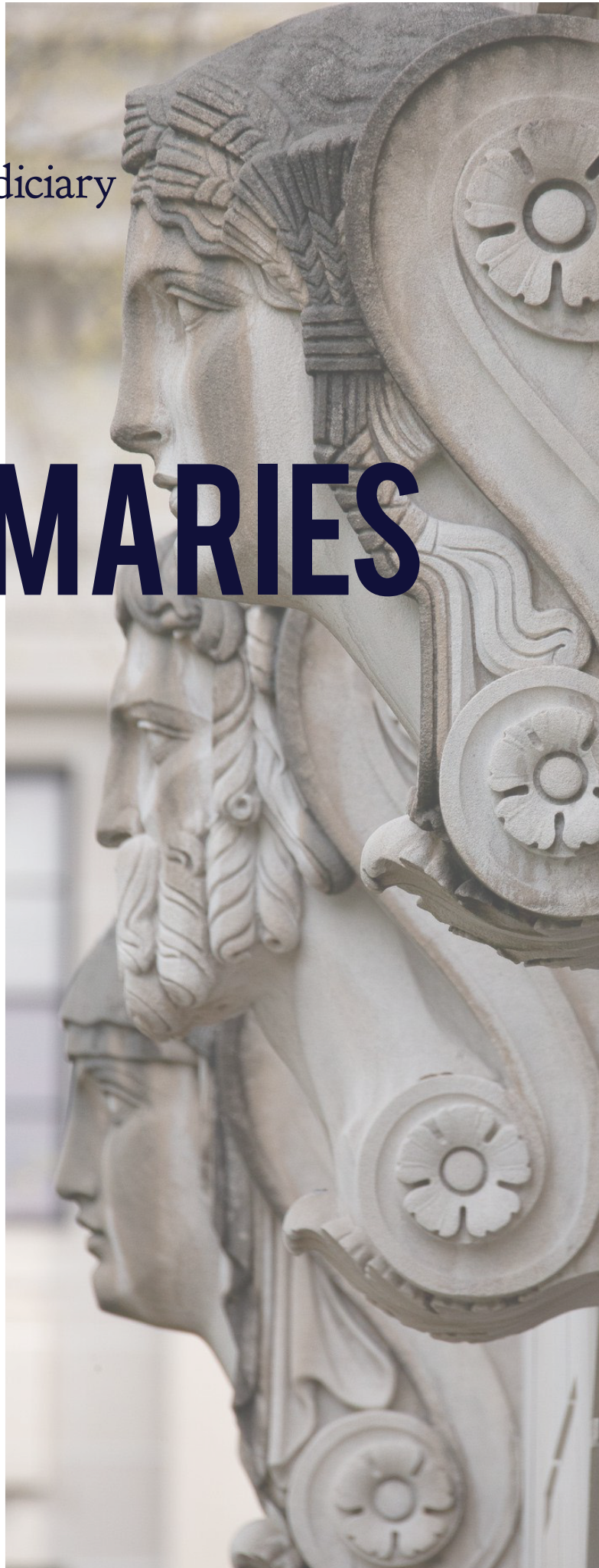


West Virginia Legislature
Senate Committee on the Judiciary

2019

BILL SUMMARIES



COMMITTEE ON THE JUDICIARY
WEST VIRGINIA SENATE

EIGHTY-FOURTH LEGISLATURE
REGULAR SESSION



MARCH 2019

SENATE COMMITTEE ON THE JUDICIARY

2019 Regular Legislative Session

Staff Members

The seal of the West Virginia Senate is a large, circular emblem in the background. It features a central illustration of the West Virginia State Capitol building, surrounded by a wreath of laurel and oak leaves. The words "WEST VIRGINIA" are written in an arc across the top, and "MONTANI SEMPER LIBERI" is written in an arc across the bottom. The seal is rendered in a light gold or yellow color.

<u>Name</u>	<u>Title</u>	<u>Employment Status</u>
Sarah Canterbury	Counsel	Full Time
Beverly Douglas	Committee Clerk	Full Time
Jordan Nuzum	Analyst/LRMRC	Full Time
<hr/>		
Evelyn Ciccarello	Receptionist	Per Diem
Darla Davidson	Secretary to Chairman	Per Diem
Debra A. Graham	Counsel	Per Diem
Bill Aubel	Counsel	Per Diem
Amanda Davis	Rollins & Burk	Per Diem
Tom Smith	Chief Counsel	Per Diem

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(D – Logan, 07)



Patricia Rucker
(R – Jefferson, 16)



