sup>rd</sup> Legislature  
West Virginia Senate

# COMMITTEE ON THE JUDICIARY



## 2018 COMMITTEE MEMBERS



**CHAIRMAN**  
**Charles Trump**  
(R – Morgan, 15)

**Ryan Ferns**  
Majority Leader  
(R – Ohio, 01)



**Charles Clements**  
(R – Wetzel, 02)



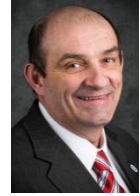
**Stephen Baldwin**  
(D – Greenbrier, 10)



**Chandler Swope**  
(R – Mercer, 06)



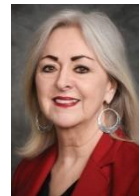
**Randy Smith**  
(R – Tucker, 14)



**Glenn Jefferies**  
(D – Putnam, 08)



**Sue Cline**  
(R – Wyoming, 09)



**Mike Woelfel**  
(D – Cabell, 05)



**WEST VIRGINIA LEGISLATURE**  
**SENATE COMMITTEE ON THE JUDICIARY**  
**STATISTICS 2018**

**TOTAL NUMBER OF BILLS AND RESOLUTIONS INTRODUCED  
DURING THE 2<sup>nd</sup> SESSION OF THE 83<sup>rd</sup> LEGISLATURE:**

BILLS:	1,778
RESOLUTIONS:	86
CONCURRENT RESOLUTIONS:	187
<u>JOINT RESOLUTIONS:</u>	<u>42</u>
<b>TOTAL:</b>	<b>2,093</b>

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

SENATE BILLS:	635
SENATE RESOLUTIONS:	72
SENATE CONCURRENT RESOLUTIONS:	70
<u>SENATE JOINT RESOLUTIONS:</u>	<u>12</u>
<b>TOTAL:</b>	<b>789</b>

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

HOUSE BILLS:	1,143
HOUSE RESOLUTIONS:	14
HOUSE CONCURRENT RESOLUTIONS:	117
<u>HOUSE JOINT RESOLUTIONS:</u>	<u>30</u>
<b>TOTAL:</b>	<b>1,304</b>

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

BILLS:	3
<u>CONCURRENT RESOLUTIONS:</u>	<u>6</u>
<b>TOTAL:</b>	<b>9</b>

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

SENATE BILLS:	255
HOUSE BILLS:	73
SENATE CONCURRENT RESOLUTIONS:	10
SENATE JOINT RESOLUTIONS:	11
HOUSE CONCURRENT RESOLUTIONS:	0
<u>HOUSE JOINT RESOLUTIONS:</u>	<u>0</u>
<b>TOTAL:</b>	<b>349</b>

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

SENATE BILLS:	79
HOUSE BILLS:	62
RULES BILLS:	85
JOINT RESOLUTIONS:	5
<u>CONCURRENT RESOLUTIONS:</u>	<u>6</u>
<b>TOTAL:</b>	<b>237</b>

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

SENATE BILLS:	129
<u>HOUSE BILLS:</u>	<u>131</u>
<b>TOTAL:</b>	<b>260*</b>

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

SENATE CONCURRENT RESOLUTIONS:	22
<u>HOUSE CONCURRENT RESOLUTIONS:</u>	<u>32</u>
<b>TOTAL:</b>	<b>54</b>

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

SENATE BILLS:	47
<u>HOUSE BILLS:</u>	<u>58</u>
<b>TOTAL:</b>	<b>105</b>

**TOTAL NUMBER OF RESOLUTIONS REPORTED FROM SENATE  
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<u>SENATE JOINT RESOLUTION:</u>	<u>2</u>
<b>TOTAL:</b>	<b>2</b>

**TOTAL NUMBER OF BILLS REPORTED FROM  
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SENATE BILLS:	46
<u>HOUSE BILLS:</u>	<u>57</u>
<b>TOTAL:</b>	<b>103**</b>

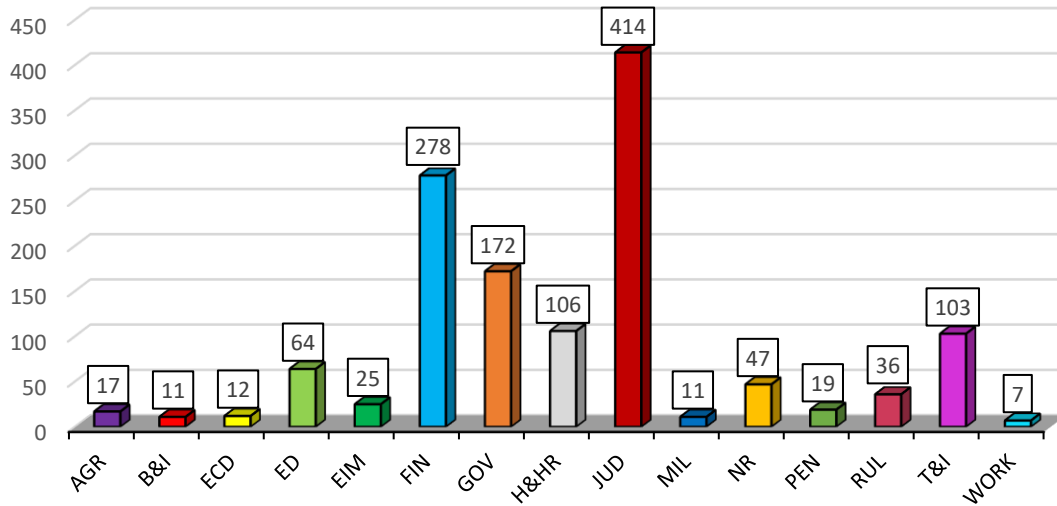
(\*Of the 260 Bills that Completed Legislative Action, there were 11 vetoes)

(\*\*Of the 105 Bills reported that Completed Legislative Action, two bills were vetoed;  
Senate Bill 434 and House Bill 4009)

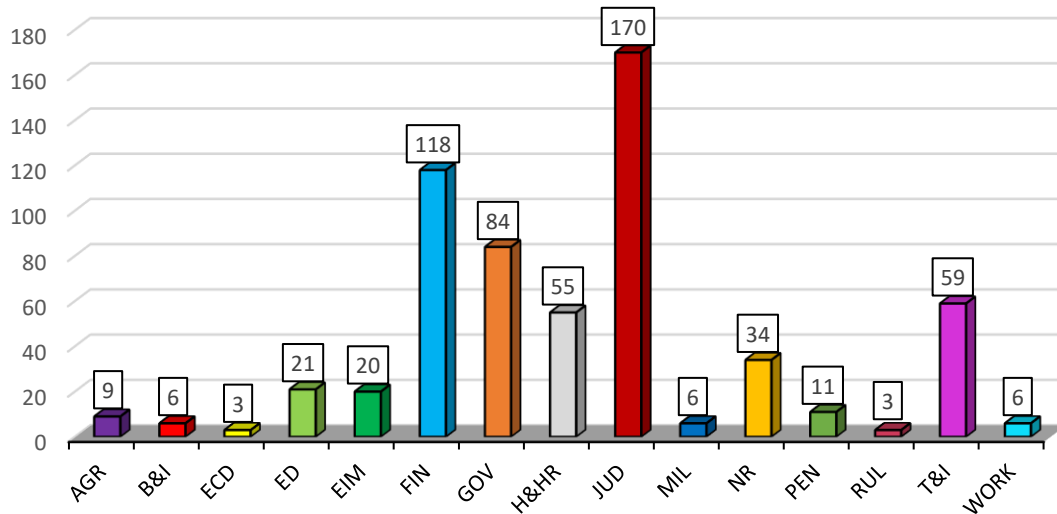


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# Senate Bill 36

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating generally to DNA testing.

**CODE REFERENCE:** §15-2B-2, §15-2B-5, §15-2B-6, and §15-2B-11 (Amends and Reenacts); §15-9B-4 (New)

### **SUMMARY:**

This bill imposes several requirements for the testing of DNA evidence in sexual assault cases. The bill amends existing language to clarify that the State Police shall first attempt to contract with Marshall University Forensic Science Center for DNA analysis in such cases. The bill further provides that persons authorized to take DNA samples may use “reasonable force” to obtain a DNA sample should a person refuse to provide a sample. It also provides persons taking DNA samples immunity from a civil or criminal action, when acting in compliance with the requirements in the affected article. DNA samples which are obtained in good faith are presumed to have been obtained in accordance with the provisions of the article. If there is an error in the sample submission, it is required to be removed and destroyed, unless the person has another qualifying offense.

The final provisions of the bill pertain to the Sexual Assault Examination Network. The Sexual Assault Examination Commission would be required to create a subgroup of experts to establish best practices for submission, retention, and disposition of forensic kits in sexual assault cases. The bill gives the Commission emergency and legislative rulemaking authority to carry out the requirements of the proposed legislation.

**DATE OF PASSAGE:** March 7, 2018

**EFFECTIVE DATE:** June 5, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 37

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Equalizing penalty for entering without breaking regardless of time of day.

**CODE REFERENCE:** §61-3-11 (Amends and Reenacts)

### **SUMMARY:**

This bill eliminates the distinction between burglary involving daytime entering without breaking versus nighttime entering without breaking. Previously, burglary involving nighttime breaking and entering, nighttime entering without breaking, and daytime breaking and entering carried a penalty of imprisonment between one and 15 years. However, daytime entering without breaking only carried a penalty of imprisonment between one and 10 years. The bill eliminates the distinction and subjects all burglary, regardless of time of day, to a penalty of imprisonment between one and 15 years.

**DATE OF PASSAGE:** March 2, 2018

**EFFECTIVE DATE:** May 31, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018

# Senate Bill 51

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to domestic relations.

**CODE REFERENCE:** §48-6-301, §48-9-205, and §48-9-206 (Amends and Reenacts)

### **SUMMARY:**

This bill removes reference to child support from the section of the Code relating to the award of spousal support and separate maintenance. It allows the court to use the specified factors used to determine the amount of the spousal support or separate maintenance to also determine their duration.

Current law requires, for a parenting plan, the submission of a description of the allocation of caretaking and other parenting responsibilities performed by the parents or other responsible persons during the 24 months preceding the filing of the action to determine custody and decision-making authority.

This bill eliminates the requirement that the court allocate custodial responsibility so that the portion of custodial time the child spends with each parent approximates the portion of time each parent spent performing caretaking functions prior to the parents' separation, or if they never lived together, the filing of the action. It also adds, as one of the objectives of the allocation, the consideration of which parent will encourage and accept a positive relationship between the child and the other parent, including which parent is more likely to keep the other parent involved in the child's life and activities.

This bill clarifies that the court may take into account the wishes of a child when determining the allocation of custodial responsibility, if the court determines that it is in the best interests of the child.

Finally, this bill eliminates language prohibiting the court from considering divisions of functions arising from temporary arrangements after separation in determining the proportion of caretaking functions each person previously performed for child.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 22, 2018

# Senate Bill 73

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Modifying crime of fleeing from scene of accident.

**CODE REFERENCE:** §17C-4-1 (Amends and Reenacts)

### **SUMMARY:**

Under current law, if a driver of a vehicle is involved in a vehicle accident and leaves the scene of the accident, the driver is guilty of committing either a felony or a misdemeanor, depending on whether anyone was injured or killed in the accident. If the accident results in the death of any person, the driver is guilty of a felony and can be fined up to \$5,000, or imprisoned for one to five years, or both fined and imprisoned. If the crash results in physical injury, the driver is guilty of a misdemeanor and can be fined up to \$1,000, or confined for up to one year, or both fined and confined.

The bill makes it a felony crime for a driver involved in an accident in which another person suffers serious bodily injury to intentionally flee the scene of the accident. Upon conviction, the person shall be imprisoned in a correctional facility for one to three years, or fined not more than \$2500, or both imprisoned and fined. The bill also clarifies that knowing or having reason to know another person suffered physical injury due to the accident is an element of the crime.

**DATE OF PASSAGE:** March 5, 2018

**EFFECTIVE DATE:** June 3, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 102

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Creating WV Uniform Fiduciary Access to Digital Assets Act.

**CODE REFERENCE:** §39B-2-101 and §39B-3-101 (Amend and Reenacts);  
§44-5B-1-19 (New)

### **SUMMARY:**

This bill extends the traditional power of a fiduciary to manage tangible property to include management of a person's digital assets. The bill allows fiduciaries to manage digital property like computer files, web domains, and virtual currency, but restricts a fiduciary's access to electronic communications such as email, text messages, and social media accounts unless the original user consented in a will, trust, power of attorney, or other record.

The following is a section by section synopsis of the bill:

### **§39B-2-101 and §39B-3-101.**

The bill amends the above-referenced sections of the Uniform Power of Attorney Act to reflect changes implemented by the Uniform Fiduciary Access to Digital Assets Act. The bill provides that a POA may access digital assets on behalf of the principal.

### **§44-5B-3. Applicability.**

The bill applies to (i) a fiduciary acting under a will of power of attorney; (ii) a personal representative for a decedent; (iii) conservatorships; (iv) a trustee acting under a trust; and (v) a custodian, if the user resides in this state or did at the time of death. The bill does not apply to digital assets of an employer used by an employee in the ordinary course of business.

### **§44-5B-4. User Direction for Disclosure of Digital Assets.**

This section allows a user to use an online tool (e.g., online terms of agreement) to direct the custodian regarding the disclosure of the user's assets. If the tool allows the user to modify or delete a direction at all times, a direction regarding disclosure overrides a contrary direction in the user's will, trust, power of attorney or other record. If an online tool is not used or is unavailable, the user may allow or prohibit the user's disposable assets to be disclosed to a fiduciary. Either expression of direction overrides a contrary provision in a terms-of-service agreement.



**§44-5B-5. Terms of service agreement.**

This section states that the rights of a custodian or user under a terms-of-service-agreement is not affected by this article, nor does it expand the rights of any fiduciary.

**§44-5B-6. Procedure for disclosing digital assets.**

This section gives a custodian the sole discretion in determining the manner in which to disclose a user's digital assets. It allows the custodian to charge a reasonable fee for the disclosure of digital assets. This section also deals with the disclosure of a portion of a user's digital assets, requiring segregation.

**§44-5B-7. Disclosure of content of electronic communications of deceased user.**

This section sets forth the process whereby a custodian may disclose the contents of electronic communications of the user to the personal representative of the estate of the user.

**§44-5B-8. Disclosure of other digital assets of deceased user.**

Unless the user prohibited disclosure, or the court directs otherwise, this section sets forth the procedure by which the custodian may disclose a catalogue of electronic communications sent by the user and digital assets to the personal representative of the estate of the diseased user.

**§44-5B-9. Disclosure of content of electronic communications of principal.**

This section sets forth the requirements which allow a custodian to disclose the content of electronic communications to an agent under power of attorney.

**§44-5B-10. Disclosure of other digital assets of principal.**

This section authorizes a custodian to give an agent with specific power of authority over digital assets, or general authority to act on behalf of a principal, a catalogue of electronic communications minus the content, if certain prerequisites are met.

**§44-5B-11. Disclosure of digital assets held in trust when trustee is original user.**

Except when otherwise ordered by a court or directed in a trust agreement, a custodian must disclose to a trustee that is an original user of an account, any of the information in the account.

**§44-5B-12. Disclosure of contents of electronic communications held in trust when trustee not original user.**

This section sets forth the conditions under which a custodian may disclose the content of an electronic communication to a trustee who is not an original user or successor user of an account.

**§44-5B-13. Disclosure of other digital assets held in trust when trustee not original user.**

This section sets forth the conditions under which a custodian may disclose the content of other digital assets to a trustee who is not an original user or successor user of an account.

**§44-5B-14. Disclosure of digital assets to conservator of protected person.**

This section allows a court to grant a conservator access to the digital assets of a protected person if certain conditions are met. The custodian may also be required to provide a catalogue of electronic communications minus the content. A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause.

**§44-5B-15. Fiduciary duty and authority.**

This section provides that the legal duties of a fiduciary charged with managing tangible property apply. A digital asset is subject to applicable terms of service. This section sets forth actions which a fiduciary may take and the information which he or she may receive. It also allows the fiduciary to terminate the user's account under certain circumstances.

**§44-5B-16. Custodian compliance and immunity.**

This section requires a custodian to reply to a request under the Act, within 60 days of receiving the information. If the custodian fails to comply, the fiduciary or designated recipient may apply for a court order directing compliance. A custodian may also require the fiduciary or designated representative to obtain a court order prior to disclosure or termination of an account. A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this article.

**§44-5B-17. Uniformity of application and construction.**

This section states that when applying and construing the Act, consideration must be given to the need to promote uniformity among the states that enact it.

**§44-5B-18. Relation to electronic signatures in global and national commerce act.**

This section states that except for specified sections, this Act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 *et seq.*

**DATE OF PASSAGE:** March 7, 2018

**EFFECTIVE DATE:** June 5, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 110

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

**SHORT TITLE:** Requiring certain licensees notify law enforcement or EMS of life-threatening emergency on premises.

**CODE REFERENCE:** §60-7-13 (Amends and Reenacts)

### **SUMMARY:**

This bill requires private clubs, as a condition of licensure to sell alcoholic liquor on the club's premises, to:

- 1.) Notify Emergency Medical Services or law enforcement in a timely manner when a life-threatening medical emergency occurs on the club premises; and
- 2) Notify the Alcohol Beverage Control Administration (ABCA) within 48 hours after the occurrence of such an emergency.

The bill allows the ABCA to revoke or suspend a private club's license to sell alcoholic liquor on club premises, or otherwise sanction the private club, upon failure to comply with the notification requirements. The bill also defines life-threatening medical emergency and authorizes the ABCA to promulgate emergency and legislative rules.

**DATE OF PASSAGE:** March 6, 2018

**EFFECTIVE DATE:** June 4, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018

# Senate Bill 146

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Correcting technical error within Solid Waste Management Act

**CODE REFERENCE:** §22-15-10 (Amends and Reenacts)

**SUMMARY:**

This bill corrects a technical error in the Solid Waste Management Act relating to open dumps. The laws relating to open dumps by a landowner or tenant differ depending on whether they were established before or after 1988; however, the current law mistakenly indicates that the relevant date is 1998. This bill also removes redundant language.

**DATE OF PASSAGE:** March 2, 2018

**EFFECTIVE DATE:** March 2, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018

# Senate Bill 154

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Authorizing the Department of Administration promulgate legislative rules.

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

### **SUMMARY:**

This bill contains the two Department of Administration rules which constitute Bundle 2.

### **Senate Bill No. 154 Department of Administration rule relating to parking, 148 CSR 6**

The proposed rule allows the Secretary of Administration to designate the type and scheme of parking to be used in addition to designating parking areas. The proposed rule also adds language covering a newer parking lot, allowing it to be used by the Legislature during legislative sessions. It also contains technical clean-up. Finally, the proposed rule adds the required 5-year sunset provision.

### **Senate Bill No. 153 Department of Administration rule relating to state-owned vehicles, 148 CSR 3**

The proposed rule repeals and replaces the current legislative rule for state owned vehicles to match current practices. The substantive changes include: Section 3 – requires agencies to designate a fleet coordinator; Section 4 – change replacement schedule for vehicles from four years and 100,000 miles to five years and 120,000 miles and redefines a process through which agencies may finance a vehicle through fleet management; and Section 11 – requires fleet coordinators to collect and submit vehicle data to Fleet Management.

**DATE OF PASSAGE:** February 15, 2018

**EFFECTIVE DATE:** February 15, 2018

**ACTION BY GOVERNOR:** Signed February 27, 2018

# Senate Bill 163

## COMMITTEE SUBSTITUTE

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

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

### **SUMMARY:**

This bill contains 10 rules proposed by the Department of Environmental Protection and two rules which the Department requested be repealed, which constitute Bundle 3.

### **Senate Bill No. 163 Hazardous Waste Management System, 33 CSR 20**

This proposed rule modifies an existing Department of Environmental Protection (DEP) legislative rule that regulates the generation, treatment, storage, and disposal of hazardous waste in this State.

The modification proposed by this rule adopts and incorporates by reference current provisions in the federal counterpart, the Resource Conservation and Recovery Act (RCRA) and the regulations promulgated thereunder. The rule is amended to include federal changes through July 1, 2017.

### **Senate Bill No. 164 Underground Storage Tanks, 33 CSR 30**

This proposed rule modifies an existing Department of Environmental Protection (DEP) legislative rule that regulates underground storage tanks in this State.

The modification proposed by this rule adopts and incorporates by reference current provisions in the federal counterpart, 40 CFR 280. The rule is amended to include federal changes through July 15, 2015.

The modifications to Section 3 are extensive, including additions to the qualifications of Class A, C, and D certificates and an entirely new Class F certificate. The modifications also delete the Secretary's power to do a background check, add a requirement that the applicant submit documentation of active job participations, and add new requirements for National Association of Corrosion Engineer certification levels for Class D and Class E classifications. Application fees are increased from \$75 to \$185 and the renewal rate is increased to \$125 from \$50, with the fee covering a three-year

period instead of a two-year period. A new section provides that fees shall be adjusted annually to account for inflation or deflation.

Section 4 is amended to add a requirement that the Secretary be notified of structural deficiencies of tanks and any work done on interior linings or corrosion protection.

### **Senate Bill No. 161 West Virginia Surface Mining Reclamation Rule, 38 CSR 2**

This proposed rule modifies an existing Department of Environmental Protection legislative rule that governs requirements of a program that deals with the remediation of mine lands and returning them to approximate environmental integrity. The proposed amendment consolidates various provisions relating to blasting under the rubrics of this rule, deletes certain sections of the current rule that have no apparent Federal counterpart, and modifies certain sections to be more closely analogous to the Federal counterpart.

Section 6 has been extensively amended. The amendments cover, in extensive detail, the general requirements for blasting operations, filing and composition of blasting plans, public notice of all blasting operations—including appropriate signage, surface blasting on underground mines, the creation, composition and maintenance of the blast record, blasting procedures, including the safety protocols to be followed, blasting controls for structures, and pre-blast surveys. They include tables and charts setting forth explosive eights, vibrations, and other criteria.

In Section 11, the provisions relating to incremental bonding have been amended to mirror the language found in the Federal Code of Federal Regulations and provisions relating to Environmental Security Accounts for Water Quality are eliminated as it has no Federal counterpart.

A new Section 25 has been added on the certification of blasters which sets forth requirements for certification, training, the responsibilities of blasters, examination procedures, approval and recertification, certificates, penalties for violations—including suspension and revocation, reinstatement, potential civil and criminal penalties and all hearings and appeals, blasting crews and reciprocity with other states.

A new Section 26 has been added setting forth requirements for blasting damage claims, claim filing procedures, investigation and rules governing all aspects of the arbitration of the claims.

A new Section 27 has been added setting forth requirements for the assessment, sufficiency, distribution of proceeds from and payment of explosive material fees, and adding language referencing the Code penalties for failure to comply with paying the fees.



**Senate Bill No. 155 Standards of Performance for New Stationary Sources, 45 CSR 16**

This proposed 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 United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).

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

**Senate Bill No. 156 Control of Air Pollution from Combustion of Solid Waste, 45 CSR 18**

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

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017.

Section 9 has been amended to substantially change the manner in which hydrogen chloride and mercury emissions are to be calculated. Additionally, combined emissions for units using a coal mill or alkali bypass are given a new method of calculation. An entirely new set of procedures now being specified for electronic media.

**Senate Bill No. 157 Control of Air Pollution from Municipal Solid Waste Landfills, 45 CSR 23**

This proposed rule modifies an existing DEP rule which establishes and adopts emission standards for controlling air pollution from Municipal Solid Waste Landfills, as promulgated by the United States Environmental Protection (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, 2017.

Section 7, which is new, sets forth the applicability, compliance times, emissions requirements, collection and control system requirements testing requirements, emission monitoring requirements, compliance requirements, reporting requirements, and recordkeeping requirements enjoined upon operators of existing municipal solid waste landfills by the EPA.

**Senate Bill No. 158 Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities, 45 CSR 25**

This proposed 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 United States Environmental Protection (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, 2017.

The modifications also incorporate by reference annual updates to provisions contained in the State Hazardous Waste Management System Rule, 33 CSR 20, promulgated as of June 1, 2017.

### **Senate Bill No. 159 Emission Standards for Hazardous Air Pollutants, 45 CSR 34**

This proposed rule modifies an existing DEP rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).

The modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017.

### **Senate Bill No. 160 Ambient Air Quality Standards, 45 CSR 08**

This proposed 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 United States Environmental Protection Agency (EPA).

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017. It incorporates by reference EPA modifications on the Ambient Air Quality Standards for Lead and Particulate matter which retain the current lead standard and make a technical correction on the particulate matter standard. Also, new methods of measuring sulfur dioxide and nitrogen dioxide concentrations were approved.

### **Senate Bill No. 161 West Virginia Surface Mining Reclamation Rule, 38 CSR 2**

This proposed rule modifies an existing Department of Environmental Protection legislative rule that governs requirements of a program that deals with the remediation of mine lands and returning them to approximate environmental integrity. The proposed amendment consolidates various provisions relating to blasting under the rubrics of this rule, deletes certain sections of the current rule that have no apparent Federal counterpart, and modifies certain sections to be more closely analogous to the Federal counterpart.

The proposed rule makes extensive changes to the section on blasting. It covers, in extensive detail, the general requirements for blasting operations, the filing and composition of blasting plans, public notice of all blasting operations—including appropriate signage, surface blasting on underground mines, the creation, composition and maintenance of the blast record, blasting procedures, including the safety protocols to be followed, blasting controls for structures, and pre-blast surveys. It includes tables and charts setting forth explosive eights, vibrations, and other criteria.

A new Section 25 on the certification of blasters setting forth requirements for certification, training, the responsibilities of blasters, examination procedures, approval and recertification, certificates, penalties for violations—including suspension and revocation, reinstatement, potential civil and criminal penalties and all hearings and appeals as per Code, blasting crews and reciprocity with other states.

A new Section 26 adds an entirely new section setting forth requirements for blasting damage claims, claim filing procedures, investigation and rules governing all aspects of the arbitration of such claims.

Finally, the proposed rule adds a new Section 27 setting forth requirements for the assessment, sufficiency, distribution of proceeds from and payment of explosive material fees, and adding language referencing the Code penalties for failure to comply with paying the same.

The Senate Committee on Energy, Industry and Mining adopted amendments to the proposed rule which rewrote paragraph 12.2.a.4 of the proposed rule, relating to a bond release or reduction. It removed reference to compliance with water quality standards and allows the Secretary to approve a request for release without restriction as to Phase. The Committee also rewrote paragraph 12.2.4.B. The paragraph currently requires an operator to irrevocable commit other financial resources to assure long term treatment of drainage. It requires a mechanism whereby the Secretary can assume management of the resources in the case of an operator's default. EIM's amendment removes this requirement and simply requires an operator to provide assurances in a form satisfactory to the Secretary through a contract or other mechanism to provide for long term treatment of the damage.

### **Senate Bill No. 162 Voluntary Remediation and Redevelopment Rule, 60 CSR 3**

This proposed rule modifies an existing Department of Environmental Protection legislative rule that implements a program that provides guidelines for brownfield revitalization and provides procedures and standards for that program. The rule is designed to encourage persons to voluntarily implement and remedial plans at sites which may be contaminated without DEP having to take enforcement action by providing financial incentives and establishing limitations of liability for persons who perform remediation on these sites to DEP's standards.

The modifications proposed by this rule revise procedures for the Brownfields Revolving Fund (BRF) program. Primarily, all information about the BRF is now placed in the same section of the Rule, greater flexibility is provided for on establishing loan interest rates and procedures for accommodation of a variety of entities, so that conditions for EPA loans can be met, and to gain access to a broader array of funding sources, such as legislative grants of monies or grants from other entities or groups.

Section 6 has been amended to remove language providing that voluntary arbitration agreements may contain a provision for alternative dispute resolution.

**State Construction Grants Program Rule, 47 CSR 33**

This rule is being repealed because Congress never reappropriated the money for this grant program.

**Rules on Freedom of Information Act Requests, 60 CSR 2**

The Department requested that this rule be repealed.

**DATE OF PASSAGE:** February 16, 2018

**EFFECTIVE DATE:** February 16, 2018

**ACTION BY GOVERNOR:** Signed February 27, 2018

# Senate Bill 165

## COMMITTEE SUBSTITUTE

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

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

### **SUMMARY:**

This bill contains 13 rules proposed by the Department of Health and Human Resources and two rules which the Department requested be repealed, which constitute Bundle 5.

### **Senate Bill No. 165 Department of Health and Human Resources, Hospital Licensure, 64 CSR 12**

This is an amendment to an existing rule. It pertains to the licensing of hospitals and extended care facilities. The changes to the rule are to update the rule to current practice.

A number of updates include referenced documents which have been updated since the rule was last amended in 2006. These include the National Electric Code and the Standards for Health Care Facilities adopted by the Centers for Medicare and Medicaid Services. There have also been a number of updates regarding references to other state rules.

The rule also eliminates the provision which allowed hospitals to have four (4) beds per patient room. The current industry standard is a maximum of two (2) which provides for better patient care. It also eliminates the need to keep records of stillborn infants separate from the mother's records. Finally, it requires all long term acute care hospitals to meet standards set by the Centers for Medicare and Medicaid Services relating to long term acute care facilities.

### **Senate Bill No. 167 Department of Health and Human Resources, Public Water Systems, 64 CSR 03**

This is an amendment to an existing rule regarding the regulation of public water systems. It also has standards for the production and distribution of bottled water.

The amendment to the rule offers clarity about who approves the concentration levels in a public water system. The rule states the range for fluoride content. The current language in the rule seems to require that the Commissioner of the Bureau for Public Health would have to approve any modifications within that range. The amendments clarify that so long as a public water system remains within the acceptable range as set out in the rule, prior approval is not necessary.

Other modifications state that any modification to the chemical composition or additives for fluoridation, or discontinuation of fluoridation would require prior written approval of the Commissioner. They also allow the Commissioner the ability to impose additional monitoring requirements if such a change is made.

**Senate Bill No. 168 Department of Health and Human Resources, Emergency Medical Services, 64 CSR 48**

This is an amendment to an existing rule regarding emergency medical services. The changes to the rule are in three places.

First, the rule alters the manner in which ground ambulances are to have reflective markings. They are replacing the current language with national standards set out by the Commission on Accreditation of Ambulance Services. This was a recommendation of the Emergency Medical Services Advisory Council. The current standards were considered outdated and had the potential to cause harm. Additionally, newer models of ambulances have made these requirements difficult to meet.

The second change was to repeal the section pertaining to local systems. It was the opinion of the agency that the Department had no authority in the statute to regulate such entities. The enabling statute allowed county commissions to provide emergency medical transport and to regulate those. That statute is West Virginia Code §7-15-1 which does not provide any oversight authority to DHHR over county commissions.

The final changes are to the fees which have been increased as much as 100% to 200% percent to account for the change from an annual certification to one every two (2) years thereby causing a decrease in revenue. These fees changes are to account for the decrease in revenue caused by the change from an annual to a biennial license.

**Fiscal Impact:** The rule contains an increase in fees for persons subject to the provisions of the rule. The increase in fees is in response to the action of the Legislature in 2016 in Senate Bill 195 which modified the certification process. In that bill (which authorized changes to the EMS Rule) the certification period was changed from one year to two years. The justification for the fee increase is that this change in the certification process has resulted in significantly lower revenue from fees.

The fee increases are as follows:

An applicant for Emergency Medical Vehicle Operator, Emergency Medical Responder, Emergency Medical Technician, Advanced Care Technician, Paramedic, Mobile Critical Care Paramedic or Mobile Critical Care Nurse applicants shall pay the following non-refundable certification fees to be deposited in the Emergency Medical Services Agency Licensure Fund:

- Initial certification via National Registry or state examination, includes fingerprint processing there is a fee increase from \$50.00 to \$100.00.
- Recertification via National Registry maintenance or state process there is a fee increase from \$25.00 to \$75.00.
- Emergency Medical Dispatcher applicants fee:
  - Initial application there is a fee increase from \$25.00 to \$75.00; and
  - Recertification there is a fee increase from \$25.00 to \$50.00.
- Fee for certification modification there is a fee increase from \$5.00 to \$25.00.
- Late recertification application (within 90 days of expiration date), there is a fee increase from \$25.00 to \$50.00.

The Department indicates these fee increases will result in an increase in revenue in 2017 of \$112,500 and an increase thereafter of \$150,000 per year. After meeting with the agency, the decided to alter the fees in rule as follows:

- Withdraw the fee increased for the dispatchers in subsection 6.9. It was to be increased from \$25.00 to \$75.00.
- Reduce the fee increase for certification modification in §6.10 from \$25.00 to \$10.00.
- Reduce the late fee for a late application for recertification in §6.12 back to the current \$25.00.
- 6.8.a. Initial certification via National Registry or state examination was proposed to increase to \$100 from \$50.00 it is not proposed to only increase to \$75.00.
- 6.8.b. Recertification via National Registry maintenance or state process was to increase from \$25.00 to \$75.00. That will now be proposed to increase to \$37.50.
- 6.8.c. Legal recognition will remain at \$100.
- 6.8.e. National Criminal Background Check: \$45.00. This is a new fee. Previously OEMS has simply taken the cost of the background check (\$45.00) out of the initial certification fee or the recertification fee, whichever is applicable. Under the current rule, the OEMS charges a certification fee of \$50. After paying the State Police for the background check, OEMS is left with just \$5.00. It is worse if the background check is necessary at the time of recertification. In that case the applicant for recertification is charged \$25.00. The OEMS must pay the State Police \$45.00 for the background check, leaving the OEMS with a negative \$20, which is paid out the office's budget Thus, the OEMS is subsidizing applicants for the cost of a mandatory background check.

6.10. Fee for certification modification had been \$5.00. It was proposed to increase that to \$25.00. They are now proposing a change to \$10.00.

**Senate Bill No. 169 Department of Health and Human Resources, WV Clearance for Access: Registry and Employment Screening, 69 CSR 10**

This rule pertains to the WV Clearance for Access: Registry and Employment Screening program. This is a program to provide for pre-employment screening for certain facilities which are subject to the act pursuant to the provisions of West Virginia Code §16-49-1 (a)(4). These facilities include skilled nursing facilities, nursing facilities, home health agencies, hospice, long-term care hospitals, personal care providers, adult day care providers and certain residential care providers.

This is an amendment to an existing rule. It simply adds to the list of disqualifying offenses which exclude an applicant from direct access those offenses listed in our code as felony crimes against the peace and felony traffic offenses. Felony crimes against the peace include aiding a convicted felon in an attempt to escape, intimidation of a witness in conspiracy prosecutions, mob or riotous assemblage with infliction of damage or injury to a person, false reporting of bombs, violence against a person for race, color, religion, ancestry, national origin, political affiliation or sex, and certain terrorist acts. The serious traffic offenses added as a disqualifying event include negligent homicide, driving under the influence and reckless driving.

The rule also changes the designation of an employee from “conditional” to “provisional” pending receipt of the background check. This makes the rule consistent with the statute.

**Senate Bill No. 170 Department of Health and Human Resources, Development of Methodologies to Examine Needs for Substance Use Disorder Treatment Facilities within the State, 69 CSR 13**

This bill was made necessary with the passage last session of House Bill 2428. The rule is new. The rule sets out the procedure to assess the needs for substance abuse beds throughout the state in an evidence based and data informed manner.

The rule contains the standard Scope, Authority, Filing and Effective Date, Sunset Provision and Purpose section. It also has a Background section which explains the genesis of the rule.

Key terms are defined in the rule. These include a list of regions whereby the state is divided into geographic regions to allow the Department through the Bureau for Behavioral Health and Health Facilities to conduct an assessment of the needs and demand by region for ease in administration. The needs assessment will be based upon direct measures, indirect measures and ethnographic study. The Bureau is required by



the rule to consult with various entities including the newly created Office of Drug Control Policy which was created in the legislation that prompted this rule.

The House of Delegates amended this rule to reconfigure the regions for disbursement of substance use funds from the Ryan Brown Fund. The amendment simply increased the number of regions from six to seven regions.

**Senate Bill No. 171 Department of Health and Human Resources, Collection and Exchange of Data Related to Overdoses, 69 CSR 14**

This rule sets out the process for exchange of various entities with the newly created Office of Drug Control Policy. That office was established with the passage of House Bill 2620 during the 2017 Regular Session of the Legislature. The enacting legislation required the exchange of necessary data. The necessity of the data is to operate a database on fatal and non-fatal overdoses.

The rule is new. It contains the standard Scope, Authority, Filing and Effective Date and Sunset Provision. It also has an applicability section which sets out the entities which are subject to the data exchange. These include various state entities, law enforcement, health care providers, emergency responders, pharmacies and medical examiners. The rule defines key terms.

Substantively the rule requires mandatory reporters as that term is defined in the rule to report electronically or on Department provided forms reportable information as set out in the rule. The Office of Drug Control Policy is permitted to disclose the reported data for legitimate purposes relative to public health to Participants – also defined. The data is to be utilized to develop policies and best practices to prevent substance abuse.

The bill sets out the powers and duties of the Director of the Office of Drug Control Policy relative to the data. This includes determinations regarding request for access, maintaining the data in a secure manner and responding appropriately to requests. The rule also sets out a number of privacy concerns and security safeguards. This includes the way in which a breach of policy shall be managed.

**Senate Bill No. 172 Department of Health and Human Resources, Financial Disclosure Rule, 65 CSR 13**

This rule updates the financial reporting requirements as required by House Bill 117 adopted during the First Special Session of this year. The rule sets forth what data a covered facility or, if requested, a related organization is required to report. These reports shall contain the annual financial report; prepared by an accountant or auditor; reports of services rendered; the Health Care Authority Financial Report through the Uniform Reporting System; and a current Uniform Bill form for each inpatient. This is data that has been reported in the past.

The required data to be no longer required to be reported includes: a statement of ownership of persons owning more than 5% of the capital stock; dividends paid and to whom; a disclosure of ownership by a parent company; a statement of services available; a statement of the total financial needs of the facility; resources available to cover the needs; copies of reports filed with the Federal Health Care Financing Administration; a statement of all charges, fees or salaries for goods or services that exceed \$55,000; a statement of all charges, fees or other sums collected which exceed \$55,000; and tax returns.

A failure to comply with the required reporting requirements would result in a fine of \$1000 per day.

**Senate Bill No. 173 Department of Health and Human Resources, Child Care Licensing, 78 CSR 01**

This rule sets out the standards and procedures for licensing child care centers. This is an amendment to an existing rule.

The changes to the rule made the rule compliant with the Child Care Development Block Grant reauthorization. This would require child care center providers to receive criminal background checks prior to licensing as a child care center. The center would bear the cost of the criminal background check. In West Virginia, these background checks would be subject to the WV CARES program which was adopted by the Legislature in Senate Bill 88 during the 2015 Regular Session of the Legislature.

The rule makes some changes to definitions necessitated by the Child Care Development Block Grant and also updates existing language regarding criminal background checks to account for the fact that these will now be processed through the WV CARES program and to make the language consistent with federal law.

**Senate Bill No. 174 Department of Health and Human Resources, Family Child Care Facility Licensing Requirements, 78 CSR 18**

This rule sets out the standards and procedures for licensing family child care centers. This is an amendment to an existing rule.

The changes to the rule made the rule compliant with the Child Care Development Block Grant reauthorization. This would require family child care providers to begin paying for criminal background checks for prospective employees. In West Virginia, these background checks would be subject to the WV CARES program which was adopted by the Legislature in Senate Bill 88 during the 2015 Regular Session of the Legislature.

The rule makes some changes to definitions necessitated by the Child Care Development Block Grant and also updates existing language regarding criminal

background checks to account for the fact that these will now be processed through the WV CARES program and to make the language consistent with federal law.

**Senate Bill No. 175 Department of Health and Human Resources, Family Child Care Home Registration Requirements, 78 CSR 19**

This rule sets out the standards and procedures for registering family child care homes. This is an amendment to an existing rule.

The changes to the rule made the rule compliant with the Child Care Development Block Grant reauthorization. This would require family child care provider and adult household member to receive criminal background checks prior to registration as a family child care home. In West Virginia, these background checks would be subject to the WV CARES program which was adopted by the Legislature in Senate Bill 88 during the 2015 Regular Session of the Legislature.

The rule makes some changes to definitions necessitated by the Child Care Development Block Grant and also updates existing language regarding criminal background checks to account for the fact that these will now be processed through the WV CARES program and to make the language consistent with federal law.

**Senate Bill No. 177 Department of Health and Human Resources, Informal and Relative Family Child Care Home Registration Requirements, 78 CSR 20**

This rule sets out the standards and procedures for regulating informal and relative family child care homes. This is an amendment to an existing rule.

The changes to the rule make the rule compliant with the Child Care Development Block Grant reauthorization. That grant requires criminal background checks for a caregiver and any adult household member through the WV CARES program. The background check is current law. These changes would allow for that check to be done through the WV CARES program. The program was adopted by the Legislature in Senate Bill 88 during the 2015 Regular Session of the Legislature.

The rule makes some changes to definitions necessitated by the Child Care Development Block Grant, also updates existing language regarding criminal background checks to account for the fact that these will now be processed through the WV CARES program and to make the language consistent with federal law. Finally, it updates the section regarding immunizations to make it consistent with current state law.

**Senate Bill No. 178 Department of Health and Human Resources, Out of School Time Child Care Center, 78 CSR 21**

This rule sets out the standards and procedures for licensing child care centers who operate an out of school time program. This is an amendment to an existing rule.

The changes to the rule made the rule compliant with the Child Care Development Block Grant reauthorization. This would require child care providers to begin paying for criminal background checks for prospective employees. In West Virginia, these background checks would be subject to the WV CARES program which was adopted by the Legislature in Senate Bill 88 during the 2015 Regular Session of the Legislature.

The rule makes some changes to definitions necessitated by the Child Care Development Block Grant and also updates existing language regarding criminal background checks to account for the fact that these will now be processed through the WV CARES program and to make the language consistent with federal law.

**Senate Bill No. 179 Department of Health and Human Resources, Pilot Program for Drug Screening of Applicants for Cash Assistance, 78 CSR 26**

This rule implements the provisions of Senate Bill 6 which passed during the 2016 Regular Session of the Legislature. That bill required the Department of Health and Human Resources to develop a three (3) year pilot program to conduct substance use testing upon applicants for Temporary Assistance to Needy Families.

This is a new rule. It defines necessary terms. Many of these terms are lifted directly from the authorizing statute. Included in the defined terms is the term “reasonable suspicion”. This would be determined from a questionnaire provided to applicants at the time of their application for benefits. A prior conviction for a drug offense is also considered reasonable suspicion. The definition of this term reflects what is set out in statute.

The bill also sets out a process for conducting a drug screen based upon the use of a screening questionnaire. If reasonable suspicion is found after completion of the questionnaire, the applicant shall have seven (7) days to submit to a drug test. The rule does, however, provide that the caseworker may extend this time if unforeseen circumstances exist. The rule sets out the duties of the caseworker upon receipt of the drug test which includes notice to the applicant of the results. There is also an exception should the drug be prescribed, and the applicant can provide proof.

A negative test allows the application to proceed with their benefit case. Upon receipt of a positive test, the caseworker is required to work with the applicant to set up treatment. There is a similar exception for unforeseen circumstances as is included in the portion of the rule regarding drug tests. During treatment, regular updates are required to the caseworker by the treatment program. The applicant remains subject to random drug tests upon completion of treatment.

Any applicant who does not adhere to the treatment plan is ineligible for assistance. Any applicant who fails a second drug test post-treatment is ineligible for

assistance for a period of twelve months or completion of a second treatment plan, whichever period is shorter. A third positive screen would result in a lifetime ban.

There are provisions for alternative payees to allow children in the household to receive benefits should their parent be ineligible for assistance as a result of a positive drug test. The alternative payee – in the rule it is referred to as a “protective payee” – is subject to the same drug screen and testing requirements as the applicant and may be subject to audits by the Department regarding the manner in which they spend the benefits for the child or children.

The rule provides for a referral and investigation by Child Protective Services for applicants who have terminated or suspended benefits due to a positive drug test. There is also the right to appeal a decision by the applicant aggrieved by any action of the Department. Records of the drug screen and tests are to remain confidential.

**Department of Health and Human Resources, Regulation of Opioid Treatment, 69 CSR 7 - Repeal**

This rule has been superseded by 69 CSR 11 and 69 CSR 12.

**Department of Health and Human Resources, Certificate of Need Rule, 65 CSR 7 – Repeal**

This rule has been superseded by 65 CSR 32.

**DATE OF PASSAGE:** February 19, 2018

**EFFECTIVE DATE:** February 19, 2018

**ACTION BY GOVERNOR:** Signed February 27, 2018

# Senate Bill 181

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Authorizing DMAPS promulgate legislative rules.

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

### **SUMMARY:**

This bill contains four rules proposed by the Department of Military and Public Safety and one rule which the Department requested by repealed, which constitute Bundle 6.

### **Senate Bill No. 181 State Fire Commission, Hazardous Substance Emergency Response Training Programs, 87 CSR 03**

The proposed changes to 87 CSR 03 modify the regulations, procedures, and required criteria related to qualified training programs in hazardous substance emergency response activities. The rule requires that hazardous substance training completion certificates be provided to the Fire Marshal, that department members must have certain training for hazardous materials, and sets forth appropriate levels of training.

Under §2.5, the proposed rule requires that all copies of all training/certifications records and approved training programs be provided to the State Fire Marshal Office for recording keeping purposes. All personnel are required to provide a hazardous material refresher certification annually to the State Fire Marshal per OSHA requirements.

Under §4.3.3, the proposed rule requires “industrial responder personnel” to meet minimum federal OSHA requirements.

The proposed rule outlines a fire department hazardous material response program under §4.4. It requires active and specialized support members of volunteer fire departments, combination fire departments, or county fire prevention units that respond but do not operate at hazardous material incidents be certified for training at least at the Hazardous Material Awareness level. Active and specialized support members that operate at hazardous materials incidents must at least be certified for training at the Hazardous Materials Operations level, as set forth by NFPA 1001 Standard for Fire Fighter Professional Qualifications or its equivalent. Additionally, all active members and firefighters shall have training available to them that allows them to become compliant

with the National Incident Management System (NIMS) Training Guidelines for West Virginia established by the Division of Homeland Security and Emergency Management.

Under §4.4.2, the proposed rule requires paid fire department members and officers be trained per NFPA 472 standards. All fire department personnel must be certified at the Awareness Level. Paid fire department personnel that operate at hazardous material incidents must minimally meet U.S. Environmental Protection Agency and OSHA requirements for response at the Operations and/or Technician levels. Additionally, all paid firefighters, fire officers and chief officers covered under this policy shall at least meet NIMS training as provided in the current version of guidelines established by the Division of Homeland Security and Emergency Management.

### **State Fire Marshal, Electrician Licensing Rules, 103 CSR 5**

The proposed changes to 103 CSR 5 update definitions and qualifications for licensure, provide for when persons not licensed may perform electrical work, and update the penalties for performing electrical work without a license.

Subdivision 2.4.5 of the proposed rule amends the examples of work that's covered by a "specialty low voltage electrician license". The rule provides the example of "fire and burglar alarm communication systems" to what's covered by the license.

Subsection 2.8 of the proposed rule establishes an exception to the current restriction on Master or Journeyman electricians from supervising more than three apprentice electricians on the job site. It provides that upon the request from an approved West Virginia Department of Education electrical vocational program, special projects shall be allowed where an instructor, who holds a master electrician's license, supervises his or her students performing work under the instructor's direct and constant supervision.

Section 4 of the proposed rule amends the requirements for obtaining several licenses. Under §4.1, it provides that in order to obtain a "Master License", an applicant must have five years of experience as a journeyman electrician in addition to the current requirements. Currently, an applicant must have needs five years of experience in electrical work of such breadth, independence and quality that such work indicates that the applicant is competent to perform all types of electrical work and can direct and instruct journeyman electricians and apprentice electricians in the performance of electrical work.

Subsection 4.3 of the proposed rule provides that any student enrolled in a Department of Education electrical vocational educational program of at least 1,080 may apply for a "Apprentice License". The rule also provides that it shall be encouraged that all apprentice license holders shall become familiar with the National Electrical Code, NFPA 70.

Under §7.3, the proposed rule amends the requirements for renewing an expired license without having to retest. It provides that an electrician previously licensed by the who did not renew his or her license, may renew without retesting within three years of the date of last renewal, as long as the license had not been revoked. An applicant must pay double the \$50 renewal fee (\$100) if the license has been lapsed for two renewal periods. If the license has been lapsed for three renewal periods, the applicant must pay triple the \$50 renewal fee (\$150). This proposed language mirrors the language of W.Va. Code §29-3B-6. Currently, a licensee failing to renew their license for up to one year following expiration shall forfeit their license and must apply and take the examination for licensure.

Subsection 7.4 of the proposed rule provides that to be eligible for licensure renewal, the applicant should be completed at least eight hours of approved continuing education for each three-year cycle of the prior certification period. The continuing education should be on the changes in the currently adopted or then next cycle code (NEC) or submit to any testing supplied by the Office of the West Virginia State Fire Marshal pertaining to the newly adopted National Electrical Code (NEC), (starting with the 2020 edition of the NEC).

Subsection 10.1 of the proposed rule increases the penalties for engaging in the business of performing electrical work without obtaining the required license. The proposed language does not mimic the penalties provided for in W.Va. Code §29-3B-8, but there is an agreed-to modification which would provide language that mirrors the Code. The fine for a first offense is increased from not more than \$100 to not less than \$100 nor more than \$500. The fine for a second or subsequent offense is increased from not less than \$100 nor more than \$500 to not less than \$500 nor more than \$1,000.

**Senate Bill No. 182 Governor's Committee on Crime, Delinquency and Correction, Law Enforcement Training and Certification Standards, 149 CSR 02**

The proposed rule makes necessary changes to the current rule to allow for the certification and training of West Virginia law enforcement officers to remain current with the best practices and legal decisions concerning such certification and training. The proposed changes were discussed during the March, April and May 2017 meetings of the Law Enforcement Professional Standards (LEPS) Subcommittee, a subcommittee of the Governor's Committee on Crime, Delinquency and Correction (GCCDC).

The proposed changes address clarification of payment of awards and the source of such payments by the Subcommittee for entry level training programs, clarification of the matters relating to the required firearms qualification by officers to maintain their law enforcement certification and the addition of a subsection, which adds failure to pay court



ordered child support payments as a factor that may result in action being taken against a law enforcement officer or denial of admission of a basic entry-level training program.

**Senate Bill No. 183 Governor’s Committee on Crime, Delinquency and Correction, Protocol for Law Enforcement Responses to Domestic Violence, 149 CSR 03**

This proposed rule modifies an existing rule regarding the protocol for law enforcement response to domestic violence calls. The rule has not been reviewed or updated since initial filing in 2011. These modifications insure that protocols listed are current and in line with state/federal guidelines and court decisions addressing domestic violence.

Section 5 contains the following amendments:

5.2.6. Adds a new subsection requiring dispatchers to dispatch EMS if strangulation has been reported, has occurred or is suspected;

5.2.9. Modifies this subsection to add a requirement that a dispatcher communicate to law enforcement whether any party has a history of cognitive or mental illness;

5.2.10 Removes a requirement to inform law enforcement if a protective order that is in effect includes a consent to enter the residence to enforce the order;

5.2.13. Modifies this subsection so that a dispatcher must know inform law enforcement if the accused has been released on bond;

5.3. Adds a requirement that dispatchers relay information provided by a caller to EMS (if dispatched) in addition to responding law enforcement;

5.4. Permits dispatchers to access the statewide domestic violence protective order database, NCIC, and other criminal databases only at the direction of the law enforcement officer.

Section 6 has been amended as follows:

6.3.1.c. In assessing injuries, the officer must now request EMS to respond to the scene if strangulation is reported or suspected;

6.4.3. Removes a prior requirement that the officer ask the victim about previous domestic incidents and their frequency and severity during the officer’s on-scene investigation;

6.4.5. Requires an officer to conduct a private interview with a victim using the “Dangerousness-Lethality Information form that is distributed by the WV State and requires the form to be attached to the police incident report;

6.4.6. Moves the requirement that a law enforcement officer should proceed with

an investigation even in the absence of a statement a victim and witnesses from 6.4.5 to this new subsection;

6.4.9. Adds a new section regarding protocols when children are present ---The officer should determination the location of the children and check to see if the children are hurt, keep children with known adults when safe and proper, provide non-offending parent with information about safety and resources and help support non-offending parent. As a general rule, the officer should not make an arrest in front of the children and if there has been a murder, suicide or serious bodily injury of any household member, the officer should make the mandated report to CPS then refer the children to community resources for trauma-informed care.

6.4.10. Adds a section regarding speaking with children --- The officer should speak on the children's level by sitting or squatting, describe their role in simple terms, don't force the child to speak, refrain from talking badly about either parent in front of the children, should not say everything will be okay or make promises that cannot be kept; reassure the children that the violence was not their fault, explain why any use of force as necessary and document any statements and demeanor of the child.

6.4.11. Adds a new section regarding assessing harm to children at the scene of a domestic violence call --- when assessing harm to children, the following should be assessed: injuries, imminent danger, abandonment/medical neglect, risk of substantial harm due to the following indicators – past history of child maltreatment, criminal history of domestic violence related crimes, proximity of child to domestic violence, nature of the violence or crime, child physically intervening, child forced to participate in the domestic violence, use of weapons or objects that could cause harm in the presence of children, direct threats of serious bodily injury or death to or regarding children and a domestic violence offender with indicators of highly dangerous/potentially lethal behaviors.

6.4.12. Adds a requirement that law enforcement officer should refer to Handle with Care;

6.4.13. Removes requirement that children should be interviewed in a manner appropriate to the child's age;

6.4.16. Removes requirement that the law enforcement officer should advise the victim to have photographs taken if injuries appear later;

6.5.1. Requires the law enforcement officer to verify the existence of a protective order by accessing the statewide protective order database instead of asking the victim if he or she can produce a copy of a protective order that is in effect;

6.5.4. Requires an officer who makes verbal notice of a valid protective order upon a respondent to document the notification by contacting 911 to record notification on the West Virginia statewide domestic violence database and submitting the return of service in writing to the circuit clerk's office with 24 hours;

The House of Delegates amended this rule to clarify that it is recommended that a person not be arrested in front of children and that the provisions for speaking with children are also recommendations.

**Governor’s Committee on Crime, Delinquency and Correction, Motor Vehicle Stop Data Collection Standards for the Study of Racial Profiling, 149 CSR 5**

This rule is being repealed because the authority for the rule expired June 30, 2009.

**DATE OF PASSAGE:** March 2, 2018

**EFFECTIVE DATE:** March 2, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018

# Senate Bill 184

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Authorizing the Department of Transportation promulgate legislative rules.

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

### **SUMMARY:**

This bill contains two rules proposed by the Department of Transportation and one rule which the Department requested by repealed, which constitute Bundle 8.

### **Division of Highways, Disposal, Lease, and Management of Real Property and Appurtenant Structures and Relocation Assistance, 157 CSR 2**

The proposed rule amends a current Division of Highways (DOH) legislative rule governing the acquisition, disposal, lease, and management of real property and appurtenant structures and relocation assistance for persons dislocated by highway construction. The majority of the amendments to the rule are for clarification and updating of terminology.

The proposed rule states that the Commissioner of the Division of Highways has the exclusive authority to designate excess real property and requires all deeds transferring any interest owned by the Division to be quitclaim deeds. The proposed rule amends provisions regarding the sale of any excess real estate acquired through voluntary real estate acquisition or eminent domain that require the property first be offered for sale to the principal abutting landowner at a specified cost. The proposed rule allows the excess property to be offered for sale to all abutting landowners if there is no principal abutting land owner. The proposed changes make it easier for DOH to sell the property to the abutting landowners by removing provisions which automatically determine the property's use as substantially changed.

The proposed rule establishes requirements for submitting proof of ownership of abutting property and requires federal Department of Transportation rules be followed when federal highways funds were used to purchase the property.

The proposed rule specifies that all property shall be sold in a manner which will bring the highest and best price, and that unsold property must be sold at public auction in the county in which the property is located. The proposed rule also provides that any

public body which requires DOH to purchase real property for highway purposes at fair market value shall be required to purchase excess real property from DOH at fair market value.

Throughout the proposed rule, many of the duties and authority currently assigned to a District Right of Way Agent are transferred to the Chief of the Property Management Unit, including in relation to the conduct of auctions, closing sales of real property, and continuing existing leases. Also, the term “Chief Appraiser” is changed throughout the rule to “Commissioner of the Division of Highways”.

The proposed rule requires the District Right of Way Agent to publish notice of a proposed sale of structures during at least three different weeks in a newspaper of general circulation in the county in which the structures are located or approved by the Director of the Right of Way Division, as opposed to two different weeks currently.