Richard Lindsay
(D – Kanawha, 08)



Mike Azinger
(R – Wood, 03)



Mike Romano
(D – Harrison, 12)



Mark Maynard
(R – Wayne, 06)



Robert Beach
(D – Mongolia, 13)



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(R – Brooke, 01)

84th Legislature
West Virginia Senate

COMMITTEE ON THE JUDICIARY



Tom Takubo
Majority Leader
(R – Kanawha, 17)



Charles Clements
(R – Wetzel, 02)



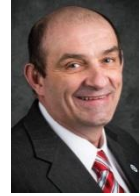
Stephen Baldwin
(D – Greenbrier, 10)



Greg Boso
(R – Nicholas, 11)



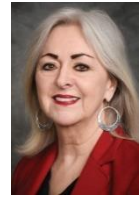
Randy Smith
(R – Tucker, 14)



Glenn Jefferies
(D – Putnam, 08)



Sue Cline
(R – Wyoming, 09)



Mike Woelfel
(D – Cabell, 05)



2019 COMMITTEE MEMBERS



CHAIRMAN
Charles Trump
(R – Morgan, 15)

WEST VIRGINIA LEGISLATURE
SENATE COMMITTEE ON THE JUDICIARY
STATISTICS 2019

**TOTAL NUMBER OF BILLS AND RESOLUTIONS INTRODUCED
DURING THE 1st SESSION OF THE 84th LEGISLATURE:**

BILLS:	1,823
RESOLUTIONS:	102
CONCURRENT RESOLUTIONS:	174
<u>JOINT RESOLUTIONS:</u>	<u>40</u>
TOTAL:	2,139

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

SENATE BILLS:	681
SENATE RESOLUTIONS:	80
SENATE CONCURRENT RESOLUTIONS:	65
<u>SENATE JOINT RESOLUTIONS:</u>	<u>11</u>
TOTAL:	837

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

HOUSE BILLS:	1,142
HOUSE RESOLUTIONS:	22
HOUSE CONCURRENT RESOLUTIONS:	109
<u>HOUSE JOINT RESOLUTIONS:</u>	<u>29</u>
TOTAL:	1,302

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

BILLS:	2
<u>CONCURRENT RESOLUTIONS:</u>	<u>5</u>
TOTAL:	7

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

SENATE BILLS:	310
HOUSE BILLS:	77
SENATE CONCURRENT RESOLUTIONS:	7
SENATE JOINT RESOLUTIONS:	11
HOUSE CONCURRENT RESOLUTIONS:	0
<u>HOUSE JOINT RESOLUTIONS:</u>	<u>0</u>
TOTAL:	405

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

SENATE BILLS:	77
HOUSE BILLS:	44
RULES BILLS:	74
JOINT RESOLUTIONS:	1
<u>CONCURRENT RESOLUTIONS:</u>	<u>5</u>
TOTAL:	201

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

SENATE BILLS:	155
<u>HOUSE BILLS:</u>	<u>139</u>
TOTAL:	294*

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

SENATE CONCURRENT RESOLUTIONS:	23
<u>HOUSE CONCURRENT RESOLUTIONS:</u>	<u>48</u>
TOTAL:	71

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

SENATE BILLS:	51
<u>HOUSE BILLS:</u>	<u>41</u>
TOTAL:	92

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

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

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

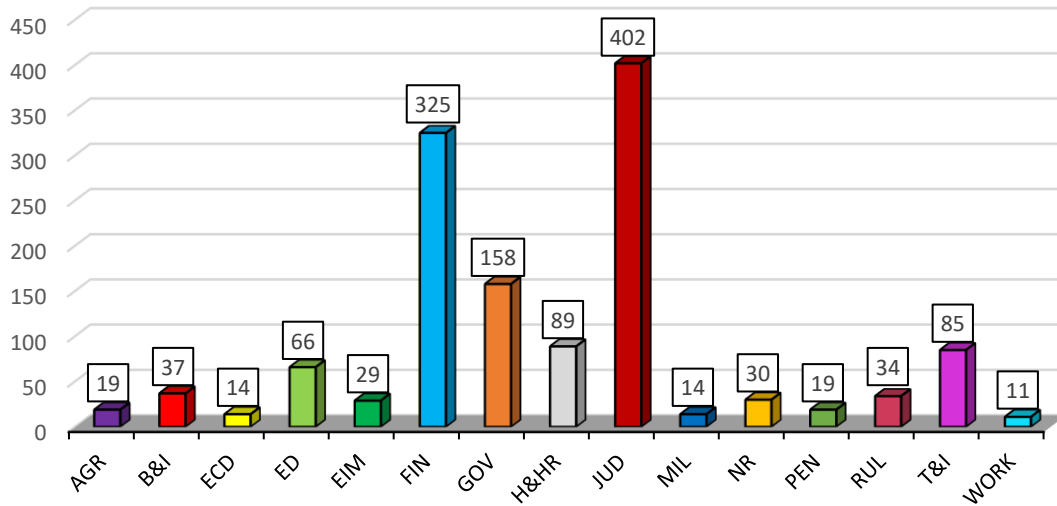
SENATE BILLS:	48
<u>HOUSE BILLS:</u>	<u>35</u>
TOTAL:	83**