The proposed rule amends §8, which limits leases to five years, though an agreed-to modification allows longer terms, but requires the amount of lease rental be updated every five years based on current existing market conditions. The House of Delegates amended this section to qualify that requirement, allowing the Commissioner to approve longer lease terms for utility accommodations leases.

The proposed rule authorizes DOH to lease property to a public body for not less than fair market value, so long as the property is used by that public body for public purposes. Furthermore, the public body may not sublet property owned by DOH for any purpose without the consent of the Commissioner of Highways.

The proposed rule provides that relocation assistance will be provided in accordance with the provisions of W.Va. Code §17-2A-20 and §54-3-1 *et seq.*, which both provide for procedures and requirements for the payment of relocation expenses. DOH is required to pay certain relocation costs, replacement housing costs, and assistance to persons dislocated by highway construction to reduce hardships to dislocated persons.

### **Division of Highways, Employment Procedures, 157 CSR 12**

The proposed rule is in response to passage of Senate Bill 2003 during the 2017 2<sup>nd</sup> Executive Session, which gives the Division flexibility in hiring outside of the Division of Personnel Rules. The proposed rule states that the Division will follow the Division of Personnel’s rule for matters not addressed in §17-2A-24 of the Code or the proposed rule.

This rule gives the Commissioner sole discretion to request registers from the Division of Personnel; to post a position internally or externally or both; to employ any person listed on the Transportation Worker register; to determine whether applicants for positions with the Division meet minimum position requirements, including whether or not a promotional exam is required; to apply or not apply the Division of Personnel’s

system of compensation for positions within the Division within the classified and classified-exempt service; and to determine settlement terms and conditions in employee grievances.

The rule allows the Commissioner to establish an examination procedure, use the Division of Personnel's procedure or a combination of both. The rule sets forth the requirements for development of the exams and for the scoring of the exams.

**Division of Highways, Waste Tire Remediation/Environmental Clean-up,  
157 CSR 8**

The Division requested this rule be repealed because the DEP assumed full jurisdiction of the waste tire program in 2005.

**DATE OF PASSAGE:** February 16, 2018

**EFFECTIVE DATE:** February 16, 2018

**ACTION BY GOVERNOR:** Signed February 27, 2018

# Senate Bill 230

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Authorizing the Department of Commerce promulgate legislative rules.

**CODE REFERENCE:** §§64-10-1 –4 (Amends and Reenacts)

### **SUMMARY:**

This bill contains seven Division of Labor Rules; five Division of Natural Resources rules, one rule from the Office of Miners' Health, Safety and Training and one Division of Energy rule which is being repealed, all relating to the Department of Commerce and constituting Bundle 10.

### **Senate Bill No. 230 Division of Natural Resources, Rules Controlling the Public Land Corporation Sale, Lease, Exchange, or Transfer of Land or Minerals, 58 CSR 02**

This is a rule repeal. The purpose of the rule was to establish guidance for the sale or lease of public lands by the Public Land Corporation The enabling legislation, W.Va. Code §20-1A-1 thru 20-1A-6 and 20-1A-8 and 20-1A-9, was repealed in 2007 and therefore the rules are no longer statutorily authorized.

### **Senate Bill No. 229 Division of Natural Resources, Hunting, Fishing and Other Outfitters and Guides, 58 CSR 11**

The rule reenacts Hunting, Fishing and Other Outfitters and Guides rules. Previously, an exempt rule was filed that mistakenly replaced 58 CSR 11. Following the corrected filing of the exempt rule, 58 CSR 11 was not refiled until now.

### **Senate Bill No. 231 Division of Natural Resources, General Hunting, 58 CSR 49**

The modifications revise current General Hunting rules. Specifically, the revisions include language to prohibit the use of bows and crossbows on the Bright McCausland Homestead Wildlife Management Area in Mason County as required in the property deed, dated January 3, 2017.

**Senate Bill No. 232 Division of Natural Resources, Special Migratory Bird Hunting, 58 CSR 56**

The modifications revise current Special Migratory Bird Hunting rules. Specifically, revisions to the rule strike language stating that Sunday hunting is illegal. New language is added to state that “Sunday hunting is legal in accordance with W.Va. Code §20-2-5.” This is as a result of legislation passed in 2017. “Sinkbox” is also revised to one word, which appears to be the most common usage.

**Senate Bill No. 233 Division of Natural Resources, Miscellaneous Permits and Licenses, 58 CSR 64**

The amendments revise Miscellaneous Permits and Licenses rules. Specifically, revisions to the rule strike language limiting shoot-to-retrieve field trials in counties wherein Sunday hunting is legal. (See Page 19) New language is added to state that “Sunday hunting is legal in accordance with W.Va. Code §20-2-5.” This is as a result of legislation passed in 2017.

**Senate Bill No. 221 Division of Labor, Zipline and Canopy Tour Responsibility Act, 42 CSR 10**

The proposed rule incorporates House Bill 2948, which require the Division to take final action on an uncontested application for a permit to operate a zipline or canopy tour within 30 days of receipt of a complete application or within 90 days if the application is contested.

The proposed rule also clarifies requirements regarding information that must be included in a permit application to operate a zipline or canopy tour, and it includes a new section that provides for the issuance of a cease and desist order to any person operating a zipline or canopy tour without a permit.

**Senate Bill No. 222 Division of Labor, Bedding and Upholstered Furniture, 42 CSR 12**

Economic Impact on Revenues of State Government:

The Division estimates that, upon full implementation of the fee increases in FY2019, the issuance of permits and registration certificates will generate \$513,450.00 in revenue.

The Division does not anticipate any increase on the costs of state government.



Economic Impact on the State or Its Residents:

The majority of permits and registration certificates are issued to individuals and businesses that do not reside in West Virginia. For those permits and registration certificates that are issued to West Virginia individuals and businesses, there will be a fee increase to \$90.00.

The proposed rule incorporates the provisions of House Bill 2948 passed during the 2017 regular legislative session, which sets time frames for taking final action on an application for a sterilization permit within 30 days of receipt of an uncontested application or within 90 days of receipt of a contested application. The proposed rule also incorporates the provisions of Senate Bill 419, passed during the 2017 regular legislative session, increased the annual fee for the issuance of registration certificates to manufacturers, renovators, and upholsters of bedding materials to \$90.00, and increased the annual permit fee for sterilizers of bedding to \$90.00 and added a \$25.00 late fee charged for renewal of a registration certificate or sterilization permit.

**Senate Bill No. 223 Division of Labor, Amusement Rides and Amusement Attractions Safety Act, 42 CSR 17**

The proposed rule incorporates House Bill 2948, which requires the Division to take final application for a permit to operate within 30 days if the application is uncontested or within 90 days if the application is contested. The proposed rule defines several new terms, clarifies the requirements for information that must be included in a permit application to operate an amusement ride or attraction, clarifies the requirements for authorizing the inspection of amusement rides or attractions, adds a section describing the privileges, requirements and responsibilities of all categories of inspectors, adds a section establishing grounds and due process for the suspension or revocation of a certificate of competency issued to all categories of inspectors, and makes some technical changes and corrections.

**Senate Bill No. 224 Division of Labor, Elevator Safety Act, 42 CSR 21**

Economic Impact on Revenues of State Government:

The Division of Labor currently issues approximately 5,000 certificates of operation annually, and estimates that the annual fee increase from \$50.00 to \$90.00 will generate an additional \$200,000 per year.

The Division does not anticipate an increase in the costs of state government.

Economic Impact on the State or Its Residents:

Elevator owners or operators will be responsible for the increase in fees for the issuance of certificates of operation.

This proposed rule modifies an existing Labor rule which governs the competency and certification of inspectors, the registration and inspection of elevators, the issuance of certificates of operation, fees, permits for repair and enforcement and penalties.

The proposed rule incorporates the provisions of Senate Bill 419, passed during the 2017 regular legislative session, which amended W.Va. Code §21-3C-11(b) by authorizing a fee increase not to exceed \$90.00 for the issuance of a certificate of operation, to be set by legislative rule. The proposed rule also includes some new definitions, clarifies the requirements for the inspection and safety testing for elevators, includes provisions concerning non-compliance with ASME codes, includes grounds for the suspension or revocation of an inspector's certificate of competency, and includes some technical corrections.

### **Senate Bill No. 225, Division of Labor Employer Wage Bonds, 42 CSR 33**

This proposed rule incorporates Senate Bill 224 to the wage bond provisions in W.Va. Code §21-5-14 and §21-5-15. The modifications revise the time period that a covered employer must post a wage bond from five years to one year. Further, the modifications add employer exemptions and update the Division's procedures for the release of wage bonds.

### **Senate Bill No. 226, Division of Labor, Registration of Service Persons and Service Agencies, 42 CSR 35**

#### Economic Impact on Revenues of State Government:

There are currently 278 voluntarily registered services agencies and 1600 voluntarily registered service persons in West Virginia. The proposed rule sets a \$90 annual registration fee for a service agency and a \$50 annual registration fee for service persons. The estimated revenue from these fees for FY2018 is \$52,510.00, and upon full implementation in FY2019, \$105,020.00.

Senate Bill 419, passed during the 2017 regular legislative session, amended W.Va. Code §47-1-8(b) by authorizing the Division of Labor to charge annual fees for the voluntary registration of service persons and service agencies and to set the fees by legislative rule.

However, the House of Delegates amended this rule to bring it in conformity with the passage of House Bill 4401, 2018 Regular Session, which removed the ability for the Division of Labor to assess fees. House Bill 4401 was necessary due to the Division being funded by general revenue.

**Senate Bill No. 227, Division of Labor, Registration of Weighing and Measuring Devices Used By Businesses In Commercial Transactions, 42 CSR 36**

Economic Impact on Revenues of State Government:

The Division estimates that the total revenue for the registration of all types of scales in FY2018 will be \$369,875.00, and upon full implementation in FY2019, \$739,750.00.

The Division estimates that the total revenue for the registration of all types of meters in FY2018 will be \$404,200.00 and upon full implementation in FY2019, \$808,400.00.

The Division estimates that total combined revenue for both scales and meters for FY2018 is \$774,075.00 and for FY2019, \$1,548,150.00.

Senate Bill 419, passed during the 2017 regular legislative session, amended W.Va. Code §47-1-21 by authorizing the Division of Labor to charge annual fees for the registration of weighing and measuring devices used in commercial transactions, and to set the fees by legislative rule.

However, the House of Delegates amended this rule to bring it in conformity with the passage of House Bill 4401, 2018 Regular Session, which removed the ability for the Division of Labor to assess fees. House Bill 4401 was necessary due to the Division being funded by general revenue.

**Senate Bill No. 228 Miners Health Safety and Training, Operating Diesel Equipment in Underground Mines in WV, 56 CSR 23**

During the 2015 legislative session, the Legislature passed Senate Bill 357. Senate Bill 357 (codified as W. Va. Code 22A-2A-301(a), abolished the West Virginia Diesel Commission and transferred its duties and responsibilities to the Director of the Office of Miners Health, Safety and Training. Senate Bill 357 gave the power and authority to propose legislative rules.

During the 2017 legislative session, the Legislature passed Senate Bill 687 (Codified at S.B. 22A-2A-1001), which mandated the Director to revise these rules and to make nine (9) specific changes as a Miners Health, Safety and Training rule. The Director incorporated those (9) specified changes into the WV Diesel Commission.

The proposed rule: adds a new subsection that permits a mine operator to replace a filter or catalyst of the same make and model without contacting the office of miners' health, safety and training; provides that only qualified mechanics authorized by the

engine manufacturer or ASE certified diesel mechanics may repair or adjust fuel injection systems, engine timing or exhaust emissions control and conditioning systems; requires all used intake air filters, exhaust diesel particulate matter filters and engine oil filters to be placed in their original containers or other suitable enclosed containers and be removed from the underground mine to the surface no less than once in a 24 hour period; requires records of emissions tests, 200 hour maintenance tests and repairs be countersigned once each week by the certified mine electrician or mine foreman; with respect to replacing engine oil and filters, requires an independent analysis be conducted of the engine oil; removes requirement that a portable carbon monoxide (CO) sampling device be installed into the untreated exhaust gas coupling provided in the operator's cab; modifies the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes to every thirty seconds for ninety seconds; modifies the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes to every thirty seconds for ninety seconds; modifies the alternative condition by which equipment fails under 196 CSR 1-21, to omit the reference to the average CO reading for untreated exhaust gas is greater than twice the baseline; and removes the requirement for eight (8) hours of annual diesel equipment operator refresher training separate from that required by MSHA regulations.

**Division of Energy, Community Development Assessment and Real Property Valuation Procedures for Office of Coalfield Community Development, 207 CSR 1**

This rule is being repealed because the Division of Energy no longer exists.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** March 10, 2018

**ACTION BY GOVERNOR:** Signed March 21, 2018

# Senate Bill 237

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Authorizing the Department of Revenue promulgate legislative rules.

**CODE REFERENCE:** §§64-7-1-3 (Amends and Reenacts)

### **SUMMARY:**

This bill contains seven Department of Revenue rules which constitute Bundle 7.

### **Senate Bill No. 237 State Tax Department, Farm-To-Food Bank Tax Credit, 110 CSR 13DD**

Legislation enacted during the 2017 Regular Session created a tax credit against personal income or corporate income taxes for donations of edible agricultural products to nonprofit West Virginia food programs. Beginning in 2018, farming taxpayers are eligible for a tax credit equal to ten percent (10%) of the value of donated agricultural products, but not to exceed \$2,500 during a taxable year. The statute limits the overall amount of tax credits per fiscal year to \$200,000 per year.

The proposed rule was required by statute and provides guidance on the administration and use of the new tax credit.

The House of Delegates amended this rule by removing two sections that refer to value added products at the request of the State Tax Department. This change was necessary to bring the Farm-to-Food Bank Tax Credit in conformity with a similar rule promulgated by the Department of Agriculture.

### **Senate Bill No. 238 State Tax Department, Payment of Taxes by Electronic Funds Transfer, 110 CSR 10F**

The proposed rule sets the threshold amount for requiring a taxpayer to file taxes electronically at \$25,000 in tax liability paid during the preceding tax year, as required by legislation enacted during the 2015 Regular Session. The proposed rule also specifies which taxes are subject to the electronic filing requirement.

### **Senate Bill No. 239 State Tax Department, Property Transfer Tax, 110 CSR 22**

The proposed rule incorporates the new rate of fee counties may charge for recordation or transfer of deeds and other defined documents (a “transfer tax”), pursuant to a new statutory fee enacted during the 2017 Regular Session. Prior to the statutory

change, a county could implement a transfer tax of up to \$1.10 per \$500 of value to be paid to the County Clerk when a deed (or other document transferring the property) is recorded. The 2017 legislation authorizes a County Commission to increase this fee to \$1.65 per \$500 of value, and the amendments to the rule reflect that statutory change. The proposed rule also updates outdated language, indicating that the State Auditor, not the Tax Commissioner, is the Chief Inspector and Supervisor of local government pursuant to legislation enacted in 1999.

### **Senate Bill No. 240 State Tax Department, Municipal Sales and Service and Use Tax Administration, 110 CSR 28**

The proposed amendments to the rule clarify requirements and establish additional guidelines as to how a municipality must enforce a municipal sales and use tax. The rule addresses those municipalities enacting ordinances to collect taxes based on home rule authority, as well as municipalities enacting ordinances to collect statutorily authorized pension relief municipal sales and use taxes. The amendment establishes requirements for content that municipalities must include in ordinances imposing such taxes and provides model ordinances in an appendix to the rule. The amendment provides municipalities with two possible effective dates for an ordinance imposing a municipal sales and use tax, following a statutorily required period of 180 days' notice to the Tax Commissioner. The amendment also creates requirements for giving notice to the Tax Commissioner when a municipality changes its boundaries. Additionally, the amendment allows municipalities that impose a business and occupation tax to enter into a memorandum of understanding with the Tax Commissioner allowing the municipality to audit businesses for compliance and share those audit findings with the Tax Commissioner. The amendment also adds clarifying language throughout the rule, makes technical corrections to the rule, and deletes obsolete language from the rule.

### **State Tax Department, Personnel Rule for the Tax Division, 110 CSR 42**

The proposed rule is in response to passage of Senate Bill 2003 during the 2017 2<sup>nd</sup> Executive Session, which gives the Division flexibility in hiring outside of the Division of Personnel Rules. It requires the Tax Commissioner to prepare, maintain, and revise a comprehensive classification plan for all positions in the classified and classified exempt service of the Tax Division. It states that the Commissioner may request approval from the Personnel Board to eliminate or modify existing classes of positions or create new classes of positions. It gives the Commissioner sole authority for the classification process.

The Commissioner and the Board, in consultation with the Secretary of Revenue, are to prepare any revisions to the pay plan and submit them to the Governor for approval. It requires the pay plan to include a market rate for each grade which is to be established by the commissioner to approximate the market midpoint pay level among southeastern state governments selected by the Commissioner. The pay plan or revised pay plan only becomes effective upon approval by the Governor.

This rule allows the Commissioner to authorize an appointment at a rate above the market rate when he or she can substantiate severe or unusual recruiting difficulties for

the job class. Upon adoption of a new plan, the Commissioner must have an implementation plan which assures incumbents in the classified service receive equal treatment based on sound compensation practices.

The Division may hire any person listed on the register for employment as an Auditor, Revenue Agent or Investigator, 1-3 without regard to the person's position on the applicable register. The rule also allows for six-month provisional appointments under certain circumstances, as well as temporary appointments for up to 1,000 hours in a 12 month period. It gives the Division greater flexibility in filling vacancies.

### **Senate Bill No. 235 Lottery Commission, State Lottery Rules, 179 CSR 1**

As proposed, the amendments to the existing rule would: 1) authorize the Lottery Commission to enter into a Memo of Understanding (MOU) with the Division of Motor Vehicles to continue receiving DMV records for background checks of employees, vendors and licensees; 2) reduce the installation fee assessed for traditional lottery retailer licensure from \$500 to \$250; and 3) revise the weekly sales average threshold that must be met over a 10 week period to avoid a weekly service fee greater than \$5.00.

### **Senate Bill No. 236 Racing Commission, Thoroughbred Racing, 178 CSR 1**

The proposed rule regulates all aspects of Thoroughbred Racing in West Virginia. The proposed amendments, which were modified by the Commission after public comment, would affect provisions in the following 10 specific areas of the rule:

1. Prohibit Racing Commission members, Commission employees and track management permit holders from wagering on West Virginia races;
2. Adopt the most recent version of the Association of Racing Commissioners International (RCI) Model Rules related to classification of substances that may be found in a horse and permissible post-race testing thresholds for therapeutic medications used in horse racing;
3. Increase permit fees for racing participants effective calendar year 2019;
4. Amend provisions of the rule related to permit holder drug testing to provide safeguards for permit holders in the testing process;
5. Revise the rule authorizing the revocation, etc., of a permit upon the sale of a horse for slaughter in certain circumstances, or upon certain instances of animal cruelty;
6. Require a jockey's agent to have the consent of the trainer before naming the jockey to ride on the trainer's horse;

7. Revise the rule governing the entry of horses with common ties of ownership or training in races;
8. Revise the rule prohibiting horse scratched from a race because of physical disability or sickness from being entered in another race;
9. Revise the rule regulating the eligibility of a horse to start a race when on certain lists; and
10. Substantially adopt an RCI Model Rule related to placement of a horse on the Racing Commission's Veterinarians List for a rest/recuperation period when the horse is found unfit to race.

The fee increase is estimated to increase special revenue by \$300,000 per full calendar year.

**DATE OF PASSAGE:** February 26, 2018

**EFFECTIVE DATE:** February 26, 2018

**ACTION BY GOVERNOR:** Signed March 6, 2018



# Senate Bill 273

## COMMITTEE SUBSTITUTE TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Reducing use of certain prescription drugs.

**CODE REFERENCE:** §30-3-14, §§30-3A-1-4, §30-4-19, §30-5-6, §30-7-11, §30-8-18, §30-14-12a, §30-36-2, §60A-2-21, §30-60A-9-4, §30-9-5 and §60A-9-5a (Amends and Reenacts); §§16-52-4-9 (New)

### **SUMMARY:**

This bill creates the Opioid Reduction Act. The bill defines terms. The bill provides for an advance directive to allow persons to voluntarily request not to be prescribed or treated with an opioid. The bill further requires that a practitioner must counsel a patient prior prescribing to inform them of the option to request a lesser quantity of any opioid prescribed and to inform them of the risks associated with the prescribed opioid.

The bill sets forth the following limitations regarding opioid prescription:

1. After an Emergency Room visits, a four-day supply may be prescribed;
2. After an urgent care visit, a four-day supply may be prescribed, but a seven-day supply may be prescribed if there is a medical rationale for more than a four-day supply. The medical rationale must be documented in the medical record.
3. For a minor, a three-day supply may be prescribed after a required discussion with the parents or guardian;
4. A dentist or optometrist may prescribe a three-day supply;
5. A physician may not issue more than an initial seven-day supply; and
6. A veterinarian may not issue more than an initial seven-day supply.

The Committee Substitute also codifies a current legislative rule requirement, that Schedule II drugs may be prescribed for 30 days at a time with two additional prescriptions for 30 days; however, for each subsequent prescription, the prescribing practitioner must access the Controlled Substances Monitoring Database and examine the patient after 90 days.

There is also a requirement that the practitioner and a patient execute a narcotics contract for prescribing any Schedule II drugs. The contract is required to provide that the patient will only seek these drugs from the physician who is prescribing them, that they will only have them filled at one pharmacy of their choosing, that if in emergency situations they are administered a Schedule II drug, they will notify the doctor within 24 hours. Breaking the contract could result in the termination of the patient/doctor relationship or in the physician discontinuing prescription of Schedule II drugs.

### **Definition of a Pain Clinic.**

Current law provides that if more than 50% of the patients of a medical practice are being prescribed a controlled substance, the medical practice is classified as a pain clinic. To make certain drugs that are alternatives to opioids available, this bill provides that only the percentage of patients prescribed Schedule II controlled substances counts toward a medical practice's classification as a pain clinic.

### **Initial Prescription:**

Prior to issuing an initial prescription, a practitioner is required to conduct and document a complete medical history. The practitioner must also conduct and document a physical examination, develop a treatment plan, and access the Controlled Substances Monitoring Database.

### **Subsequent Prescription:**

The bill sets out requirements for subsequent prescription. These requirements include that the patient has knowledge that a prescription is not an initial prescription, that the practitioner determines the opioid is necessary and appropriate, and that the prescription does not present undue risk of abuse or addiction. The practitioner is also required to discuss the risks of addiction and overdose, the reasons why the prescription is necessary, and alternative treatments and general risks including potential drug and alcohol interactions. Compliance with these requirements must be recorded in the patient's medical record.

### **Third Prescription:**

A third prescription requires a practitioner to consider referral to a pain clinic or a pain specialist, however, the patient may opt to remain a patient of the practitioner. If the relationship continues, the practitioner is required to review the course of treatment every three months to access new information and progress, assess the patient for dependence and document the same, make efforts to stop using or decrease the dosage of the controlled substance unless contraindicated, try other drugs or treatment options and document the same, and review the Controlled Substances Monitoring Database.

### **Exceptions:**

There are specific exceptions to limitations on opioid prescription for new patients who are in active cancer treatment, hospice care, residents of long-term care facilities, or being prescribed medication in rehabilitation.

There is also an exception which allows for a seven-day supply of opioids after surgery, within the medical discretion of the practitioner.

The bill provides that alternative methods shall be prescribed or recommended as an alternative to prescribing an opioid. These methods include physical therapy, occupational therapy, massage therapy, and chiropractic services. There is also a provision requiring insurance coverage for these therapies.

Finally, the bill provides that a violation of the article by a practitioner may be grounds for a professional disciplinary action.

### **Controlled Substances Monitoring Database (CSMD):**

The CSMD has been updated to require reporting of Schedule V drugs. Additionally, the Board of Pharmacy is required to share a quarterly report with the licensing boards of all prescribers have been granted prescriptive authority and the Office of Drug Control Policy, identifying abnormal or unusual prescribing practices. Any practitioner prescribing a benzodiazepine is required to access the database prior to writing the prescription. Any veterinarian who prescribes an opioid is also required to access the database.

### **Miscellaneous Provisions:**

The bill exempts Board of Pharmacy expenditures of grant money in relation to substance use or controlled substances from the state's general purchasing laws.

Finally, the bill clarifies that auricular acupuncture is not considered acupuncture when used in chemical dependency treatment programs. The procedure is an alternative medicine based on the theory that the ear reflects the entire body and treatment is centered on the auricle or outer portion of the ear.

**DATE OF PASSAGE:** March 9, 2018

**EFFECTIVE DATE:** June 7, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 275

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to tax on purchases of intoxicating liquors

**CODE REFERENCE:** §11-10-5d, §60-3-9d, and §60-3A-21 (Amends and Reenacts)

### **SUMMARY:**

The bill requires that, effective July 1, 2018, the five percent excise tax on the sale of intoxicating liquors and wine be remitted to a municipality when the sale is sourced within the corporate boundaries of the municipality, and to a county when the sale is sourced within a county, but outside of the corporate limits of a municipality. Under current law, tax collected within a mile of the corporate limits of a municipality is remitted to the municipality.

The bill requires the Tax Commissioner to make records available to a county related to alcohol excise tax collected in or remitted to the county or a municipality within the county. The bill also requires the Tax Commissioner to make records available to a municipality related to: 1) alcohol excise tax collected in and remitted to the municipality, and 2) alcohol excise tax that is collected in the county, but outside the corporate boundaries of another municipality, and alcohol excise tax remitted to that county.

Finally, the bill applies the Code's local sourcing rules for collection and payment of sales tax to the collection and sale of the excise tax.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018 (with internal effective date of July 1, 2018)

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 290

## COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to DEP standards of water quality and effluent limitations.

**CODE REFERENCE:** §22-11-6 (Amends and Reenacts)

### **SUMMARY:**

This bill prevents the DEP from setting benchmarks for substances or conditions present in storm water discharges that are more restrictive than the water quality criterion, the federal benchmark, the chronic aquatic life water quality criterion or the ambient aquatic life advisory concentration. The bill also requires the DEP to set benchmarks for storm water with the permittee that utilize mixing zones appropriate for relevant conditions. Finally, the bill requires the DEP to develop guidance for determining how benchmarks in permits demonstrate the adequacy of storm water best management practices.

**DATE OF PASSAGE:** March 8, 2018

**EFFECTIVE DATE:** June 6, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 307

## COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Declaring fundraising on state highway or roadway by volunteer fire department is not obstruction or nuisance.

**CODE REFERENCE:** §17-16-1 (Amends and Reenacts)

### **SUMMARY:**

The bill creates an exception to West Virginia Code §17-16-1, which defines road obstructions within the bounds of public rights-of-way and declares them a public nuisance for which an injunction may be sought. This bill provides that volunteer fire department fundraising in the form of “boot drives” and “bucket brigades” does not constitute a road or highway obstruction under the following circumstances:

- 1) The fundraising activity is conducted during daylight hours;
- 2) The fundraising activity is conducted at a signal-controlled or all-way stop intersection; and
- 3) The fundraising activity takes place at a location approved by the appropriate municipal law enforcement agency.

**DATE OF PASSAGE:** March 6, 2018

**EFFECTIVE DATE:** June 4, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018

# Senate Bill 327

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Providing extortion of anything of value, including sexual contact, subjects person to criminal penalty.

**CODE REFERENCE:** §61-2-13 (Amends and Reenacts)

### **SUMMARY:**

Existing law criminalizing extortion does not contemplate extortion to obtain sexual contact or images of intimate parts. This bill amends the Code to include threats to obtain sexual conduct or the release of intimate body images in the crime of extortion. The bill makes sexual extortion a felony, subject to one to five years confinement, and an attempt to commit sexual extortion a misdemeanor, subject to up to a year of confinement.

**DATE OF PASSAGE:** March 5, 2018

**EFFECTIVE DATE:** June 3, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018

# Senate Bill 347

## COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to operation of motorboats.

**CODE REFERENCE:** §§20-7-11-14, §20-7-18, §20-7-18d, and §20-7-19 (Amends and Reenacts)

**SUMMARY:**

This bill clarifies and elaborates on existing requirements regarding motorboat numbering, lighting, fire extinguishers, engine bilges and flotation devices. The bill also modifies numbering requirements for vessels that operate in other states for the majority of the time. The bill defines such states as the “state of principal operation.” The bill amends the fee schedule for motorboat registration by exempting motorboats propelled by less than 70 pounds of thrust from the numbering requirement. The bill also modernizes certain language and authorizes rulemaking.