(*Of the 294 Bills that Completed Legislative Action, there were 29 vetoes)

(**Of the 92 Bills reported that Completed Legislative Action, nine bills were vetoed: Senate Bill 190, Senate Bill 440, Senate Bill 487, House Bill 2079, House Bill 2412, House Bill 2486, House Bill 2503, House Bill 2579, and House Bill 2933. A number of vetoed bills may be taken up in a Special Session tentatively scheduled for May 2019.)

STATISTICS 2019

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2019 Regular Legislative Session Bills and Resolutions Reported from Committees

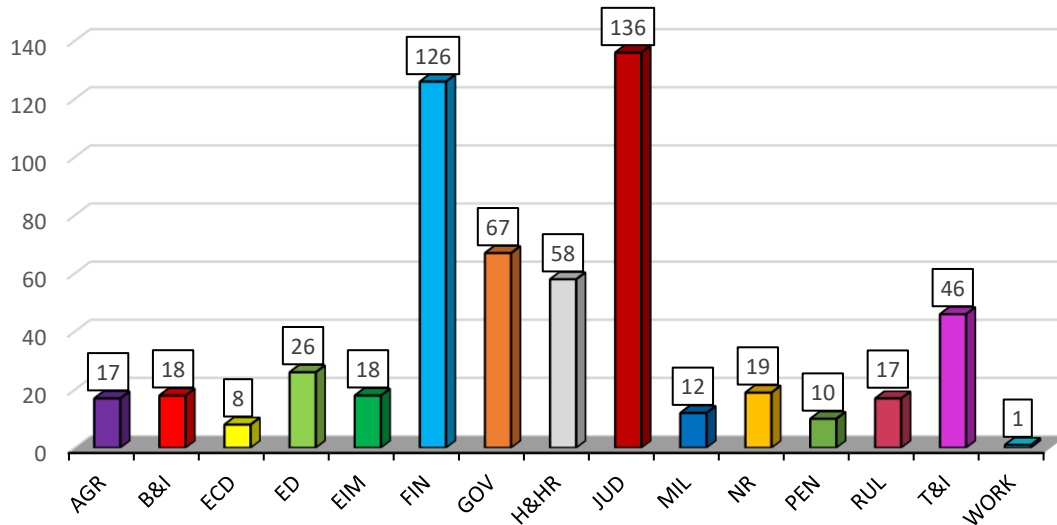


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Senate Bill 17

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to probation eligibility.

CODE REFERENCE: §62-12-2 (Amends and Reenacts)

SUMMARY:

Current law requires that persons convicted of certain sexual offenses must undergo “physical, mental and psychiatric” examinations to be eligible for consideration for probation. This bill allows a psychological exam in lieu of a psychiatric exam.

DATE OF PASSAGE: January 29, 2019

EFFECTIVE DATE: January 29, 2019

ACTION BY GOVERNOR: Signed February 11, 2019

Senate Bill 18

COMMITTEE SUBSTITUTE AS AMENDED

SHORT TITLE: Relating to crimes committed on State Capitol Complex.

CODE REFERENCE: §62-1D-6, §62-1D-8, and §61-6-19 (Amends and Reenacts)

SUMMARY:

This bill removes the requirement that a person must have a valid concealed handgun license in order to lawfully keep a firearm in their vehicle on the Capitol grounds. The bill states that a person who may otherwise lawfully possess a firearm may keep a firearm in his or her vehicle if it is locked and out of view.

DATE OF PASSAGE: February 13, 2019

EFFECTIVE DATE: February 13, 2019

ACTION BY GOVERNOR: Signed February 25, 2019

Senate Bill 40

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Establishing Military Service Members Court Program

CODE REFERENCE: §62-16-1 *et seq.* (New)

SUMMARY:

The bill provides authorization to the Supreme Court of Appeals to establish a Military Service Members Court program, under the oversight of its administrator. Each court may be a stand-alone court or operated in conjunction with an existing drug court or other specialty court program. Once established, Military Service Members Court programs may not be terminated without at least six months written notice from the Supreme Court administrator to the Speaker of the House of Delegates and the President of the Senate. Each Military Service Members Court judge may establish rules and make special orders as necessary that do not conflict with rules and orders promulgated by the Supreme Court of Appeals to effectuate the purposes of this article.

A court may offer pre-adjudication or post-adjudication programs for adult offenders. Each Military Service Members Court, with the guidance of the Supreme Court of Appeals, may establish a schedule for the payment of reasonable fees and costs to be paid by participants necessary to conduct the program. However, courts are not prohibited from obtaining supplemental funds or exploring grants to support the courts.

A military service member offender is eligible for admittance into a court program if he or she is eligible for probation based upon the nature of the offense with which he or she has been charged and his or her criminal background. Upon making an application, a military service member offender may be admitted into a court program only upon the agreement of the prosecutor and the offender. A military service member offender may not participate in a court program if he or she has been charged with any of a number of enumerated offenses. Participation in a Military Service Members Court program, with the consent of both the prosecutor and the court, shall be pursuant to a written agreement executed by the offender, which sets forth all of the agreed upon provisions to allow the military service member offender to proceed in the court. Upon successful completion of a court program, the judge shall dispose of an offender's case in the manner prescribed by the written agreement and by the applicable policies and procedures adopted by the court.

Violation of the terms of a written agreement by the military service member offender may result in the imposition of reasonable sanctions by the court, including, but not limited to, imprisonment or dismissal of the offender from the program,

reinstatement of criminal proceedings, conditional discharge, or supervision hearing. Upon successful completion of the terms and conditions of the program, the court may dismiss the original charges against the offender, successfully terminate the offender's sentence, permit the offender to enter into a plea agreement to a lesser offense, or otherwise discharge him or her from any further proceedings in the original prosecution.

If deemed appropriate by the Supreme Court of Appeals or its administrative office, the courts shall collect and maintain certain information on participants, including, but not limited to the participant's: prior criminal history; prior substance abuse and mental health treatment history; employment, education, and income histories; gender, race, ethnicity, marital and family status, and any child custody and support obligations; instances of the participant's recidivism occurring during and after participation in a court program; the number of offenders screened for eligibility, the number of eligible offenders who were and were not admitted, and their case dispositions; and the costs of operation and sources of funding. A military service member offender may be required, as condition of pretrial diversion, probation, or parole, to provide such information. Courts shall keep military service member treatment records in a secure environment, separated from the court records to which the public has access.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 61

COMMITTEE SUBSTITUTE AS AMENDED

SHORT TITLE: Adding certain crimes for which prosecutor may apply for court order authorizing interception of communications.

CODE REFERENCE: §62-1D-6, §62-1D-8, and §62-1D-9 (Amends and Reenacts)

SUMMARY:

This bill adds extortion to the currently listed offenses for which interception of communications (commonly referred to as “wiretapping”) may be authorized by a judge, upon request of a prosecutor. The bill also permits the disclosure of lawfully intercepted communications in federal court proceedings and permits the use of derivative crime evidence to obtain an arrest warrant or indictment.

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: June 4, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

Senate Bill 72

COMMITTEE SUBSTITUTE

SHORT TITLE: Creating Sexual Assault Victims' Bill of Rights.

CODE REFERENCE: §61-11a-9 (New)

SUMMARY:

This bill creates a section of code titled the Sexual Assault Victims' Bill of Rights. It gives a sexual assault victim the following rights:

1. The right to a personal representative of their choice who may accompany them to a hospital or other health care facility and to attend proceedings concerning the alleged assault, including police interviews and court proceedings;
2. The right to receive a forensic medical examination;
3. The right to have a sexual assault evidence collection kit tested and preserved;
4. The right to be informed of the results of any forensic medical examination (if such disclosure would not impede or compromise an ongoing investigation);
5. The right to be informed of the policies governing the forensic medical examination and preservation of evidence;
6. The right to receive notification of evidence obtained from a forensic medical examination no fewer than 60 days prior to the date of the intended destruction or disposal of said evidence;
7. The right for said evidence to be preserved for an additional period not to exceed 10 years as a result of a written request; and
8. The right to be informed of rights afforded a victim by this section.

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: June 3, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

Senate Bill 101

COMMITTEE SUBSTITUTE

SHORT TITLE: Equalizing penalties for intimidating and retaliating against certain public officers and other persons.