**DATE OF PASSAGE:** March 8, 2018

**EFFECTIVE DATE:** June 6, 2018

**ACTION BY GOVERNOR:** Signed March 22, 2018



# Senate Bill 348

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

**SHORT TITLE:** Allowing for disposal of service weapons of special DNR police officers.

**CODE REFERENCE:** §20-7-1d and §20-7-1f (Amends and Reenacts)

### **SUMMARY:**

This bill allows the Chief of the Section of Parks and Recreation and the Chief of the Wildlife Resources Section of the Division of Natural Resources to sell special natural police officer service weapons, that are being replaced due to routine wear, to any active or retired special natural resources police officer. The weapons must be sold at fair market value, with the proceeds from any sales used to offset the cost of the new weapon. The bill also changes the term “revolver,” in reference to natural resources police officer and special natural police officer firearms, to “weapon.” Finally, the bill specifies that provisions allowing sale of a weapon do not apply to weapons obtained through the federal donation program operated by the West Virginia State Agency for Surplus Property.

**DATE OF PASSAGE:** March 2, 2018

**EFFECTIVE DATE:** May 31, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018

# Senate Bill 350

## STRIKE AND INSERT AMENDMENT

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**SHORT TITLE:** Eliminating obsolete requirement that Lottery Commission file racetrack video lottery game rules with Secretary of State.

**CODE REFERENCE:** §29-22A-5 (Amends and Reenacts)

### **SUMMARY:**

This bill eliminates the obsolete requirement that the Lottery Commission file racetrack video lottery game rules with the Secretary of State's office.

Currently, there are approximately 1,185 legislative exempt lottery game rules filed with Secretary of State. The bill also requires the Secretary of State to post a statement on its website indicating that the rules for video lottery games are available for review at the Lottery Commission offices and providing contact information for the Commission.

**DATE OF PASSAGE:** March 5, 2018

**EFFECTIVE DATE:** March 5, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018

# Senate Bill 351

## INTRODUCED BILL

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**SHORT TITLE:** Permitting ballot commissioners serve while candidates for certain offices

**CODE REFERENCE:** §3-1-19 (Amends and Reenacts)

### **SUMMARY:**

This bill allows ballot commissioners to be candidates for political party executive committees (district, county, and state) or candidates to serve as delegates to a national party convention while continuing to serve as ballot commissioners.

**DATE OF PASSAGE:** March 5, 2018

**EFFECTIVE DATE:** March 5, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018

# Senate Bill 359

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Authorizing Supreme Court establish curricula for mental hygiene commissioners and certain magistrates.

**CODE REFERENCE:** §27-5-1 (Amends and Reenacts)

### **SUMMARY:**

This bill eliminates the requirement that the orientation course for new mental hygiene commissioners be at least three days in length, eliminates the express requirement that the orientation course include instructions on manifestations of mental illness and addiction, and authorizes the West Virginia Supreme Court of Appeals to develop curriculum for the new training program.

**DATE OF PASSAGE:** March 7, 2018

**EFFECTIVE DATE:** March 7, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018

# Senate Bill 360

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Clarifying oil and gas permits not be on flat well royalty leases.

**CODE REFERENCE:** §22-6-8 (Amends and Reenacts)

### **SUMMARY:**

In 1982, the West Virginia legislature enacted West Virginia Code §22-6-8, more commonly known as the “flat-rate statute.” The flat-rate statute governs oil and gas leases that provide for flat-rate royalties. The legislature found that such leases provided “wholly inadequate compensation,” were “unfair, oppressive, [and] work[ed] an unjust hardship on” owners of mineral interests, and “unreasonably deprive[d] the economy of the state of West Virginia of the just benefit of the natural wealth of th[e] state.”

To remedy that unfairness, the statute provides that a natural gas company cannot obtain a drilling permit unless it files an affidavit certifying that “it shall tender to the owner of” the mineral interests “not less than one eighth of the total amount paid to or received by or allowed to the owner of the working interest at the wellhead for the oil or gas so extracted, produced or marketed.” The term “at the wellhead” has been subject to several judicial interpretations.

Recently, in *Leggett v. EQT Production Co.*, 800 S.E.2d 850 (W.Va. 2017), the West Virginia Supreme Court interpreted “at the wellhead” to permit the deduction of post-production expenses from a lessor’s royalty under old flat-rate leases.

Under this bill, the language of the statute is revised to read that a permit applicant shall pay to the owner of the oil or gas in place not less “than one eighth of the gross proceeds, free from any post-production expenses, received at the first point of sale to an unaffiliated third-party purchaser in an arm's length transaction for the oil or gas so extracted, produced or marketed before deducting the amount to be paid to or set aside for the owner of the oil or gas in place, on all such oil or gas to be extracted, produced or marketed from the well.”

The bill nullifies the *Leggett* decision. The new statutory language more closely resembles the “marketable product doctrine” rather than “net back method.”

**DATE OF PASSAGE:** March 2, 2018

**EFFECTIVE DATE:** May 31, 2018

**ACTION BY GOVERNOR:** Signed March 9, 2018

# Senate Bill 395

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Providing for judicial review of appealed decisions of Air Quality Review Board, Environmental Quality Board and Surface Mine Board.

**CODE REFERENCE:** §22B-1-9, §22B-2-3, §22B-3-3, and §22B-4-3 (Amends and Reenacts)

### **SUMMARY:**

Current law provides that judicial review of an order issued by an environmental board following an appeal hearing will take place in the Circuit Court of Kanawha County. This bill would by-pass the circuit court and send appeals directly to the West Virginia Supreme Court of Appeals. The bill requires that a perfected petition of appeal must be filed with the Supreme Court within 30 days of the order's entry. The bill also states that an order is not stayed pending appeal.

Current law requires the Chief or Director to use the Attorney General as counsel for appeals, unless the Attorney General gives the Chief or Director prior written approval to hire outside counsel. This bill eliminates the requirement for use of the Attorney General as counsel and allows the hiring of outside counsel without approval of the Attorney General.

Finally, this bill amends the sections of the Code relating to the Air Quality Board, the Environmental Quality Board, and the Surface Mine Board to reflect that appeal will be made directly to the Supreme Court.

**DATE OF PASSAGE:** March 6, 2018

**EFFECTIVE DATE:** March 6, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018

# Senate Bill 397

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Creating crime of impersonating blind or disabled person.

**CODE REFERENCE:** §5-15-9 (New)

**SUMMARY:**

This bill criminalizes misrepresenting oneself as disabled or misrepresenting that a non-service animal is a service animal. Conviction of a first offense of the new crime results in a misdemeanor, punishable by a fine of up to \$200 or 10 days confinement in jail, or both a fine and confinement. Conviction of a second and subsequent offenses results in a misdemeanor and a fine of up to \$1,000 or 30 days confinement in jail, or both a fine and confinement.

**DATE OF PASSAGE:** March 5, 2018

**EFFECTIVE DATE:** June 3, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018



# Senate Bill 401

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Requiring specified coverage in health benefit plans for treatment of substance abuse disorders.

**CODE REFERENCE:** §33-15-4p, §33-24-7q, §33-16-3bb, §33-25-8n, and §33-25A-8p (New)

### **SUMMARY:**

The purpose of this bill is to require insurance carriers offering policies in this state to provide coverage for substance use recovery. The Public Employees Insurance Agency is not subject to the provisions of this bill.

The bill defines key terms. These include terms such as “insurer,” “physician or psychiatrist,” and “substance use disorder.” The bill provides that after January 1, 2019, all policies issued in this state shall provide for in and outpatient treatment for substance use disorder. There are some parameters:

- 1) The services must be in-network – with exceptions;
- 2) The services must be at the same level as other medical services;
- 3) The services must be prescribed by an appropriate medical professional; and
- 4) The services must be provided by licensed health care professional or certified substance use disorder providers.

Prior authorization and prepayment is not permitted for the first 180 days of a plan year. If there is no in-network facility, the insurer is required to provide exceptions in an out-of-network facility. If an in-network facility becomes available, the person may be transferred. Benefits are subject to concurrent or retrospective review of medical necessity.

There are required procedures for when the insurer determines that inpatient care is no longer needed. These include notice within 72 hours and the right to file for an internal expedited review which must take place within 72 hours. If the internal review is adverse to the patient, he or she may seek review by an independent utilization review organization, which also has 72 hours to make a decision. There are provisions to continue the inpatient care until all appeals are settled.

The Insurance Commissioner is granted rulemaking authority to set up a procedure for the expedited review. There are provisions and timelines for retrospective review of medical necessity for outpatient or partial hospitalization.

Finally, the bill provides that medically necessary outpatient prescription drugs to treat substance use disorder are permitted without any prior authorization. There is also a provision stating that other related or unrelated diagnoses beyond substance use disorder may not be used to reduce or deny benefits.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 404

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to sex offender registry information.

**CODE REFERENCE:** §15-12-2 and §15-12-4 (Amends and Reenacts)

### **SUMMARY:**

This bill brings the West Virginia's sex offender registry into compliance with the federal "Adam Walsh Act," by expanding the information a registrant must submit to the state police when registering or re-registering. Specifically, the bill requires that a person must provide the following additional information when registering as a sex offender:

- 1) A copy of the person's valid driver's license or government-issued identification card, which may be a tribal identification card;
- 2) A photocopy of the person's passport or any immigration documents;
- 3) A photocopy of any professional licensing information that authorizes the person to engage in an occupation or carry out a trade or business; and
- 4) Identifying information, including the make, model, serial number, and a photograph of any unmanned aerial vehicle owned or operated by registrant.

The bill also mandates life-time registration for a sex offender who believed or perceived the victim is a minor. Current law only requires life-time registration when the victim of the registrant is actually a minor.

**DATE OF PASSAGE:** March 7, 2018

**EFFECTIVE DATE:** June 5, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 412

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to authority of county litter control officers.

**CODE REFERENCE:** §7-1-3ff and §30-29-1 (Amends and Reenacts)

**SUMMARY:**

Currently, county commissions may hire litter control officers to enforce violations of litter violations under Chapter 22 of the West Virginia Code; however, county litter control officers currently do not have the authority to enforce any other litter crimes defined by other chapters of code. This bill allows litter control officers, who are also certified law enforcement officers, to enforce all applicable litter laws regardless of the chapter of code establishing the violation.

**DATE OF PASSAGE:** March 6, 2018

**EFFECTIVE DATE:** June 4, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 415

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Permitting wagering on certain professional or collegiate sports events authorized as West Virginia Lottery Sports Wagering activities.

**CODE REFERENCE:** §§29-22D-1-24 (New)

### **SUMMARY:**

The purpose of this bill is to enact a new article, permitting and regulating sports wagering, or “sports betting” at existing casinos in the state. Sports betting refers to wagering on the results of professional or collegiate sports or athletic events, as well as certain motor races or other special events designated by the Lottery Commission.

### **I. Trigger provision: repeal of PASPA.**

One of the key provisions in Senate Bill 415 provides “that it is the intent of the Legislature to authorize sports wagering when federal law is enacted or repealed or a federal court decision is issued that permits a state to regulate sports wagering, as such power is reserved to the states.” §29-22D-2(b)(3). This provision is an acknowledgement that the West Virginia Lottery Sports Wagering Act cannot become effective until the U.S. Supreme Court clears the way by ruling the Professional and Amateur Sports Protection Act unconstitutional.

#### **A. PASPA.**

In 1992, Congress enacted the Professional and Amateur Sports Protection Act (“PASPA”), 28 U.S.C. §3701 *et seq.*, “to stop the spread of State-sponsored sports gambling.” S. Rep. No. 248, 102d Cong., 1st Sess. 4 (1991) (Senate Report). PASPA’s key provision provides that States may not:

sponsor, operate, advertise, or promote, license, or authorize by law or compact [. . .] a lottery, sweepstakes, or other betting, gambling, or wagering scheme based directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

28 U.S.C. § 3702. PASPA’s restrictions apply separately to states and to private parties. States (and other governmental entities) may not “sponsor, operate, advertise, promote, license, or authorize by law or compact,” sports gambling schemes. 28 U.S.C. §3702(1). A separate provision prohibits private parties from sponsoring, operating, advertising, or promoting such schemes “pursuant to the law or compact of a governmental entity.” 28 U.S.C. §3702(2). Both restrictions apply to any “lottery, sweepstakes, or other betting, gambling, or wagering scheme” based on “competitive games in which amateur or professional athletes participate.” 28 U.S.C. §3702.

PASPA is not actually a federal ban on sports betting. Instead, it effectively freezes in time state laws in place, as of 1992, by prohibiting states from amending their laws to affirmatively authorize sports betting. Even the individual prohibition only prohibits sports betting “schemes” from operating “pursuant to the law or compact of a governmental entity.”

PASPA contains three relevant exceptions—a “grandfathering” clause that releases Nevada entirely from PASPA’s grip, *see id.* § 3704(a)(2), a clause that permitted New Jersey to license sports wagering in Atlantic City had it chosen to do so within one year of PASPA’s enactment, *see id.* § 3704(a)(3), and a grandfathering provision permitting states like Delaware and Oregon to continue the limited “sports lotteries” that they had previously conducted, *see id.* § 3704(a)(1), which did not include single-game wagering. PASPA provides for a private right of action “to enjoin a violation [of the law] . . . by the Attorney General or by a . . . sports organization . . . whose competitive game is alleged to be the basis of such violation.” *Id.* § 3703.

## **B. Legal Challenge to PASPA.**

New Jersey revised its law in 2014 to partially repeal the state’s ban on sports betting. The 2014 law lifted the betting prohibition only as to certain entities, such as casinos, but the Third Circuit Court of Appeals held the law invalid under PASPA. New Jersey filed a petition for writ of certiorari with the U.S. Supreme Court of Appeals on October 7, 2016, which the Court granted on June 27, 2017. A number of states, including West Virginia, filed amicus briefs in support of New Jersey, arguing that PASPA violates the 10<sup>th</sup> Amendment under the anti-commandeering doctrine. The Supreme Court heard oral argument on December 4, 2017.<sup>1</sup>

## **C. Effective date once PASPA overturned.**

Upon the lifting of PASPA, this new article will permit sports betting to take place. When the federal ban is lifted, the Commission will publish notice of the event in the State Register. Sports wagering is not permitted in this state until such notice is published.

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<sup>1</sup> *See Christopher J. Christie, Governor of New Jersey, et al., Petitioners v. National Collegiate Athletic Association, et al.* (No. 16-476), or *Christie v. NCAA* (available at <https://www.supremecourt.gov/docket/docketfiles/html/public/16-476.html>.)

## **II. Authority of the Lottery Commission.**

The article gives the Lottery Commission the power and authority to regulate sports betting. Included in this authority is the ability to adopt rules, including emergency rules, regulating sports wagering. Regulation of sports wagering operations may include: wagering systems for sporting events; licensing; accounting by operators; record-keeping by operators; payment form for wagers; and promotion of social responsibility in gambling. The commission is required to established minimum internal control standards (MICS) that operators must implement for all sports wagering operations.

## **III. Licenses.**

### **A. Types of Licenses.**

#### **1. Operator's License - §29-22D-6.**

The commission may issue no more than five operator's licenses, and those licenses may only be issued to the five existing casinos in West Virginia, which includes four racetrack casinos (Hollywood Casino at Charles Town Races; Mardi Gras Casino & Resort; Mountaineer Park & Racetrack; and Wheeling Island) and the historic Greenbrier Resort. The application fee for an operator's license is \$100,000. The license lasts for five years and may be renewed upon payment of a \$100,000 renewal fee.

Licensed operators must comply with numerous Lottery Commission requirements, including to:

- Execute a surety bond with the Commission.
- Submit to an annual financial audit.
- Provide office space for the Lottery Commission to perform its regulatory duties.
- Provide an accessible facility that complies with state and federal laws.

In addition to licensing requirements, operators have numerous duties, including to:

- Adopt commission approved house rules. Rules must be posted and available to patrons.
- Report monitor and report suspicious activities in volume or odds swings.
- Report suspicious betting or any violations of state or federal laws.
- Hold the commission harmless in claims arising from the operator's acts or omissions.
- Prevent tampering with wagering and wagering equipment.
- Provide for the security of wagering equipment.
- Ensure that wagering is conducting under employee observation.
- Maintain sufficient cash and other supplies for sports wagering.
- Maintain adequate records.
- Conspicuously post minimum and maximum wagers permitted.

## **2. Management services license - §29-22D-7.**

If an operator chooses to contract with an entity to conduct its sports wagering operation or shares revenue with a non-licensed entity, that entity must obtain a management services license (\$1,000 application fee; annual).

## **3. Suppliers license - §29-22D-8.**

Any entity supplying sports wagering equipment, systems, or other gaming equipment must obtain a supplier's license (\$1,000, annual).

## **4. Occupational license - §29-22D-9.**

Anyone employed to be engaged directly in wagering-related activities must obtain an occupational license (\$100; annual).

## **B. License prohibitions - §29-22D-10.**

The Act forbids the commission from granting any license to an applicant who:

- Has knowingly made a false statement to the commission;
- Has been suspended from operating a gambling operation or had a license revoked;
- Has been convicted of a crime of moral turpitude, a gambling-related offense, a theft or fraud offense, or has demonstrated, either by police record or other satisfactory evidence, a lack of respect for law and order; or
- Is a company or individual who has been directly employed by any illegal or offshore book that serviced the United States, or otherwise accepted black-market wagers from individuals located in the United States.

The commission may deny, suspend, or revoke a license:

- If the applicant or licensee has not demonstrated financial responsibility sufficient to meet the requirements of the proposed enterprise;
- If the applicant or licensee is not the true or sole owner and has not disclosed the other persons who have an ownership interest; or
- If the applicant or licensee sells more than five percent of its voting stock to any person not already determined to have met the qualifications of a licensee.

The commission may not grant a license until it determines that the applicant and each person who controls the applicant meets all the qualifications for licensure. Control is presumed of corporate holding companies, parent companies, and subsidiaries who have the ability to control the applicant's activities or to elect a majority of the applicant's board of directors; persons who hold a beneficial proprietary interest; and key personnel, including any executive, employee, or agent who has power to exercise significant



influence over the applicant's operation. Control is not presumed of lending institutions which hold mortgages or liens acquired in the ordinary course of business.

#### **IV. Fees and Taxes.**

The commission is required and authorized to collect all fees, surcharges, civil penalties, and weekly taxes on sports wagering receipts for deposit into the Sports Wagering Fund, created by this article.

The Sports Wagering Fund is a non-appropriated, special account.

The state will collect 10% of an operator's gross sports wagering receipts, on a weekly basis. Proceeds will be deposited in the Sports Wagering Fund. Negative receipts (due to winnings) may be carried forward.

The 10% privilege tax is in lieu of all other taxes, other than the property tax. The purchase and use of services and equipment directly used in the operation of sports wagering is exempt from sales and use tax, as well as similar municipal or county taxes.

Expenditures by operators on sports wagering systems and equipment qualifies for recoupment from the Racetrack and Historic Hotel Modernization Funds.

Tax credits cannot be taken against the privilege tax, or for any sports wagering investment.

- *Distribution of Sports Wagering Fund is as follows:*
  - The actual costs and expenses of Commission are deducted.
  - The commission retains up to 15% for administrative expenses. A surplus to what is needed may accumulate up to \$250,000. Any amount above \$250,000 is remitted as net profit.
  - The net profit (after the above deductions) is distributed to the State Lottery Fund up to \$15 million.
  - The profit above \$15 million is deposited into the General Fund.

#### **V. Agreements with Other Governments.**

The bill authorizes the Lottery Commission to enter into agreements with other governments allowing persons in the other government's jurisdiction to participate in sports wagering conducted by operators in this state. Agreements must provide for the sharing of revenue with the other governments and comply with other Lottery Commission requirements.

#### **VI. Miscellaneous Wagering Requirements.**

- Only persons of 21 years of age or older may wager.

- The bill expressly allows the Lottery Commission to approve participation in wagering through a licensed gaming facility, using electronic devices and mobile applications or platforms, by persons physically located in this state or in a state participating in a sports wagering agreement with the Lottery Commission,
- Gaming facility employees are prohibited from wagering at an employer's facility.
- Lottery Commission employees are prohibited from wagering at all.
- The Lottery Commission may enter into a memorandum of understanding with the West Virginia State Police for law enforcement services related to gambling at the casinos.
- The new article expressly preempts any local laws preventing sports betting.
- Fantasy sports are specifically exempted from the purview of this article, meaning the new article neither makes participation in fantasy sports a crime or expressly permits it.

## **VII. Civil Penalties.**

For a violation of the article, a person is subject to a fine not to exceed \$50,000. This is not applicable to office pools.

## **VIII. Crimes and Penalties**

The bill creates several new crimes related to sports betting. The committee substitute makes it a felony for an organization, person, or commercial enterprise, *other than a licensed gaming facility*, to conduct sports betting. The felony is punishable: as a first offense, by a fine of \$10,000 or confinement for no more than 90 days, or both; as a second offense, by a fine of no more than \$50,000 and imprisonment for no more than six months, or both; and as a third offense, for a fine of \$25,000 to \$100,000 or confinement for one to years, or both.

The bill makes it a misdemeanor, for a licensee to do any of the following:

- Operate sports wagering without authority.
- Operate sports wagering in unauthorized location.
- Knowingly allow sports wagering to occur on device that has been tampered with
- Employ an individual to conduct wagering who does not have an occupational license.
- Employ a person to act as though he or she is not an agent of the licensee and to encourage participation in wagering.
- Knowingly permit a person under 21 to enter or remain in a wagering area.

- Exchange tokens or other credit for wagering for anything of value, other than money or credits to a sports wagering account.

The misdemeanor is punishable by a fine of up to \$1,000 and up to six months confinement for a person, or a fine of up to \$25,000 if the crime is not committed by a natural person (commercial entity, etc.)

The bill makes it a felony, for a person to do any of the following:

- Attempt to use a thing of value to influence the result of a wagering event.
- Change or alter the normal outcome or reporting of a wagering event.
- Manufacture, sell, possess or distribute a device to violate wagering laws.
- Fraudulently collect any of value from a gaming facility.
- Wager with counterfeit currency or credit.
- Place or aid in placement of wagers using unlawfully acquired knowledge of the outcome of an event.

The felony is punishable by fine of \$5,000 to \$10,000 and confinement for at least one year, but no more than five years, or by both fine and confinement.

Anything of value used to bribe or as incentive to violate the provisions of the article is subject to forfeiture.

#### **IX. Preemption.**

The Act preempts local rules, regulations, or ordinances in conflict with the Article.

#### **X. Exemption from federal law.**

15 U.S.C. § 1172 makes it illegal to import gambling devices to a State unless the State has enacted a law providing for an exemption from the prohibition. The bill specifies the requisite exemption to allow import of sports wagering gambling devices.

**DATE OF PASSAGE:** March 3, 2018

**EFFECTIVE DATE:** March 3, 2018

**ACTION BY GOVERNOR:** None (became law without signature).

# Senate Bill 434

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Specifying documents not subject to discovery in certain proceedings.

**CODE REFERENCE:** § 30-3C-1 and §30-3C-3 (Amends and Reenacts); §30-3C-5 (New)

### **SUMMARY:**

#### **I. General Doctrine of Medical Peer Review Privilege**

Generally, a patient may pursue a civil claim against physicians or other health care providers, called medical liability or medical malpractice claims, alleging a health care provider caused injury or death to the patient through a negligent act or omission.

Peer review privilege precludes disclosure of the proceedings and reports of a medical facility's peer-review committee, which evaluates and oversees quality of patient care and medical services provided by the medical staff and facility.

Peer review doctrine reflects a legislative judgment that external access to peer investigations conducted by staff committees stifles candor and inhibits objectivity. It reflects a legislative judgment that the quality of in-hospital medical practice will be elevated by armoring staff inquiries with a measure of confidentiality

This privilege prevents patient-plaintiffs from obtaining the hospital records prepared in quality review proceedings. All 50 states and the District of Columbia have privilege statutes that protect peer review records of medical staff members. Some states, like Georgia and California, also provide statutory immunity to discovery of peer review records. This protection excludes from discovery, records containing performance reviews and assessments of physicians by their peers, primarily in connection with their practices at hospitals.

#### **II. Federal Regulations**

In the context of long-term care (nursing homes), the federal government has promulgated quality assurance and performance improvement program parameters that focuses on indicators of the outcomes of care and quality of life, 42 CFR 483.75 (a)(1), and asserts a state or HHS may not require disclosure of these records except to confirm compliance.

The Health Insurance Portability and Accountability Act (HIPAA), 45 CFR 164.514(b)(2)(i), is also cited as protecting disclosure of peer review documents.

### **III. West Virginia Doctrine of Medical Peer Review Privilege**

The primary state statutory authority on whether peer review privilege excludes discovery of medical record materials is W.Va. Code §30-3C-1 *et seq.* Confidentiality for peer review organization records stems from W.Va. Code §30-3C-3, which provides that:

The proceedings and records of a review organization are confidential and privileged; not subject to subpoena or discovery proceedings or admissible as evidence in any civil action arising out of the matters which are subject to evaluation and review by such organization; and no person who was in attendance at a meeting of such organization shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such organization or as to any findings, recommendations, evaluations, opinions or other actions of such organization or any members thereof: *Provided*, That information, documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil action merely because they were presented during proceedings of such organization[.]

The "original source" exception provides that documents or records otherwise available from original sources are not immune from discovery because they were merely presented during peer review proceedings.

Determination of which materials are privileged under W.Va. Code §30-3C-1 *et seq.* is essentially a factual question, and the party asserting the privilege has the burden of demonstrating that the privilege applies.

The general procedure for discovering peer review privileged documents requires: 1) that the party seeking documents submits a Rule 34(b) request; 2) if the responding party asserts a privilege, that they file a privilege log identifying the document by name, date, custodian, source, and the basis for the privilege; 3) that the log be provided to the court and opposing party; and 4) that if a motion to compel or motion for protective order is filed, the trial court must hold an *in camera* proceeding to make an independent determination.

### **IV. Changes to Law**

The bill amends W.Va. Code §30-3C-1 to define terms related to Health Care Peer Review Organization Protection:

- “Document” (new term) - any information, data, reports, or records prepared by or on behalf of a health care provider and includes mental impressions, analyses, and/or work product.
- Current definition of “health care professionals” is deleted.

- “Healthcare facility” (new term) - any clinic, hospital, pharmacy, nursing home, assisted living facility, residential care community, end-stage renal disease facility, home health agency, child welfare agency, group residential facility, behavioral health care facility or comprehensive community mental health center, intellectual/developmental disability center or program, or other ambulatory health care facility, in and licensed, regulated, or certified by the State of West Virginia under state or federal law and any state-operated institution or clinic providing health care and any related entity to the health care facility as that term is defined in §55-7B-1 *et seq.* of this code.

- “Health care provider” (new term) - a person, partnership, corporation, professional limited liability company, health care facility, entity or institution licensed by, or certified in, this state or another state, to provide health care or professional health care services, including a physician, osteopathic physician, physician assistant, advanced practice registered nurse, health care facility, dentist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, speech-language pathologist, audiologist, occupational therapist, psychologist, pharmacist, technician, certified nursing assistant, emergency medical service personnel, emergency medical services authority or agency, any person supervised by or acting under the direction of a licensed professional, any person taking actions or providing service or treatment pursuant to or in furtherance of a physician’s plan of care, a health care facility’s plan of care, medical diagnosis or treatment; or an officer, employee or agent of a health care provider acting in the course and scope of the officer’s, employee’s or agent’s employment.

- “Peer review” (amended) - the procedure for evaluation by health care professionals providers of the quality, delivery, and efficiency of services ordered or performed by other health care professionals, including practice analysis, inpatient hospital and extended care facility utilization review, medical audit, ambulatory care review, claims review and patient safety review, preparation for or simulation of audits or surveys of any kind, and all forms of quality assurance/performance improvement whether or not required by any statute, rule, or regulation applicable to a health care facility or health care provider.

- “Professional society” is deleted.

- “Review organization” (amended) - any committee or, organization, individual or group of individuals engaging in peer review, including, without limitation, a hospital medical executive committee and/or subcommittee thereof, a hospital utilization review committee, a hospital tissue committee, a medical audit committee, a health insurance review committee, a health maintenance organization review committee, hospital, medical, dental and health service corporation review committee, a hospital plan corporation review committee, a professional health service plan review committee or organization, a dental review committee, a physicians’ advisory committee, a podiatry advisory committee, a nursing advisory committee, any committee or organization established pursuant to a medical assistance program, the joint commission on accreditation of health care organizations or similar accrediting body or any entity established by such accrediting body or to fulfill the requirements of such accrediting body, any entity established pursuant to state or federal law for peer review purposes, and

any committee established by one or more state or local professional societies or institutes, to gather and review information relating to the care and treatment of patients for the purposes of: (i) Evaluating and improving the quality of health care rendered; (ii) reducing morbidity or mortality; or (iii) establishing and enforcing guidelines designed to keep within reasonable bounds the cost of health care. It shall also mean any hospital board committee or organization reviewing the professional qualifications or activities of its medical staff or applicants for admission thereto, and any professional standards review organizations established or required under state or federal statutes or regulations.