CODE REFERENCE: §61-5-27 (Amends and Reenacts)

SUMMARY:

This bill equalizes the criminal penalties for intimidation with the intent to influence a public officer, public employee, or person participating in a public proceeding (currently a misdemeanor for the first offense) with the penalty for retaliating against such a person (currently a felony). This bill increases the penalty for first offense intimidation to a felony and establishes criminal penalties.

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: June 3, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 103

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to Public Defender Services.

CODE REFERENCE: §29-21-6 and §29-21-13A (Amends and Reenacts)

SUMMARY:

Public Defender Services (PDS) is the executive branch agency that processes payment vouchers from panel attorneys appointed by Circuit Court Judges to represent criminal defendants who cannot afford an attorney. Under current code, the judges have the initial authority to approve the vouchers before they are sent to PDS for processing. The Committee Substitute transfers the initial authority to review, approve, modify, or refuse panel attorney vouchers from Circuit Court Judges to PDS. It provides that panel attorneys may submit documentation, in addition to the vouchers, if PDS rejects a voucher or reduces the amount of a voucher. If PDS and the panel attorney cannot reach an agreement as to the rejection or reduction of a voucher, then PDS must request review by the appointing judge, who will make the final determination as to payment of the voucher.

This bill requires PDS to acknowledge the submission and receipt of a voucher and to communicate that acknowledgement to the panel attorney electronically. It also allows PDS to reduce or reject vouchers for attorneys' fees and costs submitted by appointed counsel.

It requires panel attorneys to maintain timekeeping records in a manner that will enable the attorney to determine for any day the periods of time expended on behalf of any client and the total time expended on that day on behalf of all clients. It prohibits PDS from requiring attorneys to maintain or submit the actual start and finish times of work performed.

Under current code, panel attorneys are compensated at a rate of \$45 per hour for out-of-court compensation work and \$65 for in-court work, regardless of the type of case. This bill raises out-of-court to \$60 per hour and in-court compensation to \$80 per hour. The current rates have been in effect since 1989. It establishes the rate of \$20 per hour for work performed by a paralegal, rather than the current reimbursement of the amount the paralegal is paid per hour by the attorney with a \$20 per hour cap, and authorizes payment for in-court paralegal time if the court approves it in advance.

The bill authorizes PDS to enter into contracts with attorneys to provide legal services in specialized areas of law; other than criminal defense; or defense of parents in abuse and neglect proceedings if, inter alia, it will reduce costs.

The bill requires appointed attorneys to submit their vouchers for payment to PDS instead of to the court that appointed the attorney. Processes are provided for exchange of information and a final decision by the court, in the event of disagreement between PDS and the appointed attorney. PDS is authorized to use in-house counsel at any court hearing on this issue.

The bill requires the establishment of a new Habeas Corpus Division within PDS for the purpose of prosecuting writs of habeas corpus upon appointment by circuit judges.

Finally, the bill authorizes the Executive Director of PDS to promulgate emergency rules to effectuate the provisions of the article as amended during the 2019 Regular Session.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: July 1, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

Senate Bill 119

INTRODUCED BILL

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:

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

1. Nursing home incident or event reports, except reports pertaining to the plaintiff of that civil action, or reports of the 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, or terminating staff, credentialing, issuing staff privileges, renewing staff privileges, or alleged misconduct of a health care provider;
3. Review organization documents;
4. Quality control and performance improvement 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 as a result of the review organization's proceedings. However, a person who testifies before a review organization, or who is a member of such organization, shall not be prevented from testifying in court or an administrative hearing as to matters within his or her personal knowledge.

Information available from original sources are not to be construed as immune from discovery or use in any civil action merely because they were included in any report or analysis related to improving the quality, delivery, or efficiency of health care or for the purpose of credentialing or reviewing health care providers. Documents contained in peer review files are not discoverable on the basis that they were not created as part of the peer review process; rather, the document must be produced from the original source. However, if the party seeking production can show that obtaining source documents will be unduly burdensome, the court may, in its discretion, order production of the nonprivileged documents contained in the peer review file.

DATE OF PASSAGE: January 29, 2019

EFFECTIVE DATE: April 29, 2019

ACTION BY GOVERNOR: Signed February 8, 2019

Senate Bill 152

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to criminal offense expungement.

CODE REFERENCE: §61-11B1 *et seq.* (Repeals); §61-11-26 (Amends and Reenacts); §61-11-26a (New)

SUMMARY:

This bill amends current provisions and of the Code relating to the expungement of convictions, and adds a new section. This bill also repeals current code that authorizes a reduced offense of conviction.

The bill authorizes the judicial expungement of certain misdemeanors and non-violent felonies from a person's criminal record. Currently, certain misdemeanors are subject to expungement if the defendant was between 18 and 26 when the offense occurred; if he or she has no other prior or subsequent convictions and is not subject to arrest or defendant in any other pending criminal proceeding. It also repeals the age restrictions in current law and authorizes expungement for certain nonviolent felony offenses.

The bill adds a new section of code for expungement of misdemeanors and non-violent felonies. It authorizes expungement after a shorter period of time, once the petitioner has successfully completed substance abuse treatment or recovery and counseling program or completed a job readiness adult training course.

The bill provides new procedures for persons petitioning for the expungement of a single misdemeanor, more than one misdemeanor, and a non-violent felony:

- A person may petition for expungement of a single misdemeanor after one year has elapsed since conviction or completion of incarceration or supervision, whichever is later. Petitioners qualifying under the new section, W. Va. Code §61-11-26a, may petition upon successful completion of an approved substance abuse treatment and recovery and counseling program for 90 days or upon completion of an approved Job Readiness Adult Training course, or both, but after the completion of any sentence of incarceration or completion of any period of supervision, whichever is later in time.
- A person with more than one misdemeanor conviction may petition for expungement of multiple misdemeanors after two years have elapsed since the last conviction, or completion of incarceration or supervision of the last

offense, whichever is later; Petitioners qualifying under the new section, W. Va. Code §61-11-26a, can petition after only one year has elapsed since the last conviction, or completion of incarceration or supervision of the last offense, whichever is later.

- A person with a non-violent felony conviction may, after five years has elapsed since conviction or completion of incarceration or supervision, whichever is later, petition for expungement; Petitioners qualifying under the new section, W. Va. Code §61-11-26a, can petition after only three years have elapsed since conviction or completion of incarceration or supervision, whichever is later.

The offenses which preclude petition for expungement include: felony offenses of violence against a person; felony offenses against a minor; felony or misdemeanor offenses of neglect or abuse of an incapacitated adult; driving under the influence; incest; offenses which are not eligible for expungement for commercial driver's license holders under federal law; misdemeanor stalking; sexual abuse in the 2nd and 3rd degrees; burglary; any conviction wherein the sentencing judge finds sexual motivation; and attempts and conspiracies to commit any of the felonies for which expungement is not authorized.

The bill also provides an additional 20 days that a petitioner must respond to a notice of opposition to his or her petition for expungement.

The granting of expungement does not entitle a person to collect a pension or other benefit from which he or she was disqualified by the conviction.

The bill expressly excludes a person from failing to report expunged convictions from a law-enforcement job application.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 157

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing Department of Administration promulgate legislative rules.

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

SUMMARY:

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

Senate Bill No. 157 Department of Administration, Purchasing Division, 148 CSR 1

This rule modifies an existing rule as a result of the passage of Senate Bill 283 during the 2018 Regular Session. Changes include:

- Allowing a vendor contract to be cancelled if it was awarded in error;
- Allowing related parties to a debarred vendor to also be debarred;
- Authorizing the Purchasing Division to recalculate a vendor's extension price;
- Providing for reciprocal preference in limited circumstances and providing requirements to claim the preference;
- Easing requirements for direct award;
- Allowing for best-in-class solutions in evaluating requests for proposals; and
- Allowing for standardization of commodities.

Senate Bill No. 158 Department of Administration, State-Owned Vehicles, 148 CSR 3

This rule modifies an existing rule as a result of the passage of House Bill 4015 during the 2018 Regular Session. Changes include:

- Definitions for the terms "Indirect costs" and "Vehicle log" have been added to the rule;
- A requirement that the Fleet Management Office coordinate with the DMV on title format has been deleted;
- A requirement has been added that spending units dispensing with a state-owned vehicle remove the vehicle from its inventory in the centralized

inventory database governed by the Enterprise Resource Planning Board and notify the DMV that the vehicle is no longer assigned to the agency;

- Allows a volunteer acting in an official capacity to use or occupy a state vehicle. State-owned vehicles must be refueled using the fuel management program offered by the Fleet Management Office;
- Requires drivers to maintain a vehicle log, state spending units to annually calculate indirect costs of operating state-owned vehicles for the agency; and
- Requires spending units to enroll in the management services offered by the Fleet Management Division unless the spending unit is granted an exemption.