The bill amends W.Va. Code §30-3C-3 to address confidentiality of a review organization. The bill deletes a provision for waiver by an individual authorizing the release of contents pertaining to their own acts or omissions – removing the peer review privilege further removes judicial review of any finding, materials or determination by a peer review organization; and eliminates protective orders to provide confidentiality for records reviewed by the court.

The bill establishes that documents prepared by or on behalf of a health care provider for improving the quality, delivery or efficiency of health care or for credentialing or reviewing health care providers are confidential and privileged and shall not be subject to discovery in a civil action or administrative proceeding. Such documents include, without limitation:

1. Nursing home, as referred to in §55-7B-6(e), incident or event reports, except reports pertaining to the plaintiff of that civil action, or reports of same or similar incidents within a reasonable time frame of the events at issue in the civil action, containing only factual information, but excluding personal identification information;
2. Documents related to review organization proceedings for hiring, disciplining, terminating, credentialing, issuing staff privileges, renewing staff privileges or alleged misconduct of a health care provider;
3. Review organization documents;
4. Quality control documents;
5. Documents satisfying regulatory obligations related to quality assurance and performance improvement; and
6. Reviews, audits and recommendations of consultants or other persons or entities engaged in the performance of peer review.

A person who testifies before a review organization, or who is a member of a review organization shall not be required to testify regarding, or be asked about, his or her testimony before such review organization, deliberations of the review organization, or opinions formed because of the review organization's proceedings.

All peer review proceedings, communications, and documents of a review organization are confidential, privileged, and not subject to discovery in civil or administrative proceedings. However, an individual may be given access to any document used as the basis for an adverse professional review action against him or her, subject to such protective order as may be appropriate to maintain the confidentiality of the information. Privilege is not waived unless the review organization executes a written waiver authorizing the release of such peer review proceedings, communications, or documents.

A new section, W.Va. Code §30-3C-5, provides that information available from original sources are not immune from discovery or use in any civil action because they were included in any report or analysis related to improving the quality, delivery or efficiency of health care or for credentialing or reviewing health care providers. However, no court may compel production of documents contained in peer review files because they were created as part of the peer review process – the document must come from the original source.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 6, 2018

**ACTION BY GOVERNOR:** Vetoed March 28, 2018



# Senate Bill 443

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Terminating parental rights when certain conditions are met.

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

**SUMMARY:**

This bill requires the Department of Health and Human Resources to petition for termination of parental rights if a parent voluntarily fails to have contact or attempt to have contact with a child for 18 consecutive months. The bill provides exceptions to the new requirement by providing that failure to have, or attempt to have, contact due to incarceration, being in a medical or drug treatment or recovery facility, or being on active military duty is not considered voluntary behavior. Current law already requires the Department of Health and Human Resources to file a petition for termination of parental rights in three other situations; the requirement in this bill adds a fourth situation to those in which the petition for termination is mandatory.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 451

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating generally to hunting and fishing.

**CODE REFERENCE:** §20-2-5 and §20-7-9 (Amends and Reenacts)

### **SUMMARY:**

This bill makes numerous changes to the section of code regarding use of public lands in this state for hunting and fishing. The bill accomplishes the following: allows Sunday hunting on public lands including federal land, state forests, and land managed by the state for wildlife purposes; removes the 5 a.m. start time limitation on Sunday hunting on private land with the owner's permission; legalizes noodling if the noodler has a fishing license or is exempt from licensure; expressly allows image intensification, thermal imaging, and active illumination while hunting for coyote, fox, raccoon, opossum and skunk; prohibits use of drones or unmanned aircraft to harass, wound, or transport wildlife; and prohibits fishing within 200 feet of division personnel stocking fish in public waters.

The bill also clarifies that certain prohibitions against carrying uncased or loaded firearms in the woods of the state apply to doing so within state parks, state forests, state wildlife management areas, and state rail trails. The bill provides an exception to the prohibition when the weapon is used for authorized hunting or for self-defense. The bill also clarifies restrictions regarding the keeping of loaded weapons in a vehicle on public lands.

The bill increases penalties for second and subsequent violations of the prohibitions against exceeding the creel limit on trout; hunting trapping, and fishing on the lands of another; hunting trapping, and fishing on posted lands; and destruction of posted signs. For a first conviction of such a crime, a person is guilty of a misdemeanor and shall be fined between \$100 and \$500, confined for 10 to 100 days, or both fined and confined. For a second conviction of such a crime a person is guilty of a misdemeanor and shall be fined between \$500 to \$1,000, confined for 10 to 100 days, or both fined and confined. For a third conviction of such a crime, a person is guilty of a misdemeanor and shall be fined between \$1,000 and \$1,500, confined for 10 to 100 days, or both fined and confined.

**DATE OF PASSAGE:** March 6, 2018

**EFFECTIVE DATE:** June 4, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 465

## COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to mandated reporting of child abuse and neglect.

**CODE REFERENCE:** §49-2-803 (Amends and Reenacts)

### **SUMMARY:**

This bill was introduced upon the recommendations of the Task Force on Prevention of Sexual Abuse of Children, which was established by W.Va. Code §49-2-8 to make recommendations for decreasing incidence of sexual abuse of children. The bill clarifies that sexual abuse and sexual assault constitute abuse of a child for reporting requirement purposes. The bill also reduces the period in which a mandated reporter must report suspected abuse or neglect from 48 to 24 hours. The bill requires mandated reporters to directly report known or suspected cases of abuse or neglect to the proper authorities, rather than to simply report the cases to a supervisor or person in charge.

Additionally, the bill removes broad reporting requirements in the current Code that apply to any person over 18, as well as certain exceptions to the time-period during which mandatory reporting must take place. The bill also removes reporting requirements applicable only to school employees as well as reporting requirements specific to conduct between students and school personnel; the more general requirements in the bill for mandatory reporting already require reporting by school personnel and reporting of conduct between school personnel and students.

**DATE OF PASSAGE:** March 7, 2018

**EFFECTIVE DATE:** June 5, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 521

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Requiring chief executive of municipal law-enforcement agency be certified law-enforcement officer.

**CODE REFERENCE:** §30-29-13 (Amends and Reenacts)

### **SUMMARY:**

This bill requires that, effective July 1, 2018, all newly named chief executives of municipal police departments be certified law enforcement officers. Persons serving as chief executives on July 1, 2018, who began serving prior to that date, are exempt from the new requirement.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** July 1, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 522

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating generally to Administrative Procedures Act.

**CODE REFERENCE:** §29A-1-3b, §29A-3-8, §29A-3-12, and §29A-3-19 (Amends and Reenacts)

### **SUMMARY:**

This bill provides that administrative rules become void when the statute authorizing the rule is repealed. The bill also allows an agency to repeal a legislative exempt, procedural, or interpretive rule by notifying the Secretary of State's Office. The bill provides a new method for determining the filing deadline for rules. Additionally, the bill establishes the procedures agencies must use to affirmatively seek renewal of a legislative rule due to expire and provides that such legislative rules are not subject to the statutory requirements for a public comment period.

**DATE OF PASSAGE:** March 5, 2018

**EFFECTIVE DATE:** March 5, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018

# Senate Bill 528

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Providing additional circuit judge for nineteenth judicial circuit.

**CODE REFERENCE:** §51-2-1 (Amends and Reenacts)

### **SUMMARY:**

This bill provides an additional circuit court judge for the nineteenth judicial circuit, which encompasses Barbour and Taylor counties.

As required by the section of code governing the filling of judicial vacancies, the judge is to be appointed by the Governor and then subsequently elected at the next primary election in 2020 for the length of the unexpired term of circuit court judges in the state (four years). Currently, all circuit court judges are elected for eight-year terms, which will expire in 2024.

At the end of the unexpired term for circuit judges, the additional judge is to be elected at the next general election in 2024 and every eighth year thereafter.

**DATE OF PASSAGE:** March 9, 2018

**EFFECTIVE DATE:** June 7, 2018 (with internal effective date of January 1, 2019)

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 539

## INTRODUCED VERSION

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**SHORT TITLE:** Increasing limit for settling claims against DOH.

**CODE REFERENCE:** §14-2-17a (Amends and Reenacts)

**SUMMARY:**

W.Va. Code §14-2-17a currently provides an expedited procedure for individuals to submit a property damage claim that is because of a condition on the state's highways or roads and does not exceed \$1,000.

The bill raises the threshold limit from \$1000 to \$3000.

**DATE OF PASSAGE:** March 5, 2018

**EFFECTIVE DATE:** June 3, 2018

**ACTION BY GOVERNOR:** Signed March 22, 2018



# Senate Bill 543

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to confidentiality of medical records.

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

### **SUMMARY:**

This bill pertains to confidentiality of mental health records. Under existing code, physical health records and mental health records are governed by two different disclosure standards. As such, physical health records and mental health records must be kept separate from one another. Moreover, under existing code mandates further disclosure requirements in addition to those provided under HIPAA.

The amendment removes a 30-day consent requirement, which is not required under federal law.

The amendment is intended to provide uniform disclosure rules with respect to physical health records and mental health records. The amendment also adopts HIPAA disclosure standards, thus, making West Virginia law conform to federal law.

**DATE OF PASSAGE:** March 7, 2018

**EFFECTIVE DATE:** March 7, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 555

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Providing director of corporation not personally liable for corporation's torts.

**CODE REFERENCE:** §55-7C-3 (Amends and Reenacts)

### **SUMMARY:**

The purpose of the bill is to promote service on nonprofit boards by insulating directors from certain liability.

The bill provides that a qualified director is not personally liable for the torts of a volunteer organization or entity, or the torts of the agents or employees of a volunteer organization or entity, unless he or she directed, sanctioned, or participated in the wrongful acts.

A “qualified director” is defined as “an individual who serves without compensation for personal services as an officer, member or director of a board, commission, committee, agency or other nonprofit organization which is a volunteer organization or entity.”

**DATE OF PASSAGE:** March 7, 2018

**EFFECTIVE DATE:** June 5, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 574

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to crime of misrepresentation of military honors.

**CODE REFERENCE:** §61-3-59 (New)

### **SUMMARY:**

This bill criminalizes the act of misrepresenting military service or honors to obtain money, property, or other things of value. The person convicted of the new crime may be guilty of a felony or misdemeanor, depending on the value of the money, property, or other thing of value involved in the crime. If the money, property, or other thing of value has a value of \$999 or less, a person convicted of the crime is guilty of a misdemeanor and shall be fined up to \$2,500, confined for up to one year, or both fined and confined. If the money, property, or other thing of value has a value of \$1,000 or more, a person convicted of the crime is guilty of a felony and shall be fined up to \$5,000, imprisoned for one to 10 years, or both fined and imprisoned.

**DATE OF PASSAGE:** March 7, 2018

**EFFECTIVE DATE:** June 5, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 576

## INTRODUCED VERSION

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**SHORT TITLE:** Relating to Patient Injury Compensation Fund.

**CODE REFERENCE:** §29-12D-1a, §59-1-11, and §59-1-28a (Amends and Reenacts)

### **SUMMARY:**

This bill provides funding for remaining unfunded liabilities of the Patient Injury Compensation Fund (PICF). The Fund was created in 2004 to compensate claimants who are unable to collect damages due to statutory caps and other reforms. However, no funding stream was established in the legislation creating the PICF. In 2016, the Legislature closed the PICF to claims filed after June 30, 2016, and provided temporary funding sources for PICF claims filed before that time, including biennial fees paid by physicians, fees paid by trauma centers, an assessment on settlements and judgments in medical malpractice actions, and filing fees for plaintiffs in medical malpractice actions.

This bill extends the time during which those temporary fees will continue to be collected to satisfy projected unfunded liabilities of the PICF, as follows: physicians are required to pay a biennial license privilege fee of \$125 until December 31, 2021 (currently, the fee would be required only until December 31, 2019); and trauma centers are assessed a \$25 fee per patient treated until December 31, 2021 (currently, the fee is to be assessed only until June 30, 2020).

The bill also provides that after December 31, 2021, the filing fee required of plaintiffs in medical malpractice actions will decrease from \$400 to \$280, and that the clerk of a circuit court will no longer deposit filing fees by plaintiffs in medical malpractice actions into the PICF after that time. The bill amends the definition of a “qualifying claim,” in the context of medical malpractice claims subject to the PICF filing fee, to clarify that claims for which a “screening certificate of merit” is not required are included in the definition, and subject to PICF filing fees.<sup>2</sup>

The bill designates the plaintiff or his or her counsel as the person responsible for paying the assessment in the case of settlement. The bill also conforms language in the bill establishing when an assessment must be paid with current law language describing

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<sup>2</sup> Under the statutory exhaustion requirements for medical malpractice claims, a plaintiff must obtain a “screening certificate of merit,” which includes information from a health care provider setting out the basis for the claim. If a claim is based on a well-established legal theory of liability, the screening certificate of merit is not required, and the plaintiff may simply file a statement setting for the basis of the claim.

when a medical malpractice claim may be filed.

Finally, the bill provides that any money remaining in the PICF on June 30, 2022 will be transferred to the General Revenue Fund.

**DATE OF PASSAGE:** March 8, 2018

**EFFECTIVE DATE:** June 6, 2018

**ACTION BY GOVERNOR:** Signed March 22, 2018

# Senate Bill 603

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to proceedings for involuntary custody for examination.

**CODE REFERENCE:** §27-5-2 and §27-5-3 (Amends and Reenacts)

### **SUMMARY:**

This bill adds licensed professional counselors to the list of mental health professionals who may examine an individual by court order for the purpose of a “probable cause” hearing for involuntary hospitalization, pending further mental hygiene proceedings. A licensed professional counselor may perform the examination if the licensed professional counselor has been authorized by a circuit court order, finding that the counselor has particularized expertise in the areas of mental health and mental hygiene or addiction.

The examination is meant to assist a court in determining whether there is probable cause to believe that the person is likely to cause serious harm to him or herself or others because of addiction or mental illness, unless hospitalized pending further proceedings.

Currently, an individual awaiting a probable cause hearing for involuntary hospitalization pending commitment proceedings may be examined by the following: a physician, psychologist, a licensed independent clinical social worker with particularized expertise in mental health, an advanced nurse practitioner with psychiatric certification and particularized expertise in mental health, and a physician assistant with particularized expertise in mental health.

Licensed professional counselors are currently required to have graduate level education, pass a professional examination, and meet other requirements of the Board of Examiners in Counseling.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# Senate Bill 616

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Establishing maximum gross weight for certain wood-bearing trucks

**CODE REFERENCE:** §17C-17-11 (Amends and Reenacts)

### **SUMMARY:**

This bill represents a compromise between the West Virginia Forestry Association and the Division of Highways. Instead of increasing the weight limit automatically for wood-bearing trucks, the bill permits the DOH Commissioner, in his or her discretion and upon application, to issue a special permit authorizing the applicant to transport logs, wood-chips, timber, natural raw-wood, lumber, paper, wood-veneer, wood pellets, or any other wood product of the forest, craft, or manufacturing with an increased weight. A permit must be contingent on the following conditions:

- The vehicle authorized by the permit must be a tractor-semitrailer combination with six axles, each axle equipped with brakes, and limited to a maximum gross vehicular weight of 94,000 pounds, without any tolerance.
- The weight of each axle, beginning with the steering axle commencing rearwards respectively will have to be 15,000 pounds, 17,000 pounds, 17,000 pounds, 15,000 pounds, 15,000 pounds and 15,000 pounds.
- The tractor will have to have one steer axle and two drive axles in tandem, and the trailer will have to have three trailer axles in tridem. The distance between the last drive axle of the tractor and the first trailer axle will have to be a minimum of 29 feet and 6 inches. Permits will not be issued for any vehicle traveling on interstate routes.

**DATE OF PASSAGE:** March 8, 2018

**EFFECTIVE DATE:** June 6, 2018

**ACTION BY GOVERNOR:** Signed March 22, 2018

# Senate Joint Resolution 3

## STRIKE AND INSERT TO COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Judicial Budget Oversight Amendment.

**CODE REFERENCE:** §51, Article VI of the West Virginia Constitution (Amends)

### **SUMMARY:**

The purpose of this resolution is to amend §51, Article VI of the West Virginia Constitution to allow the Legislature to decrease the total general revenue appropriation to the judiciary in the annual Budget Bill. The resolution eliminates a provision of the Constitution, preventing Legislature from decreasing any item in the Budget Bill related to the judiciary. However, the resolution requires that in order to decrease the total general revenue appropriation to the judiciary from the appropriation in the previous budget (the then-current budget), to an amount below 85% of the previous budget, the Legislature must approve such a reduction by a separate 2/3 vote of each house.

Additionally, the resolution proposes new language giving the Chief Justice of the West Virginia Supreme Court of Appeals a new right and a new duty “when requested by either house of the Legislature [. . .] to, appear and be heard with respect to any budget bill, and to answer inquiries relative thereto.”

The resolution also amends §51, Article VI to alter outdated language relating to the timing of legislative sessions in the context of the Governor’s submission of the Budget Bill to the Legislature. Since the original incorporation of this language into the Constitution, the Constitution has been amended elsewhere, so that legislative session begins on the second Wednesday of January and on the second Wednesday of February every fourth year after 1973. The amendment simply alters obsolete language to reflect the current, constitutionally required practice whereby the Governor submits the budget to the Legislature on the first day of each regular session.

Finally, the bill clarifies that during an extension of the Regular Session by three days for the purpose of considering budgetary matters, the Legislature may also consider actions addressing the Governor’s veto of legislation, pursuant to §14, Article VII of the Constitution. This language was added to clarify that the amendments to §51, Article VI are not aimed at overriding the more recently adopted provisions of §14, Article VII. The



resolution makes numerous minor technical changes to language in the section of the Constitution being amended.

The proposed amendment will be on the general election ballot in November of 2018.

**DATE OF ADOPTION:** March 10, 2018

# Senate Joint Resolution 12

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** No Constitutional right to abortion Amendment.

**CODE REFERENCE:** §57, Article VI of the West Virginia Constitution (New)

### **SUMMARY:**

The purpose of this resolution is to nullify a West Virginia Supreme Court of Appeals decision, *Womens' Health Center, et al. v. Panepinto*, 191 W. Va. 436 (1993), in which the Court held that §3, Article III of the West Virginia Constitution requires Medicaid funding of abortions.

The proposed amendment provides that “[. . .] nothing in this constitution secures or protects a right to abortion or requires the funding of abortion.” The proposed amendment will be on the general election ballot in November of 2018.

**DATE OF ADOPTION:** March 5, 2018

# House Bill 2028

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to the venue for suits and other actions against the state.

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

### **SUMMARY:**

The purpose of this bill is to allow a plaintiff to file a claim against the state, a state officer, or state agency in the circuit court of a county in which 1) the plaintiff resides, 2) the claim arose, or 3) Kanawha County.

Under existing code, claims against the state, a state officer, or state agency may only be filed in Kanawha County.

**DATE OF PASSAGE:** March 8, 2018

**EFFECTIVE DATE:** June 6, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 2464

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to disclaimers and exclusions of warranties in consumer transactions for goods.

**CODE REFERENCE:** §46A-6-107 (Amends and Reenacts)

### **SUMMARY:**

This bill provides that a consumer who purchases a used manufactured home may waive the warranties of merchantability and fitness for a particular purpose, or waive a warranty as to a particular defect or malfunction which the merchant has identified and disclosed in writing to the consumer, if the used manufactured home is not being sold for human habitation.

The waiver is not effective unless the waiver:

- 1) Is in writing;
- 2) Is conspicuous and is in plain language;
- 3) Identifies with particularity the disclosed defect or malfunction, if any, in the used manufactured home for which the warranty is to be waived: Provided, that to the extent a merchant intends to waive a warranty as to a particular defect or malfunction, the disclosure must also be posted on the front door of the used manufactured home;
- 4) Describes any additional defects or malfunctions, if any, disclosed to the merchant by a previous owner of the used manufactured home or discoverable by the merchant after an inspection of the used manufactured home;
- 5) States that the warranty being waived applies only to the disclosed defect or malfunction, if any, to the extent the merchant intends to waive a warranty as to a specific defect;
- 6) Acknowledges that the used manufactured home will not be used for habitation purposes; and
- 7) Is signed by both the consumer and the merchant before the sales contract is executed.

This bill only applies to used manufactured homes that are more than four years old from their date of production and have previously been occupied, used, or sold for purposes other than resale.

**DATE OF PASSAGE:** March 9, 2018

**EFFECTIVE DATE:** June 7, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 2483

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Requiring the Division of Juvenile Services to transfer to a correctional facility or regional jail any juvenile in its custody that has been transferred to adult jurisdiction of the circuit court and who reaches his or her eighteenth birthday.

**CODE REFERENCE:** §49-4-720 and §49-4-722 (Amends and Reenacts)

### **SUMMARY:**

This bill prohibits persons 18 and over from being housed in a juvenile facility and requires the Division of Juvenile Services to notify the sentencing court six months, or as soon as practicable, before a juvenile under the adult jurisdiction of the court turns 18 so a hearing on further disposition may be held. The bill also clarifies that victims have a right to attend such a hearing, pursuant to West Virginia Code §61-11a-1 *et seq.*

**DATE OF PASSAGE:** March 5, 2018

**EFFECTIVE DATE:** June 3, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018

# House Bill 2612

## INTRODUCED VERSION

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**SHORT TITLE:** Repealing section relating to unattended motor vehicles and penalties.

**CODE REFERENCE:** §17C-14-1 (Repeals)

**SUMMARY:**

This bill repeals §17C-14-1 in its entirety and thereby eliminates the crime of leaving a motor vehicle unattended without first stopping the engine, locking the ignition, removing the key, and setting the brake. Currently, for a first conviction of the misdemeanor, a person shall be fined up to \$100; for a second conviction within a year thereafter, a person shall be fined up to \$200; and for a third or subsequent conviction, a person shall be fined up to \$500.

**DATE OF PASSAGE:** February 13, 2018

**EFFECTIVE DATE:** May 14, 2018

**ACTION BY GOVERNOR:** Signed February 21, 2018

# House Bill 2655

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Defining and establishing the crime of cyberbullying.

**CODE REFERENCE:** §61-3C-14c (New)

**SUMMARY:**

This bill criminalizes cyberbullying, which is defined as using a computer or computer network with the intent to harass, intimidate, or bully a minor by posting or disseminating or encouraging others to post private personal or sexual information about a minor or posting obscene material. There is no existing law that specifically deals with cyberbullying.

The new crime of cyberbullying is a misdemeanor and upon conviction, a person shall be fined up to \$500, or shall be confined for up to one year, or shall be both fined and confined.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018



# House Bill 2693

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to state ownership of wildlife.

**CODE REFERENCE:** §20-2-3 (Amends and Reenacts)

**SUMMARY:**

This bill incorporates terminology consistent with §20-1-2 which defines the term “wildlife” to include the individually listed species addressed in the amended section of code.

**DATE OF PASSAGE:** March 5, 2018

**EFFECTIVE DATE:** June 3, 2018

**ACTION BY GOVERNOR:** Signed March 22, 2018

# House Bill 2696

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to crossbow hunting.

**CODE REFERENCE:** §20-2-42a, §20-2-42q, §20-2-42s and §20-2-42v (Amends and Reenacts)

### **SUMMARY:**

The bill makes technical changes to the Code to incorporate the use of crossbows which was previously permitted by legislation. The Natural Resources Commission established a separate crossbow season that will run concurrently with the various archery seasons. Game species may be taken with a crossbow during their respective open archery seasons. Use of crossbows must comply with the following conditions:

- Hunters must be properly licensed to hunt with a crossbow during the respective archery seasons. Depending upon the game species being hunted with a crossbow, a hunter will be required to possess the required licenses and stamps (e.g., base license, species specific stamps and additional species-specific stamps).
- Game species harvested with a crossbow apply to the archery bag limit restrictions for that species (e.g., a properly licensed hunter may harvest no more than three deer with a crossbow or bow during the concurrent crossbow and archery deer season.).
- Resident hunters may harvest one deer on a base license and up to two more deer if they have purchased two appropriate stamps.
- Nonresident hunters may harvest one deer after they have purchased the appropriate license combination and up to two more deer if they have purchased two stamps.

**DATE OF PASSAGE:** March 3, 2018

**EFFECTIVE DATE:** June 1, 2018

**ACTION BY GOVERNOR:** Signed March 22, 2018

# House Bill 2916

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Authorizing certain first responders to carry firearms.

**CODE REFERENCE:** §6-1-3a (Amends and Reenacts); §5-3-6 (New)

### **SUMMARY:**

This bill authorizes investigators employed by the Attorney General and certain reserve deputy sheriffs to carry a concealed handgun while engaged in official duties under the following circumstances:

- 1) written approval is given by the Attorney General or Sheriff;
- 2) the investigator or reservist is not otherwise prohibited from carrying a concealed handgun under current law;
- 3) the investigator or reservist has successfully completed entry level law enforcement training and maintains certification; and
- 4) for investigators employed by the Attorney General only, such investigators must be licensed to carry a concealed handgun.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 2982

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to allowing draw games winners to remain anonymous.

**CODE REFERENCES:** §29B-1-4 (Amends and Reenacts); §29-22-15a (New)

### **SUMMARY:**

This bill adds a new section of code to the State Lottery Act allowing draw game winners to remain anonymous when claiming prizes of \$1 million or more, so long as the winners remit 5% of the winnings for deposit in the State Lottery Fund.

The bill further amends the Freedom of Information Act to exempt personal information of an individual who elects to remain anonymous from public disclosure.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 3004

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to filling vacancies in certain offices.

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

### **SUMMARY:**

The purpose of this bill is to codify a recent Supreme Court of Appeals ruling, *State ex. rel. Biafore v. Tomblin*, 782 S.E.2d 223 (2016), and make other amendments to the Code regarding filling vacancies in certain offices.

In *Biafore*, the Supreme Court of Appeals interpreted the West Virginia Code to require that, for the vacancy of a State Senator who was elected as a Democrat but switched his party registration to Republican, the Governor was required to appoint a Republican to fill his office. The Supreme Court stated that its “decision is grounded in law, not in ideology or politics.” *Id.* at 232.

### **I. Vacancies in State Offices:**

This bill requires that a person appointed to fill a vacancy in elected state offices be selected from a list submitted by the party executive committee of the party with which the person vacating the office was affiliated at the time the vacancy is created. These offices include: The Board of Public Works offices (Secretary of State, Treasurer, Attorney General, Commissioner of Agriculture, Auditor, or any other elected state office). The bill specifies that the requirements related to party of a replacement official do not apply to the filling of vacancies in nonpartisan offices.

The bill requires the party executive committee to submit names of candidates to the Governor within 15 days of the occurrence of a vacancy. The bill also requires the Governor to make an appointment to fill the vacancy within five days of receiving the list. If the party executive committee does not submit a list to the Governor within the 15-day deadline, the Governor shall appoint a legally qualified person of the party with which the person vacating the office was affiliated at the time the vacancy.

### **II. Vacancies in U.S. Congressional Offices:**

The bill also requires that gubernatorial appointments to vacancies in the office of U.S. Senate be made from a list submitted by the party executive committee of the party with which the person vacating the office was affiliated at the time the vacancy is created.

The bill requires the party executive committees to submit names of candidates to the Governor within 15 days of the occurrence of a vacancy. The bill also requires the Governor to make an appointment to fill the vacancy within five days of receiving the list. If the party executive committee does not submit a list to the Governor within the 15-day deadline, the Governor shall appoint a legally qualified person of the party with which the person vacating the office was affiliated at the time the vacancy.

### **III. Vacancies in state Legislature:**

The bill codifies the requirement that for vacancies in the state Legislature, the Governor must appoint a person of the same party with which the person vacating the office was affiliated at the time the vacancy is created.

### **IV. Vacancies in County Commissions:**

Under current law, vacancies in the offices of county commissioner and clerk of the county commission are filled by the county commission. If the vacancy causes a lack of quorum, the Governor makes an appointment to fill the vacancy.