Senate Bill No. 159 Department of Administration, Leasing of Space and Acquisition of Real Property on Behalf of State Spending Units

The changes to the existing rule are the result of legislation passed during the 2018 Regular Session which required agencies to report real property inventory in the centralized accounting system maintained by the Enterprise Resource Planning Board. Changes in ownership status or occupancy must be reported in the system within 30 days, which mirrors the requirements amended into state code.

DATE OF PASSAGE: February 28, 2019

EFFECTIVE DATE: February 28, 2019

ACTION BY GOVERNOR: March 26, 2019

Senate Bill 163

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing DEP promulgate legislative rules.

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

SUMMARY:

This bill contains eight Department of Environmental Protection rules which constitute Bundle 3.

S.B. 163 Department of Environmental Protection, Emission Standards for Hazardous Air Pollutants, 45 CSR 34

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

The modifications incorporate by reference annual updates to the federal counterpart promulgated by the EPA as of June 1, 2018.

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

S.B. 160 Department of Environmental Protection, Ambient Air Quality Standards, 45CSR08

This rule modifies an existing DEP rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead, incorporating, by reference, the national primary and secondary ambient air quality standards as promulgated by the 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, 2018. These incorporate, by reference, EPA modifications on retention of standards for the various oxides of nitrogen.

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

S.B. 161 Department of Environmental Protection, Standards of Performance for New Stationary Sources, 45 CSR 16

This rule modifies an existing DEP rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the 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, 2018. These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this state.

S.B.162 Department of Environmental Protection, Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities, 45 CSR 25

This rule modifies an existing DEP rule which establishes and adopts emission standards for controlling air pollution from Hazardous Waste Treatment, Storage, and Disposal Facilities, as promulgated by the 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, 2018. These modifications are necessary to maintain consistency with applicable federal laws and allow West Virginia to continue as the primary enforcement authority of the federal hazardous waste management system (RCRA) in the state.

The modifications also incorporate, by reference, annual updates to provisions contained in the State Hazardous Waste Management System Rule, 33 CSR 20, promulgated as of June 1, 2018 and establishes the general procedures and criteria necessary to implement air emissions standards. Additionally, the tables appended are updated in conformity with new Federal guidelines.

S.B. 164 Department of Environmental Protection, Quality Implementation Plans, 45 CSR 36

This rule repeals an existing DEP rule which establishes general provisions relating to transportation conformity plans, pursuant to the Clean Air Act (CAA), requiring that federally supported highway and transit projects are consistent with state air quality implementation plans in places where air quality does not currently meet federal standards. The circumstances requiring adoption of the Rule no longer exist.

S.B. 165 Department of Environmental Protection, Provisions for Determining Compliance with Air Quality Management Rules, 45 CSR 38

This rule repeals an existing DEP rule which establishes general provisions relating to data which could be used to determine if a facility complied with emissions standards, pursuant to the Clean Air Act (CAA). The circumstances requiring adoption of the Rule no longer exist, as the requirements of Enhanced Special Monitoring Call of the EPA which gave rise to this Rule have been included in other Rules and this is now duplicative.

S.B. 166 Department of Environmental Protection, Cross State Air Pollution Rule to Control Annual Nitrogen Oxides Emissions, Annual Sulfur Dioxide Emissions and Ozone Season Nitrogen Oxides Emissions, 45 CSR 43

This rule is new. It establishes a program of mitigating the emissions of certain hazardous materials through emissions trading programs among the states as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).

The modifications incorporate by reference the federal Cross-State Air Pollution Rules promulgated by EPA as of June 1, 2018.

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

S.B. 167 Department of Environmental Protection, Requirements Governing Water Quality Standards, 47 CSR 2

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

As submitted to the Legislative Rule-Making Review Committee, DEP amended the requirements governing Water Quality Standards to adhere to the federal requirement for Triennial Review of Water Quality Standards, as required by the Clean Water Act, Section 303(c)(1). Revisions relating to overlapping mixing zones and harmonic mean flow complied with changes made by the Legislature to W. Va. Code §22-11-7b. Revisions to human health criteria brought the state's standards in line with nationally-recommended water quality criteria. Revisions to the site-specific criterion

process allowed a streamlined process for developing site-specific revisions for copper and other metals. Additional administrative revisions were made to make the rule clearer and more concise.

The Legislative Rule-Making Review Committee modified the proposed rule to return the standards to current standards with technical amendments. The Committee on Energy, Industry and Mining approved an amendment to the proposed rule returning the standards to those submitted by the DEP. The Committee Substitute returns the proposed rule to the modified rule recommended by the LRMRC with the addition of a paragraph requiring the Secretary to propose updates to Appendix E on or before April 1, 2020, to put them out for comment, and submit the proposed updates to the 2021 Legislative Session. The Committee Substitute also states that the DEP Secretary shall allow for submission of proposed human health criteria until October 1, 2019.