The process for filling vacancies in the county commission itself is reworked in this bill. Initially, the county commission is given 30 days in which to make the appointment; the bill requires that the appointee must have been a member of the political party from which he or she is appointed for a period of at least 60 days preceding the vacancy. If the commission fails to make the appointment within that time frame, the county executive committee of the departing commissioner's party submits a list of three names. If the commission cannot select from among that list, then a process of elimination is provided, beginning with the most senior commissioner striking one name off the list, followed by the second-most senior. Additional language is added to §3-10-7 to clarify that the authority of the Governor to appoint members to the county commission is limited to creating a quorum in that body.

**DATE OF PASSAGE:** March 1, 2018

**EFFECTIVE DATE:** May 30, 2018

**ACTION BY GOVERNOR:** None (became law without signature)

# House Bill 3005

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to regulation of unmanned aircraft systems.

**CODE REFERENCE:** §61-14-1 and §61-14-2 (New)

### **SUMMARY:**

This bill creates a misdemeanor criminal offense of using an unmanned aircraft system to knowingly and intentionally view or take photographs of another person or the private property of another without consent, when there is a reasonable expectation of privacy. A person convicted of the misdemeanor shall be fined \$100 to \$1,000, confined in jail for up to one year, or both fined and confined.

The bill also creates a felony offense of equipping an unmanned aircraft system with a lethal weapon or operating an unmanned aircraft system with a lethal weapon. A person convicted of the felony shall be fined \$1,000 to \$5,000, imprisoned in a state correctional facility for one to five years, or both fined and imprisoned.

The bill creates an additional felony offense of piloting an unmanned aircraft system with the intent to cause damage to, or disrupt, the flight of a manned aircraft. A person convicted of the felony shall be fined \$1,000 to \$5,000, imprisoned in a state correctional facility for one to five years, or both fined and imprisoned.

**DATE OF PASSAGE:** March 7, 2018

**EFFECTIVE DATE:** June 5, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4002

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Providing that all delegates shall be elected from one hundred single districts following the United States Census in 2020.

**CODE REFERENCE:** §1-2-2c (New)

### **SUMMARY:**

This bill abolishes multi-member legislative districts for the West Virginia House of Delegates. Currently, the statutorily prescribed legislative districts for the House of Delegates contain 20 at-large multiple-member districts.

The bill provides that only 100 single-member districts will be used in the statutorily required redistricting plan for the House of Delegates following the 2020 census.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 21, 2018



# House Bill 4009

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** State Settlement and Recovered Funds Accountability Act.

**CODE REFERENCE:** §§5-3A-1-6 (New); §5-3-5 (Repeals)

### **SUMMARY:**

This bill repeals the section of the Code requiring the Attorney General to deposit all fees received for representing the state into the General Revenue Fund.

This bill also creates the State Settlement and Recovered Funds Accountability Act. It contains legislative findings which include that the power to appropriate funds for public purpose is solely within the purview of the legislative branch of government.

With some exceptions, when the Attorney General or other state officer or state agency is a party to or has entered an appearance in a legal action on behalf of the State, the disposition of which results in a recovery of funds or assets to the state, all funds or assets awarded the state are public funds and are to be deposited into the General Revenue Fund. These provisions do not apply to equitable relief.

This bill provides that any of these assets or funds deposited in the State Treasury may not be disbursed without a specific legislative appropriation by the Legislature.

The exception to the deposit of funds in the General Revenue Fund are: monies recovered by the Attorney General's Division of Consumer Protection which are to be deposited in the Consumer Protection Recovery Fund; monies recovered on behalf of and specifically awarded to a political subdivision of the state, which are to be transmitted to the treasurer of the political subdivision; monies constituting recovery of attorney's fees, expenses and costs specifically awarded to the Attorney General, which are to be deposited to the Attorney General's General Administrative Fund; monies received in civil asset forfeiture proceedings; or fines and civil penalties.

This bill contains legislative findings that the Attorney General has litigation responsibilities for the state and that certain operational monies need to be retained by the Attorney General's Office. It creates the Consumer Protection Recovery Fund, a special revenue fund, for receipt of funds recovered in a civil action filed by the Attorney General's Division of Consumer Protection. At the end of each fiscal year, the Attorney General is to transfer any monies in excess of \$7,000,000 to the General Revenue Fund. Monies in the Fund are to be used for costs and services incurred for consumer protection purposes.

This bill also creates a special revenue fund to be known as the Consumer Protection Restitution Fund for deposit of consumer restitution or refunds, from which funds are to be paid to specific consumers for which recovery was made. If the AG cannot locate the consumer within one year of the date the restitution was received, the Attorney General is to transfer the funds to the Consumer Protection Recovery Fund.

On the effective date of this legislation, any monies in the current Consumer Protection Fund are to be transferred to the Consumer Protection Recovery Fund.

This bill prohibits the Attorney General or any state officer or agency from agreeing to any disposition that is contrary to the provisions of this bill and they are to make the court aware of the law. They may not agree to any terms in an extra-judicial settlement that are contrary to the requirements of this bill.

Finally, this bill requires the Attorney General to file an annual report on or before August 15, with the Governor, the Joint Committee on Government and Finance and the State Auditor containing receipt and expenditure information for each fund. The Attorney General is also required to file an annual report on or before January 15, with the Governor, the Joint Committee on Government and Finance and the State Auditor containing specified information regarding dispositions. The report is also to contain information on monies paid to special assistant attorney generals and persons under contract to perform legal services and the amount of judgements, settlements, costs and fees awarded by a court to the Attorney General or to a state officer or agency.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** July 1, 2018

**ACTION BY GOVERNOR:** Vetoed March 28, 2018

# House Bill 4013

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Clarifying venue in West Virginia state courts as it applies to nonresidents of the state.

**CODE REFERENCE:** §6-9A-6, §14-2-2, §14-2-2a and §56-1-1 (Amends and Reenacts)

### **SUMMARY:**

First, in §6-9A-6 the bill amends the enforcement provision set forth in the Open Governmental Proceedings Act to provide venue to the circuit court in the county where the public agency regularly meets. Current code provides for jurisdiction, but not venue. The bill reconciles this section of code with other changes.

In §14-2-2a under current law, notwithstanding the general rule above, any suit brought against WVU or Marshall, their governing boards, or medical schools shall be brought in the county where the cause of action arose. The bill expands the venue exception to include all institutions of higher education and their governing boards, e.g., Fairmont State University. Under the bill, a suit against any state institution of higher education shall be brought in the county where the cause of action arose.

This bill also amends §56-1-1 to provide that for all civil actions filed on or after July 1, 2018, a nonresident of the state may not bring an action in a court of this state unless all or a substantial part of the acts or omissions giving rise to the claim asserted occurred in this state. The bill further provides that unless barred by the statute of limitations or otherwise time barred in the state where the action arose, a nonresident of this state may file an action in state court in this state if they cannot obtain jurisdiction in either federal or state court against the defendant in the state where the action arose.

The bill imposes these venue requirements on all plaintiffs and potential plaintiffs, including those in class actions. It provides that when venue is not proper for a nonresident plaintiff in any court of this state, the court shall dismiss the claims of that plaintiff without prejudice to refile in a court in any other state or jurisdiction. It also notes that if venue is proper as to one defendant, it is also proper as to any other defendant with respect to all actions arising out of the same transaction or occurrence. Finally, it defines the term nonresident.

**DATE OF PASSAGE:** March 10, 201

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2017

# House Bill 4016

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to combatting waste, fraud, and misuse of public funds through investigations, accountability and transparency.

**CODE REFERENCE:** §§6-9B-1-4 (New)

### **SUMMARY:**

This bill creates a new article, titled “Open Governmental Finances,” for the purpose of combatting waste, fraud, and misuse of public funds through investigations, accountability, and transparency. The bill requires the State Auditor to make a searchable financial transparency website available to the public no later than July 1, 2018. The bill specifies information which must be included on the website regarding the current fiscal year and the three preceding fiscal years. The bill provides that all governmental agencies have 30 days, once the data becomes available, to provide the required information to the Auditor on a specified form. The Auditor is additionally directed to track and publish annual reports on complaints of possible fraud, misappropriation, mismanagement, or waste of public moneys.

**DATE OF PASSAGE:** March 8, 2018

**EFFECTIVE DATE:** June 6, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4020

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** State Settlement and Recovered Funds Accountability Act.

**CODE REFERENCE:** §7-4-4, §7-4-5, §7-7-2, §7-10-2, §15-11-2, §15-2-15, §15-2C-1, §15-9-3, §15-11-2, §16-2F-2, §16-3C-1, §16-9A-3, §16-30-3, §16-47-5, §17C-5-6a, §18-5-15c, §18-8-6a, §18A-5-1d, §28-1-2, §29-21-16, §31-20-2, §33-4-20, §48-9-20, §48-9-301a, §48-22-301, §48-26-701, §48-26-1002, §48-27-403, §49-1-201, §51-2A-2, §51-7-8, §61-2-14h, §61-5-12b, §61-6-25, §61-7-8, §61-8-12, §61-8B-11a, §61-8C-3b, §61-8D-9, §61-11-23, §61-12-10, and §62-6B-5 (Amends and Reenacts)

### **SUMMARY:**

The purpose of this bill is to correct outdated cross-references to Chapter 49 throughout the Code. The bill rewrites the definition section in §49-1-201. The definition of “abused child” is amended to include a child whose health or welfare is being harmed or threatened by human trafficking and a child conceived as the result of a sexual assault.

**DATE OF PASSAGE:** February 8, 2018

**EFFECTIVE DATE:** May 9, 2018

**ACTION BY GOVERNOR:** Signed February 20, 2018

# House Bill 4035

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Creating a legislative coalition to study and report to the Legislature on palliative care.

**CODE REFERENCE:** §§16-54-1-7 (New)

### **SUMMARY:**

This bill creates the State Advisory Coalition on Quality of Life to improve the quality and delivery of patient-centered and family-focused care in West Virginia. It defines terms and provides that the administrative functions of the Coalition are the responsibility of the staff assigned to the Joint Committee on Health.

The bill specifies the types of individuals whom the President of the Senate and the Speaker of the House of Delegates are to appoint to the Coalition. The co-chairs of the Joint Committee on Health are to serve as nonvoting ex-officio members of the Coalition. Membership is to be distributed among the congressional districts.

The powers and duties of the Coalition are specified. The Coalition is required to meet at least quarterly and report its findings to the Joint Committee on Health by December 31, 2018 and annually thereafter. Minimum requirements for the report are specified. The Coalition terminates on December 31, 2021, unless continued by the Legislature.

**DATE OF PASSAGE:** March 9, 2018

**EFFECTIVE DATE:** June 7, 2018

**ACTION BY GOVERNOR:** Signed March 22, 2018

# House Bill 4042

## AMENDMENT FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Redefining school zone to facilitate placement of school zone signs.

**CODE REFERENCE:** §17C-6-1 (Amends and Reenacts)

**SUMMARY:**

This bill amends the definition of school zone to account for school property that does not abut a street or highway but is accessed through a right-of-way granted for entrance to school property. It provides that a school zone is all school property, including school grounds and any property within the access right-of-way, and extending one hundred twenty-five feet along the street or highway from the entrance to the access right-of-way. The change is to facilitate the placement of school zone signs.

**DATE OF PASSAGE:** March 9, 2018

**EFFECTIVE DATE:** June 7, 2018

**ACTION BY GOVERNOR:** Signed March 22, 2018



# House Bill 4079

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Promulgating administrative rules by various executive or administrative agencies of the state.

**CODE REFERENCE:** §§64-9-1-16 (Amends and Reenacts)

### **SUMMARY:**

This bill is known as the Miscellaneous Rules bundle which authorizes and directs the promulgation of 38 rules and repeals two rules which constitute bundle 9.

### **House Bill No. 4073 Board of Accountancy, Board Rules and Rules of Professional Conduct, 1 CSR 1**

The proposed rule establishes procedures for requiring a criminal history records check for obtaining an initial license to practice as a Certified Public Accountant. The enactment of the 2016 Senate Bill 271 made a criminal record check a requirement for a Board of Accountancy certificate application.

The proposed rule provides that beginning July 1, 2018, all applicants for initial license to practice as a Certified Public Accountant must request and submit the results of a state and national criminal history record check to the Board. The Board may contract with a company specializing in the criminal record check services.

Applicants must furnish a full set of fingerprints and any additional information required to the State Police or other designated organization. Applicants are responsible for any fees required by the State Police or other organization designated by the Board for the costs associated with fingerprinting.

A criminal record check must be requested by an applicant no earlier than three months immediately prior to the Board's receipt of the applicant's application for licensure. An application for licensure is not complete until the results of a state and national criminal record check is received by the Board, and the Board may not grant licensure to any applicant who fails to submit the criminal record check.

The proposed rule addresses procedures for an applicant to contest the results of a record check. Applicants are solely responsible for challenging or reconciling the accuracy of information provided to the Board by the West Virginia State Police, the Federal Bureau of Investigation or other reporting agencies. The applicant is responsible for

providing proof to the Board of any error and correction. The Board shall reconsider an application if the applicant provides adequate proof of any error and correction thereof by any reporting agency.

Applicants must authorize the release of all records obtained by the criminal record check to the Board. Results of a criminal record check may not be released to or by a private entity except: (1) to the individual who is the subject of the record check; (2) with written authorization of the individual subject to the record check; and (3) pursuant to a court order. The Board must maintain records pertaining to criminal record checks in separate files only accessible to personnel authorized by the State Police to receive such records. Records must be maintained for a period of two years subsequent to final action on an application, and then disposed up by crosscut shredding.

### **House Bill No. 4083 Agriculture, Animal Disease Control, 61 CSR 1**

A number of changes are made to the rule regarding animal disease control. First, the definitions of “honor flock” and “honor herd” are updated. Now, to qualify as an honor flock or an honor herd, the owner may complete certifications with the State Veterinarian’s Office (as an alternative to being inspected by an Animal Health person). However, the honor herd or honor flock must pass inspection at the entrance to exhibitions, and may be rejected from the event if there are signs of communicable disease or other conditions “perceived detrimental for animal health and welfare.” Additionally, a requirement is added that sheep and goats that are exhibited obtain a Certificate of Veterinary Inspection within thirty days of the event entry, unless that animal is a member of an honor herd or honor flock that has been so designated by the Commissioner. Finally, certain fees are added and/or increased, including the fees for several Mycoplasma tests, poultry dissection, field necropsy, salmonella testing fees, accession fees, and STAT.

### **House Bill No. 4082 Agriculture, Auctioneers, 61 CSR 11B**

The proposed rule governing auctioneers grants the Commissioner of Agriculture discretion to, in certain circumstances, require a bond that is higher than what is currently authorized by the legislative rule. Currently, apprentice auctioneers must carry a \$5,000 bond, while full auctioneers must carry a bond of \$10,000. It authorizes the Board of Review, as part of disciplinary recommendation, to propose an increased bond for any individual who is before the board upon a disciplinary complaint. while allowing the Commissioner of Agriculture to, at his or her discretion, require a bond of up to \$100,000.

The House Judiciary Committee amended the proposed rule to increase the bond for an auctioneer from \$10,000 to \$25,000.

### **House Bill No. 4081 Agriculture, Noxious Weeds, 61 CSR 14A**

The proposed rule adds a sunset provision of five years from the effective date of the rule, adds two new species to the list of noxious weeds (Kudzu and Japanese Barberry), and eliminates section 5.2 which authorized the use of Kudzu as a forage crop and authorized the Commissioner to issue permits for such use. The ban on Japanese Barberry is delayed for two years, due to many nurseries having already ordered plants.

### **House Bill No. 4080 Agriculture, Inspection of Meat and Poultry, 61 CSR 16**

The proposed rule makes two updates to the current legislative rule governing inspection of meat and poultry. First, the language that incorporates federal regulations is updated to include all regulations passed through June 1, 2017, are incorporated into state law. Second, the definition of “inspection service supervisor, veterinary inspector and circuit supervisor” is modified slightly to provide more clarity.

### **House Bill No. 4079 Agriculture, West Virginia Apiary Law, 61 CSR 2**

The proposed rule is in response to the passage of Senate Bill 531 during the 2017 Regular Session. In Senate Bill 531, the annual expiration date for apiary certificates was changed from December 31 to June 30. For certificates issued in 2017 (and thus initially set to expire on December 31, 2017), the expiration date was extended to June 30, 2018. Additionally, duplicative language concerning the limitation on liability granted to apiary operators for complying with Department of Agriculture best practices was eliminated, and emergency rulemaking authority was removed.

To satisfy the new statutory requirements, the proposed rule reflects the new expiration date of apiary certificates. Additionally, the annual date for the Commissioner of Agriculture to mail applications to beekeepers for registration renewals is moved from December to June.

### **House Bill No. 4078 Agriculture, Inspection of Nontraditional Domesticated Animals, 61 CSR 23D**

Several updates and changes are made to this rule governing the inspection of rabbits and rabbit meat, among other exotic animals. First, a sunset provision is added. Second, the list of federal regulations not incorporated by reference is updated. Third, in section four, changes are made to require slaughter of rabbits otherwise exempt from inspection to occur on premises that are registered with the Commissioner of Agriculture for that purpose. Changes are also made to clarify that rabbits slaughtered and processed in those facilities must be inspected by the state Department of Agriculture. Finally, the exemptions in section six are amended to increase the number of exempted rabbits from 1,000 to 20,000.

**House Bill No. 4077 Agriculture, Schedule of Charges for Inspection  
Services: Fruit, 61 CSR 8B**

The changes to the current legislative rule proposed by the Commissioner of Agriculture are twofold. First, the hourly rate for a GAP.GHP/Audit is increased from \$92 to \$108 per hour. Second, a sunset provision, expiring the rule five years from the effective date, is added.

Fiscal Impact: The rule increases the hourly rate for performing GAP.GHP Audits from the current \$92 to \$108. The Department of Agriculture estimates that, if the number and duration of audits remains the same as in 2016, this will result in an annual revenue increase of \$896.

**House Bill No. 4076 State Athletic Commission, Administrative Rules of the  
WV Athletic Commission, 177 CSR 1**

The proposed rule reflects amendments to W.Va. Code §29-5A-1 *et. seq.* made by the enactment of the 2017 Senate Bill 495.

The proposed rule provides for a new \$20 licensing fee for amateur boxers established by Senate Bill 495.

The proposed rule provides language which clarifies it is the responsibility of a promotor to provide and pay for each examining physician required to be at an event. The section also provides that the examining physician must be approved by the Commission, which is also currently the case.

The proposed rule strikes the provisions of §46.3.g., which provides that contestants who win a bout on the first night of a two-night semi-professional tournament and who cannot participate the second night forfeit to the contestant they defeated. The subdivision also provides for procedures for if a fighter refuses to continue in the tournament.

The proposed rule creates another new subdivision, §46.4.f., which requires that all corner men be provided and paid for by the promoter. It provides that corner men shall have no special interest in or bias towards a contestant.

The proposed rule provides that a scorekeeper shall be paid by the promoter a minimum of \$50 per day. This minimum payment was established by the Senate Bill 495.

The proposed rule also updates two common terms throughout the rule series to reflect current industry terminology. The term “bandages” is changed to “hand wraps”, and the term “water buckets” is changed to “sanitation buckets”.

## **House Bill No. 4075 State Athletic Commission, Regulation of Mixed Martial Arts, 177 CSR 02**

The proposed rule reflects the amendments to W.Va. Code §29-5A-1 *et. seq.* made by the enactment of the 2017 Senate Bill 495.

The proposed rule provides for the new \$20 licensing fee for amateur contestants established by the Senate Bill 495.

The proposed rule provides that any medical testing required of fighters that are forty-years-old or older shall be paid by the applicant or the promoter if contracted for by the applicant. Applicant are responsible for the testing to be completed in compliance with the Commission's rules.

The proposed rule provides language which clarifies it is the responsibility of a promotor to provide and pay for each examining physician required to be at an event. The section also provides that the examining physician must be approved by the Commission, which is also currently the case. The proposed rule provides that each boxing contestant must undergo a minimum of two examinations by a physician, one pre-fight and another post-fight.

The proposed rule provides that a scorekeeper shall be paid by the promoter a minimum of \$50 per day. Currently, there is no required fee to be paid to scorekeepers. However, this minimum payment was established by the Senate Bill 495 amendments to §29-5A-6.

The proposed rule also updates two common terms throughout the rule series to reflect current industry terminology. The term "bandages" is changed to "hand wraps", and the term "water buckets" is changed to "sanitation buckets".

## **House Bill No. 4072 Board of Dietitians, Licensure and Renewal Requirements, 31 CSR 1**

The proposed rule provides for increases in licensing fees collected by the Board of Licensed Dietitians. For the 2016 FY, there were approximately 400 licensees. Licenses must be renewed annually. The table below outlines the current fees and the proposed fees.

<b>Fee</b>	<b>Current Rate</b>	<b>Proposed Rate</b>	<b>Total Increase</b>
Application Fee	\$50	\$75	\$25
Provisional Permit	\$50	\$75	\$25
Annual Renewal	\$50	\$75	\$25
License Reinstatement	\$75	\$125	\$100
Late Renewal*	\$75*	\$125	\$50

The current language of the rule does not provide for fee amounts. The current fees assessed by the Board are outlined throughout W.Va. Code §30-35-1 *et seq.* The Code provides that the fees for provisional permit or renewal, application for license, and license renewal shall be \$50 or a reasonable fee established by legislative rule. The Code also provides for a reinstatement fee to renew a license which has expired, in addition to the annual renewal fee, that shall be \$25 or a reasonable fee established by legislative rule. The phrase “or a reasonable fee established by legislative rule” that is provided throughout the article authorizes the fee increases through rulemaking.

The Board asserts that there are several reasons for increasing the fees. First of all, the Board is moving offices, and its rent is increasing from \$138 per month to \$275 per month, which is a yearly expense increase of \$1,644. The Board is hoping to use an attorney from the Attorney General’s Office more frequently, which requires the Board to pay an hourly fee to the Attorney General. The Board also anticipates increases in expenses related to Board members’ travel costs, salary for an administrative assistant, training, and investigations.

The House Judiciary Committee amended the proposed rule by specifying a \$50 provisional license fee and by correcting several internal citations

**Fiscal Impact:** The Board asserts that the fee increases would generate an additional \$34,500 in revenue. If approved by the Legislature, the proposed fee increases would be the first increase of fees for the Board since its formation in 1997.

**House Bill No. 4071 Hearing Aid Dealers, WV Board of Hearing Aid Dealers, 8 CSR 1**

The proposed rule charges fees for administering examinations. The board has not previously charged for this activity.

**Fiscal Impact:** \$550

**House Bill No. 4069 Board of Medicine, Licensure of Physician Assistants, 11 CSR 01B**

This rule implements Senate Bill 1014 that was passed during this First Extraordinary Legislative Session. This bill modernized the provisions of the Physician Assistants’ Practice Act.

The word “collaborating” replaces “supervising” throughout. The powers and duties of the two licensing boards have been modified to permit a physician assistant in a collaborating arrangement with a physician the same prescriptive authority as provided to advanced practice registered nurses last session.

The requirement that a physician assistant be certified under the National Commission on Certification of Physician Assistants has been removed.

The final change would grant them global signatory authority in a manner identical to that which was given to advanced practice registered nurses last session. They can sign death certificates, order for life sustain treatment, orders for scope of treatment and DNR forms. They may also issue handicap hunting certificates and utility company forms requiring maintenance of utilities regardless of ability to pay.

### **House Bill No. 4070 Board of Medicine, Continuing Education for Physicians and Podiatrists, 11 CSR 6**

The proposed rule concerns continuing education for physicians and podiatric physicians. This rule has been revised and, in some sections, reorganized, for clarity, ease of reference by licensees and applicants, and to eliminate outdated language. Consistent with other Board rules, nomenclature has been updated to replace the term “podiatrist” with “podiatric physician” throughout this rule. The proposed amendments to the rule (1) modernize and clarify the language of the existing rule; (2) identify when an applicant may utilize post-graduate training to satisfy continuing education requirements; (3) update the requirements for drug diversion training and best practice prescribing training to incorporate a training component on prescribing and administration of an opioid antagonist; (4) clarify that three hours of Board-approved drug diversion training and best practice prescribing of controlled substances training must be completed each renewal cycle unless the renewal applicant has not prescribed, administered or dispensed controlled substances pursuant to a West Virginia license during the reporting period; (5) clarify when written documentation of successful completion of CME must be submitted to the Board by renewal, change of status, reinstatement and reactivation applicants; and (6) establish protocol for Board approval of drug diversion training and best practice prescribing of controlled substances training.

The House Judiciary Committee amended the proposed rule to cite the correct authority for the proposed rule.

### **Board of Medicine, Licensing and Disciplinary Procedures: Physicians; Podiatrists, 11 CSR 1A**

The Legislature is directing the Board to amend the rule to allow patient testimonials to be used in advertising.

### **House Bill No. 4050 Board of Optometry, Rules of the WV Board of Optometry, 14 CSR 1**

The proposed rule implements the standardized criminal background check for an applicant language and incorporates a 10 year sunset date to the rule.

### **House Bill No. 4068 Board of Osteopathic Medicine, Osteopathic Physician Assistants, 24 CSR 2**

The proposed rule implements Senate Bill 1014 that was passed during this First Extraordinary Legislative Session. This bill modernized the provisions of the Physician Assistants' Practice Act. The word "collaborating" replaces "supervising" throughout. The powers and duties of the two licensing boards have been modified to provide to permit a physician assistant in a collaborating arrangement with a physician the same prescriptive authority as provided to APRNs last session.

The requirement that a physician assistant be certified under the National Commission on Certification of Physician Assistants has been removed.

The final change would grant them global signatory authority in a manner identical to that which was given to advanced practice registered nurses last session. They can sign death certificates, order for life sustain treatment, orders for scope of treatment and DNR forms. They may also issue handicap hunting certificates and utility company forms requiring maintenance of utilities regardless of ability to pay.

### **House Bill No. 4067 Board of Pharmacy, Licensure and Practice of Pharmacy, 15 CSR 1**

The Board has proposed a new series, 15 CSR 14, to allow for the central filling of prescriptions. A proviso was added to subdivision 14.7.5 to permit the central filling of prescriptions. Further, some of the language from section 28 was cut from this Series, and moved to Series 14 (and then revised there) dealing with central prescription processing in the form of remote data entry and remote order review.

The House Judiciary Committee amended the proposed rule to increase the fee for licensure by reciprocity from \$125 to \$250.

### **House Bill No. 4066 Board of Pharmacy, Pharmacist Recovery Networks, 15 CSR 10**

The Rules for Pharmacist Recovery Networks have not been updated for several years. The changes were made to modernize the rules. In addition, when the Pharmacy Practice Act was changed in 2013, some language pertaining to the Pharmacy Recovery Network (PRN) was deleted from code to leave the requirements fully to rulemaking.

The proposed rule extends the time a person may present to a WVPRN approved evaluator from two days to seven days.

After two unsuccessful intervention requests, the executive director is required to inform the licensee that the information will be submitted to the board for possible disciplinary action.



It clarifies that the information obtained pursuant to enrollment in this program is not public information and establishes that if the person violates the terms of the program the information will be submitted to the board.

Finally, it requires when reports are submitted to the board that they do not include personally identifiable information.

### **House Bill No. 4065 Board of Pharmacy, Immunizations Administered by Pharmacists and Pharmacy Interns, 15 CSR 12**

House Bill 2518 passed this year, provides for additional rulemaking on pharmacists and pharmacy interns to provide certain immunizations.

The rule change permits a pharmacists and pharmacy interns to give the Human Papilloma Virus (HPV) vaccine to someone over age 18; and would allow for influenza and HPV vaccines to be administered to a person age 11 through 18 with written informed parental consent, a prescription from a physician, and there are no contraindications to that patient receiving that vaccine.

West Virginia Code Section 30-5-7(d) and (e) requires the advice and consent of the Board of Medicine and Board of Osteopathy for pharmacist administration of any immunizations beyond the influenza and pneumonia vaccines. The three boards have worked together to amend this rule.

### **House Bill No. 4064 Board of Pharmacy, Centralized Prescription Processing, 15 CSR 14**

The Board granted a pharmacy chain a waiver to do a pilot program permitting a central filling and processing operation. Unlike retail pharmacies which dispense controlled substances directly to the patient, central fill pharmacies provide a service to retail pharmacies by preparing and packaging prescriptions for retail pharmacies to dispense to the patient. Prescription information is transmitted from a retail pharmacy to a central fill pharmacy where the prescription is filled or refilled. The filled prescription is delivered to the retail pharmacy for pick up by the patient.

This rule would allow for central filling and processing of prescriptions by pharmacies licensed by the state, which would include non-resident pharmacies.

### **House Bill No. 4063 Board of Pharmacy, Uniform Controlled Substances Act, 15 CSR 2**

21 CFR § 1301 requires wholesale drug distributors to design and operate distribution systems which disclose suspicious orders of controlled substances, and to report those suspicious orders to the DEA. Suspicious orders include orders of unusual

size, orders deviating substantially from a normal pattern, and orders of unusual frequency. This rule in §15-2-4.4 contains the same provision as described above.

This rule requires a whole drug distributor to report to the board within five days:

- When a wholesale drug distributor determines to stop distributing controlled substances to a customer; and
- When a wholesale drug distributor determines not to commence distribution to a potential customer due to a concern that the customer may be involved in dispensing those substances for other than a legitimate medical purpose.

### **House Bill No. 4062 Board of Pharmacy, Registration of Pharmacy Technicians, 15 CSR 7**

House Bill 2846 enacted §30-5-11a which permitted the regulation of pharmacy technician trainees.

To be eligible, an applicant must file an application and fee and have graduated from a high school, obtained a GED, be enrolled in a high school or a board-certified learning institution or training center competency-based pharmacy technician education and training program, or be employed in a pharmacy with on the job training.

### **House Bill No. 4061 Board of Pharmacy, Controlled Substance Monitoring Program, 15 CSR 8**

This rule updates reporting requirements of the controlled substance monitoring program. It requires drugs of concerns to be inputted into the CSMD. A drug of concern is a drug that has a high potential for abuse. Gabapentin is added as a drug of concern. Gabapentin is approved by the Food and Drug Administration to treat epilepsy and pain related to nerve damage, called neuropathy. Gabapentin can enhance the euphoria caused by an opioid and stave off drug withdrawals. In addition, it can bypass the blocking effects of medications used for addiction treatment, enabling patients to get high while in recovery.

The rule grants access to the CSMD to:

- A dean of any medical school or his or her designee located in this state to access prescriber level data to monitor prescribing practices of faculty members, prescribers and residents enrolled in a degree program at the school where he or she serves as dean;
- A physician reviewer designated by an employer of medical providers to monitor prescriber level information of prescribing practices of physicians, advance practice registered nurses or physician assistant in their employ;

- A chief medical officer of a hospital or a physician designated by the chief executive officer of a hospital who does not have a chief medical officer, for prescribers who have admitting privileges to the hospital or prescriber level information;
- Authorized agents of OHFLAC; and
- Authorized agents of BMS.

**House Bill No. 4049 Board of Psychologists, Fees, 17 CSR 1**

This rule establishes the fee structure for licensees of the Board of Psychologists. Fees for applications for licensure, license renewal, licensure examination, and duplicate license are increasing. The Board anticipates that the fee increase will generate an additional \$38,000 per year. This is the first change in fees in 13 years.

**House Bill No. 4048 Board of Psychologists, Requirements for Licensure as a Psychologist and/or a School Psychologist, 17 CSR 3**

This rule establishes the requirements for licensure. The Board has modified this rule to accommodate changes to the Code over the last two years. The major changes include special volunteer licensure, licensure requirements for continuing education for veterans, including reference to the new Code of Ethics, updating internship, timing, and training requirements, and updating language.

**House Bill No. 4047 Board of Psychologists, Code of Ethics, 17 CSR 6**

This rule establishes the code of ethics for psychologists. The Board previously adopted the code of ethics from the American Psychological Association. Upon advice from legal counsel and others, the Board has created its own code of ethics to govern the practices of psychology in West Virginia.

**House Bill No. 4060 Real Estate Appraiser Licensing and Certification Board, Requirements for Licensure and Certification, 190 CSR 2**

Apprentice appraiser education requirements would decrease from 150 hours to 75 hours. Inactive licensees desiring to reinstate their license would be required to complete a 15-hour USPAP course instead of the 7-hour USPAP update course. The rule also adds a five-year sunset provision.

**House Bill No. 4059 Real Estate Commission, Licensing Real Estate Brokers, Associate Brokers and Salespersons and the Conduct of Brokerage Business, 174 CSR 1**

The Commission has rewritten and restructured the licensure rules. The major changes are clarification of the application and testing process, clarification of non-resident licensing, the addition of rules concerning deceased or incapacitated brokers, sweep accounts, and duties of licensees to report certain actions.

### **House Bill No. 4058 Real Estate Commission, Schedule of Fees, 174 CSR 2**

Most fees remain the same, but changes to current license or company status, and approval of continuing education courses would increase. Licensing, license renewal, and examination fees would not change. The rule would add a fee for initial approval, registration, and renewal of pre-license and continuing education providers and instructors. The rule also establishes procedures should the Commission receive insufficient funds from a payee.

### **House Bill No. 4057 Real Estate Commission, Requirements for Real Estate Courses, Course Providers and Instructors, 174 CSR 3**

The proposed rule clarifies the process for approving continuing education courses. It changes the course outline for the Broker course. It changes the attendance and exam score requirements. It allows for an audit procedure for continuing education courses and instructors and allows for disciplinary action against those found to violate the rule. The proposed rule also contains an updated definitions section and technical edits.

The Legislative Rule-Making Review Committee amended the proposed rule to exempt out-of-state approved pre-license and continuing education instructors from completing annual instructor development workshops offered by the Commission. The out-of-state instructor must be approved by the National Association of Realtors or hold a Distinguished Real Estate Instructor designation.

### **Board of Examiners for Registered Professional Nurses, policies, standards and criteria for the evaluation and accreditation of colleges, departments or schools of nursing, 19 CSR 1**

The Legislature is directing the Board to amend a current legislative rule to: remove the requirement that a governing institution seeking legal accreditation of a professional nursing education program submit a feasibility study; remove the requirement that nursing education units submit certain faculty reports; and remove the requirement that the nursing education unit must submit major changes in the nursing curriculum to the Board for its approval prior to effecting the changes.

### **House Bill No. 4056 Secretary of State, Procedures for Canvassing Elections, 153 CSR 18**

This bill makes substantial updates to the legislative rule governing election canvassing:

First, a 10-year sunset provision is added.

Second, the requirement for the board of education to jointly conduct any canvass for a special levy or bond election ordered by the county commission (section 2.1.c) is eliminated. This is due to a change in the law, passed in 2014 (House Bill 4302), which made the county commission the board of canvassers for special levy and bond elections.

Third, section 2.4 is amended to modify the definition of “electronically tabulated ballots” to 1) eliminate references to punch card ballots and 2) add language to include touch screen voting machines.

Fourth, under section 3.1, changes are made to bring this section into compliance with current code. W. Va. Code § 3-6-9(a)(1) sets the date for convening the board of canvassers governing body as “the fifth day (Sundays excepted) after every election held in their county”.

Fifth, language is added to sections 3.6.a and 3.6.b to reference “provisional” ballots among the materials that should be brought before the board of canvassers at the appropriate time.

Sixth, section 4.3, which refers to “elections conducted with lever voting machines” is eliminated, as that type of voting machine is now obsolete.

Seventh, the heading of section 7 and section 7.1 is updated to account for a change in the law (*see* W. Va. Code § 3-4A-28(d)) that reduces the required canvas from five percent to three percent.

Eighth, changes are made to section 10.4.a (renumbered in the current rule, see below) to require that candidates who were on a ballot are entitled to a certificate of election “upon request”.

**House Bill No. 4055 Secretary of State, Procedures for Handling Ballots and Counting Write-In Votes in Counties Using Optical Scan Ballots, 153 CSR 27**

This bill makes substantial updates to the legislative rule governing the handling optical scan ballots.

First, the rule adds a sunset provision for 10 years from the effective date.

Second, references to punch card voting systems are eliminated throughout the rule.

Third, references to a required filing fee for an “official write-in candidate” is eliminated. This is due to a change in the law (*see* W. Va. Code §3-6-4a) that no longer requires write-in candidates to pay a filing fee.

Fourth, the provisions of §3-6-5, which contains rules for counting write-in ballots in non-primary elections, are incorporated into section 3.2, which describes when a write-in vote shall be counted.

Fifth, references to straight-ticket voting are removed as straight-ticket voting has been eliminated in West Virginia.

**House Bill No. 4054 Secretary of State, Vote by Mail Pilot Project Phase 2: Voting By Mail, 153 CSR 39**

This rule is proposed for repeal. Initially promulgated in 2012, this rule was designed to implement Phase 2 of the Vote By Mail Pilot Program, established by the West Virginia Legislature in W. Va. Code §3-3A-1 *et seq.* Phase two “authorized five municipalities in the state to conduct all voting by mail beginning with the primary election of 2011.” The pilot program expired by operation of statute on January 1, 2014, and was not renewed by the Legislature. As a result, the Secretary of State proposes to repeal the related rule.

**House Bill No. 4053 Board of Veterinary Medicine, Organization and Operation and Licensing of Veterinarians, 26 CSR 1**

This rule authorizes criminal background checks for applicants, incorporates a sunset date to the rule and updates other provisions of veterinarian practice, and updates definitions, application requirements, and requirements for licensure renewal. The jurisprudence examination is now taken online and the rule has been updated accordingly. It removed temporary permits which are no longer needed since there are online jurisprudence exams. It added notification to the Board no later than 30 days from the action of a conviction of a misdemeanor or felony, and/or disciplinary action by another federal or state agency. Finally, the proposed rule requires criminal history record checks for new applicants.

**House Bill No. 4052 Board of Veterinary Medicine, Certified Animal Euthanasia Technicians, 26 CSR 5**

This rule authorizes criminal background checks for applicants; incorporates a sunset date to the rule; and updates other provisions to current practice standards of euthanasia technology. The proposed rule removed the approved chemical restraint drugs since the drugs could change at any time, as well as requirements for animal euthanasia by carbon monoxide and inspection requirements for animal euthanasia gas chambers since we no longer register facilities that euthanize by carbon monoxide.

The proposed rule adds the following reasons for disciplinary actions and allows the Board to assess cost for disciplinary actions:

- Fraudulent evidence of qualification.

- Has engaged in dishonest, unethical, or illegal practices in or connected with the practice of animal euthanasia technology, or has been convicted of a misdemeanor related to the practice of animal euthanasia technology or animal abuse or neglect.
- Has been convicted of a felony or any other crime involving moral turpitude.
- Has violated the standards of professional conduct as duly established by the Board.
- Used euthanasia drugs for any other purpose other than humane animal euthanasia.
- Has disciplinary in another jurisdiction.
- Mentally incompetent by a court of competent jurisdiction.
- Conviction of a felony.

The Board has requested an amendment to the proposed rule which would require an applicant to indicate on his or her application the status of his or her certification and whether or not he or she has ever been denied a certification or had a certification restricted or disciplined by another state or jurisdiction.

**House Bill No. 4051 Board of Veterinary Medicine, Schedule of Fees, 26 CSR 6**

The proposed rule • Rearranged fees to be in sequence with each profession. • Removed “temporary permit” fee. • Removed “animal euthanasia gas chamber inspection administrative fee” since we no longer register these facilities. • Removed “change of address” fee because address changes are available online. • Removed “cash” from the acceptable ways of payment. • Removed “copies of public record”. • Removed “WV State Police background check” fee since the licensee will be paying the fee directly to the WV State Police. • Modified “duplicate license” fee so there is no longer a fee if done online. • Modified “Certified animal euthanasia technician application, exam & certification fee” to include the Rules and Practice Act. This is not a fee increase since the Rules and Practice act is required and was always added in the total application fee • Modified “Inspection of a facility which employs a certified animal euthanasia technician” to only include the ones that are euthanizing • Added “veterinary inactive license fee” - • Added “veterinary inactive license reactivation fee”

**Division of Rehabilitation Services, Case Services, 130 CSR 1**

This rule is being repealed at the Division’s request.

**Division of Rehabilitation Services, Resources Manual, 130 CSR 2**

This rule is being repealed at the Division’s request.

**DATE OF PASSAGE:** March 9, 2018

**EFFECTIVE DATE:** March 9, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018



# House Bill 4138

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Requiring certain public or private schools and daycare centers to install carbon monoxide detectors.

**CODE REFERENCE:** §29-3-16a (Amends and Reenacts)

**SUMMARY:**

This bill requires that by January 1, 2019, all public or private schools or daycare facilities that use a fuel burning heating system or other fuel burning device that emits carbon monoxide must install carbon monoxide detectors in each location with such system or devices.

**DATE OF PASSAGE:** March 2, 2018

**EFFECTIVE DATE:** May 31, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018

# House Bill 4150

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Prohibiting telecommunications and IP-enabled voice services from displaying the name or telephone number of the recipient.

**CODE REFERENCE:** §46A-6F-501 (Amends and Reenacts)

### **SUMMARY:**

This bill prohibits spoofing caller ID information that is fraudulent or misleading.

The bill provides that it shall be an unfair or deceptive act or practice to engage in transmission of misleading or inaccurate caller identification information, including, but not limited to, circumventing caller identification technology that allows the consumer to identify from what phone number or organization the call has originated, or to otherwise misrepresent the origin and nature of the solicitation.

The bill does not apply to a communications service provider that delivers a communication originated by another person or entity.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4169

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Requiring certain establishments and facilities to post human trafficking assistance notices.

**CODE REFERENCE:** §15-9A-4 (New)

### **SUMMARY:**

This bill creates a new section in the Code, requiring certain businesses to post notice of information to assist victims of human trafficking. The businesses subject to this requirement include: all businesses or establishments licensed to allow consumption of alcohol on the premises; exotic entertainment facilities; primary airports; passenger rail stations, bus stations; gas stations; emergency departments in hospitals; urgent care centers; locations where farm labor contractors and day haulers work; job recruitment centers; public rest areas; and hotels.

The bill requires that a business or establishment post information regarding the National Human Trafficking Resource Center and the National Human Trafficking Resource Center hotline in the public entrance to the establishment or other conspicuous location. Notice must be posted in English, Spanish, and any other language required by rule of the Director of the Division of Justice and Community Services.

The bill requires the Director of the Division of Justice and Community Services to make posters meeting certain requirements available on the Division's website.

The bill also authorizes state and local agents inspecting a business or establishment to notify the business or establishment, in writing, if the business or establishment is in violation of the requirements of the new section. If the business or establishment does not correct the violation within 30 days, the owner is guilty of a misdemeanor, punishable by a fine of not more than \$250. For a second or subsequent offense, an owner is guilty of a misdemeanor, punishable by a fine of not more than \$500.

**DATE OF PASSAGE:** March 5, 2018

**EFFECTIVE DATE:** June 3, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4186

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating generally to guaranteed asset protection waivers.

**CODE REFERENCE:** §33-4-22 (Amends and Reenacts)

### **SUMMARY:**

#### **I. Prior Legislative History**

House Bill 4186 resurrects Senate Bill 496 which was passed by the Senate too late in the session to be considered by the House.

#### **II. Legislative intent.**

In subsection (c), the bill recites the finding of the legislature that guaranteed asset protection waivers are not insurance and not subject to the provisions of Chapter 33. It also states that the intent of the Legislature is that guaranteed asset protection waivers issued prior to and after the effective date of the new section are not insurance and may not be construed to be insurance.

#### **III. Applicability.**

In subsection (d), the bill provides that it does not apply to:

- An insurance policy offered by an insurer under the laws of this state; or
- Certain debt cancellation or debt suspensions complying with certain federal provisions.

It also specifically states that guaranteed asset protection waivers are not insurance and are exempt from insurance laws of the state and that persons administering, selling or offering to sell GAP waivers to borrowers that comply with this section are exempt from insurance licensure requirements.

#### **IV. Waivers not insurance and are exempt from licensing.**

In subsection (e), the bill provides that a guaranteed asset protection waiver is exempt from insurance laws, and not considered insurance. Persons marketing, administering, selling or offering to sell guaranteed asset protection waivers to borrowers that comply with this section are exempt from this state's insurance licensing requirement.

## **V. Definitions.**

In subsection (f), the bill sets forth definitions for several terms used in the section: 1) administrator; 2) borrower; 3) contractual liability; 4) creditor; 5) finance agreement; 6) free look period; 7) guaranteed asset protection waiver; 8) insurer; 9) motor vehicle; and 10) person.

## **VI. Requirements for offering waivers.**

In subsection (g), the bill sets forth the requirements for offering guaranteed asset protection waivers. Guaranteed asset protection waivers must meet the following requirements:

- They must comply with this section
- They may be payable by a single payment or monthly installments;
- the cost thereof must be separately stated and not be considered a finance charge or interest;
- A retail motor vehicle dealer must insure its guaranteed asset protection waiver obligations on vehicles sold; creditors other than a dealer may insure its obligations;
- The GAP waiver remains part of the finance agreement upon its assignment, sale or transfer; and
- Extension of credit or terms of sale may not be conditioned upon its purchase.

In addition, the bill provides that guaranteed asset protection waivers are not subject to state consumer sales tax.

## **VII. Contractual liability or other insurance.**

An entity providing insurance for guaranteed asset protection waivers must comply with requirements in subsection (h).

## **VIII. Disclosures.**

Subsection (i), provides for certain disclosures, including:

- The name and address of the initial creditor, borrower at time of sale and, if different from the creditor, identity of the administrator;
- The purchase price and terms of the GAP waiver;
- The cancellation rights and procedures during the “free look period” (defined in (f)(5)) – full refund minus any benefits already provided;
- The procedure to obtain GAP waiver benefits;
- Cancellation after the free look period;
- A requirement that borrower must make written request to cancel or for early termination of the loan agreement (upon early payoff); and

- Methodology for calculating any refund of unearned purchase price; that the extension or terms of credit or terms of sale or lease may be conditioned on purchase of a GAP waiver.

Neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease, may be conditioned upon the purchase of the guaranteed asset protection waiver.

### **IX. Cancellation.**

Subsection (j) provides that guaranteed asset protection waivers may be cancellable or non-cancellable after a free look period (referred to above). If the borrower cancels within the free look period, and if no benefits have been provided, the borrower is entitled to a full refund; if benefits have been provided, the borrower may receive full or partial refund as agreement terms provide. If the borrower cancels after the free look period the borrower is entitled to a refund of any unearned portion of the purchase price, upon written request, unless the agreement provides otherwise. If the borrower cancels due to early termination into the financing agreement, the borrower must provide a written request within 90 days. If cancellation occurs because of default of the finance agreement, any refund due may be paid directly to the creditors and applied to the finance agreement balance, as set forth in (j)(4).

### **X. Exemption for commercial transactions.**

Subsection (k) provides that the requirements for offering, the disclosure requirements, as well as the requirement for the automobile retailer to obtain contractual liability or other insurance, are not applicable to guaranteed asset protection waivers offered in connection with a lease or sale associated with a commercial transaction.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018 (with internal effective dates)

**ACTION BY GOVERNOR:** None (became law without signature)

# House Bill 4187

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Business Liability Protection Act.

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

### **SUMMARY:**

The purpose of this bill is to prohibit employers, public or private, from taking certain actions against employees or customers lawfully possessing a firearm on the employer's property.

Under existing code, any owner, lessee, or other person charged with the care, custody, and control of real property may prohibit the open or concealed carry of a firearm on his or her property. The bill, however, provides a new exception.

### **I. Prohibitions**

First, the bill provides that no owner, lessee, or other person charged with the care, custody, and control of real property may prohibit any customer or employee from possessing a legally owned firearm when: 1) it is lawfully possessed, 2) it is locked inside or locked to a motor vehicle, and 3) the customer or employee is lawfully on the premises.

As defined, the bill does not include cars owned, leased, or rented by the employer.

Second, the bill provides that the property owner may not violate the privacy rights of a customer or employee by 1) by making a verbal or written inquiry regarding the presence of a firearm, or 2) searching the vehicle.

Third, no employer may condition employment upon 1) the fact that an employee holds a concealed carry license, or 2) an agreement with the employer that the employee will not possess a firearm in their car on the property.

Fourth, no property owner may prevent a customer or employee from entering the parking lot because the vehicles contain a lawful firearm.

### **II. Limitations**

A property owner has no duty of care related to the acts prohibited under this act.

### **III. Enforcement**

The Attorney General is given the authority to enforce the provisions by injunctive or other equitable relief and may access civil penalties not to exceed \$5,000 per violation. The Attorney General may recover costs and attorneys' fees.

Customers and employees are also given a private cause of action for injunctive or other equitable relief and civil penalties. The prevailing party is entitled to attorneys' fees and costs.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 21, 2018



# House Bill 4207

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Authorizing an online application to receive a commission to act as a notary public, and eliminating the bond requirement.

**CODE REFERENCE:** §39-4-20 (Amends and Reenacts)

### **SUMMARY:**

This bill allows a person to apply for a commission as a notary public through the Secretary of State's online notary system. It removes the requirement that the applicant execute an oath of office, but requires the applicant to provide an affirmation statement on the application. This bill also eliminates bonding requirements.

**DATE OF PASSAGE:** March 5, 2018

**EFFECTIVE DATE:** June 3, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4214

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Increasing penalties for unlawfully possessing or digging ginseng.

**CODE REFERENCES:** §19-1A-3a and §61-3-35 (Amends and Reenacts)

### **SUMMARY:**

This bill increases the penalties for unlawfully possessing or digging ginseng in this state. Further, the bill requires ginseng dealers to maintain a copy of a valid identification card for those involved in ginseng transactions, and it requires written consent of a landowner for a person to dig or prospect for cultivated ginseng on that land.

For the crime of illegally digging or prospecting for cultivated ginseng on the land of another under West Virginia Code §61-3-35, the penalties are increased from a fine of not less than \$100 to a fine of not less than \$500 nor more than \$1000 for a first offense and not less than \$1000 for any subsequent offense.

For the crimes listed under West Virginia Code §19-1A-3a related the Division of Forestry's regulation of ginseng and ginseng dealers, the penalties for violations of that section are increased as follows: 1) The civil penalties are increased from not less than \$100 nor more than \$500 per violation to not less than \$500 nor more than \$1,000 per violation; and 2) The criminal penalties are increase for a first offense from not less than \$100 nor more than \$500 to not less than \$500 nor more than \$1,000 and for a second or subsequent offense from not less than \$500 nor more than \$1,000 to not less than \$1,000 nor more than \$2,000.

The bill also makes minor technical corrections to the Code.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4230

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to credit for reinsurance.

**CODE REFERENCE:** §33-4-15a (Amends and Reenacts)

### **SUMMARY:**

This bill amends current requirements in W.Va. Code §33-4-15a concerning credit for reinsurance, which is a credit reflected on a ceding insurer's annual statement showing reinsurance premiums ceded and losses recoverable from the reinsurer.

Reinsurance is a type of insurance that involves acceptance by an insurer, called the reinsurer, of all or part of the risk of loss covered by another insurer, called the ceding company. It is commonly used as a way for an insurer to avoid having to pay for large or catastrophic losses.

Currently, this section sets forth requirements to become an "accredited reinsurer," which includes having filed an application for and accreditation and received a letter of accreditation from the Insurance Commissioner and meeting several other requirements. This bill completely rewrites this section.

The bill adopts revised solvency standards for reinsurance placed with U.S. insurers. In order to get credit for reinsurance on an insurer's balance sheet, the reinsurer, if not licensed in a U.S. domiciliary jurisdiction, must be certified as an appropriate reinsurer based upon solvency strength and other financial benchmarks.

The bill establishes a scheme of reduced collateral requirements for certified and rated insurers. An unauthorized reinsurer may be "certified" and rated by the domestic state regulator of a ceding U.S. insurer. Insurer's ceding to a reinsurer that has been certified will be granted full credit for reinsurance while being permitted to obtain security according to a sliding scale, with the level of required collateral varying from 0% to 100% of ceded liabilities according to the certified reinsurer's rating.

To be eligible for certification, a reinsurer must meet the following criteria: 1) be domiciled and licensed in a "qualified jurisdiction;" 2) maintain capital and surplus of no less than \$250 million; 3) maintain financial strength ratings from two or more acceptable rating agencies; 4) submit to the jurisdiction of the certifying state and agree to provide security for 100% of its liabilities attributable to cessions by U.S. insurers if it resists enforcement of a final U.S. judgment; 5) agree to provide certain informational filings, including notice within 10 days of any regulatory action taken against the reinsurer, an annual list of disputed and overdue reinsurance claims regarding U.S.

cedants and annual audited financial statements and auditor's report; and 6) comply with any other requirements established by the certifying state. If a reinsurer applying for certification has been certified by another state accredited by the NAIC, the regulator may defer to that state's certification.

In addition, the bill clarifies that to obtain credit for reinsurance, the reinsurance agreement must contain an insolvency clause stipulating that if the ceding insurer is placed in liquidation or similar insolvency proceedings, reinsurance claims are payable directly to the ceding insurer's liquidator or successor without diminution, regardless of the ceding insurer's status.

The bill requires that an insurer must notify its domestic regulator within 30 days if reinsurance recoverables from any single reinsurer or group of affiliated reinsurers exceed 50% of the insurer's last reported surplus or if the insurer has ceded to any single reinsurer or group of affiliated reinsurers more than 20% of the insurer's gross written premium in the prior calendar year. An insurer also must notify its domestic regulator within 30 days if, at any time, it determines it is likely to exceed these limits.

**DATE OF PASSAGE:** March 3, 2018

**EFFECTIVE DATE:** January 1, 2019

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4233

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating generally to fraudulent transfers.

**CODE REFERENCE:** §§40-1A-1–6 and §40-1A-8 (Amends and Reenacts);  
§§40-1A-13–15 (New)

### **SUMMARY:**

This state is one of the large number of jurisdictions (43 states and the District of Columbia) which has enacted the Uniform Fraudulent Transfers Act. In 2014, the Uniform Law Commission approved a set of amendments to the Act. The amendments changed the title of the Act to the Uniform Voidable Transactions Act. The amendment project was instituted to address a small number of narrowly-defined issues, and was not a comprehensive revision; many of the updates made by the Uniform Law Commission have already been adopted by West Virginia, and this bill is merely a codification of the remaining provisions to bring us into full conformity with the new Act. In three years, 16 of the 43 states above have updated their statutes to be in conformity with the new provisions; and at least six more are likely to follow this year. The Commission took measures to correct the differing evidentiary standards and burdens of proof which had grown up among jurisdictions.

§40-1A-2(b) of the bill deals with the presumption of insolvency. The change contemplated by the bill places on the debtor the burden of rebutting the presumption of insolvency by proving that the nonexistence of insolvency is more probable than its existence. §40-1A-4(c) provides that the evidentiary standard for a claim under §40-1A-4, Transfer or Obligation Voidable as to Present or Future Creditors, is preponderance of the evidence and defines the party that bears the burden of proof under the section.

§40-1A-5(c) provides that evidentiary standard under §40-1A-5, Transfers Fraudulent as to Present Creditors is preponderance of the evidence and places the burden of proof on the creditor, except to the extent the burden is limited by §40-1A-2(b) which shifts the burden to the debtor to show he is not insolvent if a creditor has proven the debtor is not paying his debts as they become due.

§40-1A-8(g) establishes the party with the burden of proving each subsection of §40-1A-8, Defenses, Liability, and Protection of Transferee. It sets forth rules to determine the burden of proving the matters in the section. The evidentiary standard for all of §40-1A-8. applies the “preponderance of the evidence” standard.

§40-1A-13 is new and contains a choice of law rules similar to that of the Uniform Commercial Code, using the debtor’s location at the time of the transfer or incurrance of

the obligation to determine the local law that governs the avoidance action; defined as: 1) the debtor's principal residence if the debtor is an individual, 2) the debtor's place of business if the debtor is an organization and has one place of business, or 3) the debtor's chief executive office if the debtor is an organization and has more than one place of business.

§40-1A-14, which is new adds language relating to the application of fraudulent transfer law to series organizations/series LLCs and the series that comprise them. These entities are a simple way to mimic the formation of separate special purpose vehicles to isolate assets of one series from the claims of creditors of another series (or of the series organization itself) for the benefits of different stakeholders. A series can and usually does have both assets and liabilities, but it is not required to have both. This creation of various shell entities allows for the compartmentalization of assets and liabilities and could allow for the protection of assets from creditors. This section also provides that a series organization includes a foreign series limited liability company.

§40-1A-15 is new and addresses electronic signatures.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4242

## ENGROSSED COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Clarifying the jurisdictional amount for removal of a civil action from magistrate court to circuit court.

**CODE REFERENCE:** §50-4-8 (Amends and Reenacts)

**SUMMARY:**

This bill provides that a civil action may now be removed from magistrate court to circuit court if the matter exceeds \$5,000, not \$2,500.

**DATE OF PASSAGE:** February 16, 2018

**EFFECTIVE DATE:** May 17, 2018

**ACTION BY GOVERNOR:** Signed February 27, 2018

# House Bill 4268

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Co-tenancy Modernization and Majority Protection Act.

**CODE REFERENCE:** §22C-9-3, §22C-9-4, §37-7-2 (Amends and Reenacts); §§37B-1-1-7, §§37B-2-1-9 (New)

### SUMMARY:

This bill allows oil and gas development to occur in cases where there are seven or more royalty owners and at least 75% of the undivided interest owners of the oil and gas consent to development.

Prior to development, consenting cotenants and the operator are required to search the county records, last known addresses, and the internet to locate and identify all owners of the oil and gas estate. Reasonable efforts must be made to negotiate with all owners to acquire consent through leasing, purchasing, or assignments of interests.

The operator is required to pay non-consenting cotenants by one of the following methods, to be selected by the non-consenting cotenant:

- 1) To receive a production royalty free of post-production expenses, equal to the highest royalty percentage paid to the consenting cotenants in the same property, and lease bonus and delay rental payments equal to the weighted average per net mineral acre paid to the consenting cotenants; or
- 2) To participate in the development and receive his or her share of the revenue and costs attributable to the tract being developed, after the market value of the nonconsenting cotenant's share of production equals double the share of such costs payable or charged to the interest of the nonconsenting cotenant.

Non-consenting cotenants have 45 days to make an election. Non-consenting cotenants who do not make an election within the required time-period and all unknown or unlocatable owners are deemed to have elected the production royalty option.

In the case of a non-consenting cotenant who chooses the production royalty option, the bill provides that such cotenants shall benefit from the most favorable provisions in the consenting cotenant leases unless otherwise agreed to in writing. In the case of a non-consenting cotenant who chooses to participate, such cotenants shall benefit from other terms and provisions determined to be just and reasonable by the Oil and Gas Conservation Commission. The commission is authorized to propose legislative rules to implement and make effective the provisions of the new code section.



The interests of the unknown or unlocatable owners are to be reserved, reported, and remitted to the Treasurer quarterly. The Treasurer will deposit and administer the funds in a newly created fund known as the Unknown and Unlocatable Interest Owners Fund. After July 1, 2023 the Treasurer must evaluate the size of the account and likelihood of claims being paid and begin transferring unneeded money as follows: 50% to the Oil and Gas Reclamation Fund, which is used by the DEP to plug orphan wells; and 50% to the Public Employees Insurance Agency Stability Fund. Among other duties, the Treasurer is empowered to invest the funds with the West Virginia Board of Treasury Investments, conduct investigations to locate lawful owners, payout lawful claims to owners, and deduct reasonable administration costs.

Seven years after the first quarterly report is filed, a bonafide surface owner may file an action to quiet title to the interests of all unknown and unlocatable interest owners of the oil and natural gas estate underlying the surface tract and after satisfying certain requirements and procedures set forth in the bill shall be entitled to receive a special commissioner's deed transferring title to the interest of any or all unknown or unlocatable interest owners in an oil and natural gas estate which underlies the surface tract. The surface owner shall thereafter be entitled to his or her proportionate share of all future proceeds.

**DATE OF PASSAGE:** March 5, 2018

**EFFECTIVE DATE:** June 3, 2018

**ACTION BY GOVERNOR:** Signed March 9, 2018

# House Bill 4270

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Providing for the timely payment of moneys owed from oil and natural gas production.

**CODE REFERENCE:** §22-6-22 (Amends and Reenact); §§37B-1-1-3 (New)

### **SUMMARY:**

This bill provides for quarterly production reporting to the Department of Environmental Protection. The Department of Environmental Protection shall publish the production data to its website within a reasonable time.

The bill adds a new chapter addressing oil and natural gas production information reporting from horizontal wells.

The new chapter requires an operator or producer to provide certain information set forth in §37B-1-1 thereof with each payment. An interest owner who does not receive the required information in a timely manner may send a written request for the same by certified mail. The operator or producer has 60 days to provide the requested information. If the information is not provided within the 60-day period, the interest owner may bring a civil action against the operator or producer to enforce the provisions of the new section, and a prevailing interest owner shall be entitled to recover reasonable attorneys' fees and court costs incurred in the civil action.

Next, §37B-1-2 provides an exception to the timely payment rule which allows accumulation of payments until the total amount attributable to an interest owner exceeds \$100 but requires annual remittance not less than once annually regardless of the amount accumulated. Remittance of all accumulated amounts is required immediately, or as soon as practicable, upon cessation of production of oil, natural gas, or natural gas liquids or upon relinquishment or transfer of the payment responsibility to another party.

Lastly, §37B-1-3 requires all regular production payments from horizontal wells be made not less than 120 days from the first date of sale of oil, natural gas, or natural gas liquids and within 60 days thereafter for each additional sale, unless failure to remit is due to lack of record title in the interest owner, a legal dispute concerning the interest, a missing or unlocatable owner of the interest, or due to conditions otherwise specified in the new article. The bill assesses an interest penalty for non-timely payments of prime plus 2% compounded quarterly until such payment is made.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4275

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to the law-enforcement authority of the director and officers of the division of protective services.

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

### **SUMMARY:**

This bill clarifies the law-enforcement authority the Division of Protective Services. The bill exempts certain safety and security information from disclosure under the West Virginia Freedom of Information Act; clarifies that agencies installing electronic security systems designed to connect with the division's command center must be approved prior to installation; and authorizes persons who regularly do business at Building 1 of the State Capitol Complex to receive an exterior door access security card, after being subject to a background check and paying a \$250 fee, upon approval of the Director of the Division of Protective Services.

**DATE OF PASSAGE:** March 7, 2018

**EFFECTIVE DATE:** June 5, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4276

## COMMITTEE SUBSTITUTE

---

**SHORT TITLE:** Allowing magistrates to grant work release privileges.

**CODE REFERENCE:** §62-11a-1 (Amends and Reenacts)

**SUMMARY:**

This bill authorizes magistrates to order work release for persons convicted of misdemeanors.

**DATE OF PASSAGE:** March 8, 2018

**EFFECTIVE DATE:** June 6, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4320

## COMMITTEE SUBSTITUTE

---

**SHORT TITLE:** Limiting the ability of an agent under a power of attorney to take self-benefiting actions.

**CODE REFERENCE:** §39B-1-114 and §39B-2-101 (Amends and Reenacts)

### **SUMMARY:**

This bill adopts the language from the Uniform Law Commission’s Uniform Power of Attorney Act by striking the following language:

“However, when the agent benefits from the act to the substantial and direct detriment of an ancestor, spouse, heir or descendant of the principal a presumption is created that the act was not within the scope of authority granted in the power of attorney, unless the authority to perform that specific act is expressed with particularity in identifying the existing property interest and provided in the power of attorney.”

The stricken language creates a presumption that a self-benefitting action is outside the scope of the power of attorney, unless provided for in the Power of Attorney. The bill removes the presumption and provides that a self-benefitting act that was undertaken pursuant to express authority under the Power of Attorney is not in violation of the Power of Attorney’s duties.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4324

## STRIKE AND INSERT AMENDMENT TO INTRODUCED VERSION

---

**SHORT TITLE:** Relating to the employment of individuals by municipal paid fire departments under civil service.

**CODE REFERENCE:** §8-15-17 and 8-15-20 (Amends and Reenacts)

**SUMMARY:**

This bill removes the requirement that an applicant for a position with a municipal paid fire department be a resident of the municipality or the county in which the municipality is located. It also provides that, if there are not enough eligible applicants to certify a list of three, then the appointing officer may appoint a qualified individual to fill the position.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4336

## COMMITTEE SUBSTITUTE

---

**SHORT TITLE:** Updating the schedule of controlled substances.

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

### **SUMMARY:**

This bill updates four schedules of controlled substances. The bill generally reorganizes each section by removing much of the numbering and lettering that distinguished each subdivision. The bill further adds catch-all language to the initial subsection of each schedule and removes catch-all language that is interspersed throughout each schedule. The catch-all language added to the initial subsection of each schedule would include not just the chemical substance listed but also “their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation.” Additionally, the bill adds chemical compounds to three of the schedules. Gabapentin and pregabalin are added to Schedule V. Dronabinol is added to Schedule II, and several new chemical compounds are added to Schedule I, including the chemical compound for fentanyl.

**DATE OF PASSAGE:** March 9, 2018

**EFFECTIVE DATE:** June 7, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018



# House Bill 4343

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to the delivery of financial statements to bank shareholders.

**CODE REFERENCE:** §31A-4-20 (Amends and Reenacts)

### **SUMMARY:**

This bill permits the digital delivery of publication of a bank's most recent year-end audited financial statements to their shareholders at or prior to their annual meeting.

Currently, W.Va. Code §31A-4-20 requires state banking institutions to prepare and submit to stockholders a copy of the institutions fiscal year audited financial statement, by mail "or otherwise delivers", within 120 days of the close of the fiscal year. This bill amends the methods of delivery of the financial statement to shareholders to allow delivery of a digital copy of the statement through traditional mail or courier service, electronic mail or any other means of delivery or provides shareholders with access to a digital copy of the statements published to a website or any other digital media platform or portal.

**DATE OF PASSAGE:** March 3, 2018

**EFFECTIVE DATE:** June 1, 2018

**ACTION BY GOVERNOR:** Signed March 22, 2018

# House Bill 4368

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

**SHORT TITLE:** Relating to voluntary assignments of wages by state employees who have been overpaid.

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

**SUMMARY:**

The purpose of this bill is to allow a state employee to voluntarily deduct overpayment of wages, including incremental salary increases. The employee may authorize such assignment through a writing or order for future wages to repay the overpayment, not to exceed 75 percent of their wages.

**DATE OF PASSAGE:** March 7, 2018

**EFFECTIVE DATE:** June 5, 2018

**ACTION BY GOVERNOR:** Signed March 22, 2018

# House Bill 4394

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

---

**SHORT TITLE:** Relating to forest fires.

**CODE REFERENCE:** §20-3-5 (Amends and reenacts); §20-3-5a (New)

**SUMMARY:**

This bill clarifies the civil and criminal penalties for failure to remove flammable material and create a safety strip around material to be burned.

The bill establishes a prescribed fire program for timber management. West Virginia is the only state in this part of the country that does not have a prescribed fire program. Under current law any person who lights a fire can be criminally and civilly liable. This bill enables the Division of Forestry to create and operate a prescribed fire program to better manage our forests. The bill creates a regulatory framework similar to what is used in the state of Tennessee and Virginia.

The bill contains definitions, requires the Division to create a process and prescribed fire course to become a certified prescribed fire manager, provides guidance on the development of a plan or "prescription" to conduct the fire, and specifies the manner in which a prescribed burn is to be conducted

The bill allows for the Department of Environmental Protection to regulate the pollutants from a fire and authorizes the Division to promulgate legislative rules for approval.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 22, 2018

# House Bill 4400

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to the West Virginia Physicians Mutual Insurance Company.

**CODE REFERENCES:** §33-20F-3, §33-20F-5, and §33-20F-9 (Amends and Reenacts); §33-20F-6 (Repeals)

### **SUMMARY:**

This bill amends several sections of code to allow the Physicians' Mutual Insurance Company (PMIC) to insure physicians licensed to practice in other states or to allow physicians licensed in this state to practice out of state. It further removes outdated code provisions that were either irrelevant to the current operation of the PMIC or set timeframes in 2003 and 2004 related to the creation of the PMIC that have long since passed. The bill also increases the number of directors on the PMIC's board who must be physicians licensed in this state from five to six, and it allows two additional directors to be chosen by election under the PMIC's bylaws. The bill reflects the PMIC's evolution from a state-funded insurance company for physicians in this state to a self-sustaining private insurer of physicians in this and other states.

**DATE OF PASSAGE:** March 7, 2018

**EFFECTIVE DATE:** June 5, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018

# House Bill 4402

## STRIKE AND INSERT AMENDMENT TO INTRODUCED VERSION

---

**SHORT TITLE:** Relating to the prevention of sexual abuse of children.

**CODE REFERENCE:** §18-2-41 (New)

### **SUMMARY:**

#### **Education of children grades K-12**

The bill requires that, beginning July 1, 2019, children in grades K-12 receive body age-appropriate safety information at least once per academic school year, with a preference for four times per academic year. To facilitate this process and resources, the bill requires the state board to promulgate legislative rules by December 31, 2018, and that those rules address, at least, the following:

- 1) Developmentally appropriate education and resources;
- 2) Social media content;
- 3) Best practices;
- 4) Differing county and school sizes, demographics, etc.;
- 5) Strategies for dealing with disclosures;
- 6) Family involvement in the process;
- 7) Offender dynamics;
- 8) Child-on-child scenarios;
- 9) Development of supplementary materials, including posting of the child abuse hotline, to embed into the school climate; and
- 10) Local crisis response.

#### **Training of public school employees**

The bill requires the state board to promulgate legislative rules before December 18, 2018, that will include comprehensive instruction and information to better equip schools and their employees. If necessary, the bill permits the board to promulgate an emergency rule. The rule will include how to:

- 1) Recognize sexually offending behaviors in adults, questionable behaviors such as boundary violations, and signs in adults that might indicate they pose a sexual risk to children;
- 2) Recognize, appropriately respond to, and prevent sexually inappropriate, coercive, or abusive behaviors among children and youth served by schools;
- 3) Recognize behaviors and verbal cues that might indicate a child or youth has been a victim of abuse or neglect;

- 4) Support the healthy development of children and youth and the building of protective factors to mitigate against their sexual victimization by adults or peers;
- 5) Recognize and appropriately respond to student infatuations and flirtations with adults in schools;
- 6) Recognize appropriate and inappropriate social media usage by adults and children;
- 7) Provide consistent and standard protocols for responding to disclosures of sexual abuse or reports of boundary-violating behaviors by adults or children in a supportive and appropriate manner which meet mandated reporting requirements;
- 8) Provide adequate understanding of the age-appropriate, comprehensive, evidence-informed child sexual abuse prevention education which will be offered to their students; and
- 9) Reflect the research on Adverse Childhood Experiences (ACEs) and trauma-informed care.

The bill further provides that the training shall be given two years and sets forth parameters for duration and delivery of the training and documentation of the training.

**DATE OF PASSAGE:** March 5, 2018

**EFFECTIVE DATE:** June 3, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4410

## INTRODUCED VERSION

---

**SHORT TITLE:** Removing the requirement that the State Auditor receive copies of the Limited Video Lottery bids.

**CODE REFERENCE:** §29-22B-1107 (Amends and Reenacts)

### **SUMMARY:**

Currently, the State Auditor and West Virginia Department of Administration receive Limited Video Lottery Bids. The bill eliminates the requirement that the Auditor receive such bids, so that bids are only required to be delivered to the Director of Purchasing within the West Virginia Department of Administration. This requirement that bids be delivered to the Auditor is based on a historical statewide purchasing practice, which has been eliminated; the language in this section is obsolete.

**DATE OF PASSAGE:** March 5, 2018

**EFFECTIVE DATE:** June 3, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018

# House Bill 4424

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Providing that the Ethics Act applies to certain persons providing services without pay to state elected officials.

**CODE REFERENCE:** §6B-1-3 and §6B-1-5 (Amends and Reenacts)

### **SUMMARY:**

Currently, the Ethics Act does not apply to persons performing duties on a volunteer basis that are ordinarily performed by public officials. The bill provides that the Ethics Act applies to a “public servant volunteer” which is defined as a person who is granted or vested with powers, privileges or authorities ordinarily reserved to public officials or who performs services, without compensation, on behalf of a public official.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018



# House Bill 4434

## STRIKE AND INSERT AMENDMENT TO INTRODUCED VERSION

---

**SHORT TITLE:** Clarifying provisions relating to candidates unaffiliated with a political party as it relates to certificates of announcement.

**CODE REFERENCE:** §3-5-23 (Amends and Reenacts)

### **SUMMARY:**

The bill prohibits people from becoming candidates for political office by virtue of the nomination-certificate process: 1) who, at the time of the filing of the nomination certificate or certificates, are registered and affiliated with a recognized political party as defined in W.Va. Code §3-1-8; or 2) who were candidates for nomination by a recognized political party as defined in W.Va. Code §3-1-8, but failed to win the nomination of their political party.

**DATE OF PASSAGE:** March 7, 2018

**EFFECTIVE DATE:** June 5, 2018

**ACTION BY GOVERNOR:** Signed March 22, 2018

# House Bill 4436

## STRIKE AND INSERT AMENDMENT TO INTRODUCED VERSION

---

**SHORT TITLE:** Clarifying when a minor between the ages of 16 and 18 may be employed by or elected as a member of a volunteer fire department.

**CODE REFERENCE:** §21-6-2 (Amends and Reenacts)

**SUMMARY:**

Current law allows a child between the ages of 16 and 18 who has completed the minimum training requirements of the WVU Fire Service Extension fire training section one or its equivalent to be employed by or elected as a member of a volunteer fire department to perform firefighting functions. This bill expands upon the requirement by additionally allowing for enrollment in, participation in or completion of minimum training requirements of the State Fire Commission or the Department of Education Public Service Training approved program as prerequisites to employment or election.

**DATE OF PASSAGE:** March 5, 2018

**EFFECTIVE DATE:** June 3, 2018

**ACTION BY GOVERNOR:** Signed March 20, 2018

# House Bill 4453

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to judicial review of contested cases under the West Virginia Department of Health and Human Resources Board of Review.

**CODE REFERENCE:** §9-2-13 (Amends and Reenacts)

### **SUMMARY:**

This bill corrects a previous drafting error and makes other technical corrections to the section of code governing the process for seeking judicial review of decisions by the Department of Health and Human Resources.

The Code currently states that “The petition [for review of a DHHR decision] shall state whether the appeal is taken on questions of law or questions of fact, not both.” The bill changes the “not” to “or,” as the intent of the original legislation was for an appellant to present questions of law and questions of fact when filing an appeal.

The bill makes additional corrections of grammatical errors and misspelling of words.

**DATE OF PASSAGE:** March 8, 2018

**EFFECTIVE DATE:** June 6, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4462

## STRIKE AND INSERT AMENDMENT TO INTRODUCED VERSION

---

**SHORT TITLE:** Allowing off duty members and officers of the department of public safety to guard private property.

**CODE REFERENCE:** §15-2-18 (Amends and Reenacts)

**SUMMARY:**

This bill allows a State Police officer or member to work for a private person or entity during off-duty hours, if the work is not prohibited by State Police rules because of the nature or location of the work.

**DATE OF PASSAGE:** March 8, 2018

**EFFECTIVE DATE:** June 6, 2018

**ACTION BY GOVERNOR:** Signed March 22, 2018

# House Bill 4473

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

---

**SHORT TITLE:** Relating to use of state funds for advertising to promote a public official or government office.

**CODE REFERENCE:** §§6B-2B-1-4 (Amends and Reenacts)

### **SUMMARY:**

This bill amends the article of code enacted by the “trinket bill” in 2016. The bill redefines the term “advertising” to explain that the term includes the (impermissible) distribution of information meant to promote a public official or a political party. The current definition is extremely broad, simply defining “advertising” to mean any “publishing, distributing, disseminating, communicating, or displaying information to the public through audio, visual, or other media tools.” The bill also defines the term “press release” to include the reporting of specific, but brief information about an event, circumstance or other happening.

The bill permits the name and likeness of a public official to be used in publicly-funded educational materials, so long as the primary purpose of the education material is to provide “information about the processes, operations, structure, functions, or history of an agency, agencies, or branch of government”, or to provide lists of contact information. The bill also specifically permits the name and likeness of a public official to be included in the West Virginia Blue Book and Legislative Manual. In addition, the bill permits the name and likeness of a public official to be included in a publicly-funded press release that is intended for legitimate news or informational purpose, and taken as a whole, does not feature or present the public official for the purpose of self-promotion.

Finally, the bill permits the name and likeness of a public official to be included on an agency’s website or social media account for the purpose of sharing biographical information, sharing educational materials, sharing press releases, or for any other purpose that is reasonable, incidental, appropriate, and has the primary purpose of promoting the agency’s mission and services rather than promoting the public official.

**DATE OF PASSAGE:** March 7, 2018

**EFFECTIVE DATE:** June 5, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4486

## INTRODUCED VERSION

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**SHORT TITLE:** Relating to persons required to obtain a license to engage in the business of currency exchange.

**CODE REFERENCE:** §32A-2-3 (Amends and Reenacts)

### **SUMMARY:**

This bill assists in the streamlining of filings with the West Virginia Securities Commission, and to potentially reduce the cost to filers by allowing use of a national database to make filings.

West Virginia adopted the Uniform Securities Act in 1974, which designates the State Auditor as the commissioner of securities of the state. The Act (W.Va. Code §32-3-301) requires that all securities offered for sale and sold in the state must be registered with the Auditor. The Act also requires all broker-dealers of securities and investment advisors to also be registered with the Auditor under the Act. Currently, and for the past several years, the Auditor utilizes the Electronic Filing Depository system, which is administered by the North American Administrator's Association to facilitate the electronic filing of these registrations and filings required by the Act, as an alternative to paper filings.

W.Va. Code §33A-2-1 *et seq.* regulates and requires licensure by the Division of Financial Institutions of persons, engaged in the business of currency exchange, transportation of transmission in this state, including persons providing these services either inside or out of this state by electronic means. This bill would specifically exempt The North American Securities Association, which administers the electronic Filing Depository System utilized by the Auditor to facilitate the filing of registrations under the Securities Act, from the licensure or other fee requirements contained in W.Va. Code §33A-2-1 *et seq.*

**DATE OF PASSAGE:** March 9, 2018

**EFFECTIVE DATE:** March 9, 2018

**ACTION BY GOVERNOR:** Signed March 22, 2018

# House Bill 4488

## AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to the Hatfield-McCoy Recreation Authority.

**CODE REFERENCE:** §§20-14-1–4 and §20-14-8 (Amends and Reenacts)

### **SUMMARY:**

This bill adds the counties of Braxton, Clay, Fayette, Nicholas and Webster as participating counties in the Hatfield-McCoy Recreation Authority. The bill also amends provisions regarding the board and prohibited acts. The following is an explanation of the changes that the bill makes, by section:

#### **W.Va. Code §20-14-1**

- The bill updates the Legislative Findings.

#### **W.Va. Code §20-14-2**

- The bill amends the definition of “[p]articipating county or counties” to add the following five counties: Braxton, Clay, Fayette, Nicholas, and Webster,

#### **W.Va. Code §20-14-3**

- The bill amends the counties in which the recreational trail system will be located to include Braxton, Clay, Fayette, Nicholas and Webster.
- The bill amends the number of members of the board from no more than 18 to no more than “two times the number of participating counties
- The amends the manner in which board members are appointed.

#### **W.Va. Code §20-14-4**

- The bill amends the quorum from a majority of the members of the board to 10 members of the board.

#### **W.Va. Code §20-14-8**

- The bill prohibits a person from consuming or possession any non-intoxicating beer and non-intoxicating craft beer or wine on any location within the Hatfield-McCoy Recreation Area.
- The bill prohibits any child under the age of six from being allowed on any trail within the Hatfield-McCoy Recreation Area.
- The bill prohibits children under the age of eight who are required to be placed in a child passenger safety device system from occupying a motor vehicle on any trail.



- The bill requires all persons operating or riding upon an ATV, UTV or motorcycle to follow manufacturer's recommendations for that vehicle relating to age and size limitations for operators and passengers.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 21, 2018

# House Bill 4502

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Including treason, murder, armed robbery, and organized crimes for which communications can be intercepted.

**CODE REFERENCE:** §62-1D-8 (Amends and Reenacts)

### **SUMMARY:**

This bill allows law enforcement to apply for, and receive, a judicial order authoring wiretapping in an investigation of the following crimes: treason, murder, aggravated robbery, participation in an organized criminal enterprise, and felony sexual assault.

**DATE OF PASSAGE:** March 7, 2018

**EFFECTIVE DATE:** June 5, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4529

## INTRODUCED VERSION

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**SHORT TITLE:** Relating to oath by municipal official certifying list of delinquent business and occupation taxes.

**CODE REFERENCE:** §8-13-25 (Amends and Reenacts)

### **SUMMARY:**

W.Va. Code §8-13-24 vests plenary power and authority in municipalities to adopt an ordinance, which provides for the publication of delinquent business and occupation taxes, subject to certain requirements. W.Va. Code §8-13-25 requires that the official designated in the ordinance to oversee or conduct the publication shall take an oath, which is to be included in or attached to the published delinquency list.

This bill permits the certification to be a date certain (date of certification), instead of the date the oath is signed. The bill also clarifies that the official signing the oath is not subject to the misdemeanor penalties in §11-10-5d(c) prohibiting disclosure of personal taxpayer information.

**DATE OF PASSAGE:** March 8, 2018

**EFFECTIVE DATE:** June 6, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4546

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to where an application for a marriage license may be made.

**CODE REFERENCE:** §48-2-102 (Amends and Reenacts)

**SUMMARY:**

This bill allows an applicant, regardless of the applicant's state or county of residency, to apply for a marriage license in any county of this state.

**DATE OF PASSAGE:** March 7, 2018

**EFFECTIVE DATE:** June 5, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4571

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to the final day of filing announcements of candidates for a political office.

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

### **SUMMARY:**

This bill requires that on the final day of the period during which certificates of announcement of candidacy for political office may be filed, the Secretary of State's office must be open from 9:00 a.m. until 11:59 p.m. and the offices of the county clerks must be open from 9:00am until 12:00pm.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4603

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Providing immunity from civil liability to facilities and employees providing crisis stabilization.

**CODE REFERENCE:** §§55-7K-1-3 (New)

### **SUMMARY:**

Certain non-profit behavioral health facilities and residential recovery facilities are not liable for injury related to the provision of short-term crisis stabilization and/or drug and alcohol detoxification services, substance use disorder services, drug overdose services, and/or withdrawal services. The bill only applies to nonprofit facilities that do not require payment from the individual receiving the services.

The facilities will be held liable to the extent the injury was caused by gross negligence or willful or wanton misconduct of the facility.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4607

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Establishing certain criteria for the restricted operation of drones within State Parks, Forests, and Rail Trails.

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

### **SUMMARY:**

This bill amends the section of the Code dealing with the Director of the Division of Natural Resources' authority over State Parks, State Forests and State Rail Trails. The bill requires the Director to allow drones to be operated in those areas. The bill also limits an Area Superintendent's authority to issue directives or implement time and place restrictions regarding drones to: 1) protect safety and privacy of park users; 2) protect facilities; 3) protect peaceful and quiet; 4) protect atmosphere of the area; and 5) prevent harassment of wildlife.

Drone operators are required to register at the park before operating a drone, at which time they shall be provided a list and map of areas where drone operation is prohibited. Drone operators are expressly liable for any risk or injury related to drone use. There are specific amendments changing "drone" to "unmanned aircraft system" consistent with a bill that was previously passed during the session.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018

# House Bill 4618

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

**SHORT TITLE:** Relating to the authority of the Division of Protective Services.

**CODE REFERENCE:** §61-6-1, §61-6-1a, §61-6-3, §61-6-4, and §61-6-5 (Amends and Reenacts)

**SUMMARY:**

This bill adds the Division of Protective Services and its officers to list of persons and entities with authority to declare and control unlawful assemblies. The bill also updates references to State Police from the former name of the agency, “Department of Public Safety.” The bill also removes antiquated language which makes all persons unlawfully assembled guilty of any deaths to persons quelling the assembly unlawful.

**DATE OF PASSAGE:** March 9, 2018

**EFFECTIVE DATE:** June 7, 2018

**ACTION BY GOVERNOR:** Signed March 27, 2018



# House Bill 4627

## STRIKE AND INSERT AMENDMENT TO INTRODUCED VERSION

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**SHORT TITLE:** Relating to providing a limitation on the eminent domain authority of a municipal park board.

**CODE REFERENCE:** §8-21-8 (Amends and Reenacts)

### **SUMMARY:**

Every city is authorized to create a board of park and recreation commissioners, for the purpose of establishing, constructing, improving, extending, developing, maintaining, and operating a city public park and recreation system. The boards are given the authority to acquire property by purchase, lease, or by exercise of the power of eminent domain.

The bill provides that any acquisition by exercise of eminent domain must be approved by a majority vote of the governing body of that municipality. The purpose of this bill is to place a limitation on the eminent domain authority of a municipal park board by requiring the approval of the governing body of that municipality in instances where it is sought to be exercised.

**DATE OF PASSAGE:** March 10, 2018

**EFFECTIVE DATE:** June 8, 2018

**ACTION BY GOVERNOR:** Signed March 22, 2018