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: March 5, 2019

ACTION BY GOVERNOR: March 26, 2019

Senate Bill 175

COMMITTEE SUBSTITUTE AS AMENDED

SHORT TITLE: Authorizing DHHR promulgate legislative rules.

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

SUMMARY:

This bill contains nine Department of Health and Human Resources rules which constitute Bundle 5.

S. B. 175 Department of Health and Human Resources, Collection and Exchange of Data Related to Overdoses, 69 CSR 14

This rule amends a current rule. This rule sets out the process for exchange of data from various entities with the Office of Drug Control Policy. The changes were made necessary by the passage of Senate Bill 272 during the 2018 Regular Session of the Legislature, which required the exchange of necessary data. The information will be uploaded to a database on fatal and non-fatal overdoses.

The substantive changes to the rule add hospital emergency rooms and departments to the list of mandatory reporters. Also, the reporting requirements were expanded to include reports on, not only suspected overdoses or reported overdoses, but also on confirmed overdoses.

The Senate Committee on Health and Human Resources amended the proposed rule by substituting a different definition for the term “Overdose.”

S. B. 168 Department of Health and Human Resources, Behavioral Health Centers Licensure, 64 CSR 11

This rule amends an existing rule. The purpose of the rule is to license and regulate behavioral health facilities. The last time this rule was amended was in 2000.

The rule lists a number of programs or services which are not subject to the provisions of the rule. Significant amendments have been made to the definition section. Among the notable changes was the combination of the various definitions of types of “abuse” into a single definition. Previous definitions included “physical”, “psychological”, and “verbal” abuse.

Section four of the rule pertains to the licensing procedure. This section has been substantially rewritten, however, the provisions are not substantially modified from existing provisions. The provisions of the section regarding “Issuance” have been divided into two separate sections providing detail on the types of licenses which may be issued. These provisions are fairly standard licensing provisions. Among them are an initial license – valid for a six-month period – a regular license – valid for up to two years – and a provisional license – valid for six months.

The rule addresses risk management. This section was previously known as “Health and Safety.” It has been scaled back to require appropriate types of insurance regarding liability, fire, theft, and automobiles. It also requires employees who manage consumer funds be bonded. There are also specific safety requirements related to transportation for use with consumers. Finally, the newly rewritten section provides for quality assurance measures.

There is a newly entitled section which requires all providers meet all pertinent and applicable federal, state, and local laws, rules, and regulations, including all necessary licensing provisions. This section also includes provisions for security, retention, maintenance, and destruction of consumer records.

A new section regarding “Financial Management” has been created. It provides for a budget for the facility sufficient to meet the requirements for provider services, accounting for consumer funds, and adherence to all governmental requirements.

A second new section has been added regarding oversight and administration of staff. These provisions deal with training and orientation of staff, background checks, job descriptions, supervision of staff, volunteers and students, and employee record keeping requirements.

Most of the amendments to the rule occurred in the section now entitled “Services.” This section requires providers to have written descriptions of the services they offer. There are specific requirements for admission, including assessment and intake procedures. There are also requirements for: planning of services which include an initial plan of service; an ongoing plan of care or treatment strategy; coordination of services, should the consumer need services beyond behavioral health services; reviews of the plan of service; treatment provisions for “critical treatment junctures;” discharge planning; services for special populations, if the provider offers such services; incidents of abuse and neglect; critical incidents; injuries of unknown source; management of inappropriate behavior, including behavior intervention; emergency planning for potentially dangerous behavior; medical and dental procedures for persons who are incapacitated or who have developmental disabilities; respite care; documentation standards for residential services; and standards for 24-hour medical monitoring.

The Senate made minor technical amendments. However, the House of Delegates amended the rule for the purposes of substance use disorder services. The amendment authorizes OFLAC, through reciprocity, to license an out-of-state provider, who is

enrolled to accept West Virginia Medicaid and is authorized to provide behavioral health services in its state, as a West Virginia Behavioral Health Center under this rule.

S. B. 169 Department of Health and Human Resources, Assisted Living Residences, 69 CSR 14

This rule is an amendment to an existing rule. The rule is being updated to reflect statutory changes made over time. The rule sets forth standards for licensing and operation of assisted living residences.

The provisions of the rule related to criminal background checks has been updated to reflect the current process for obtaining criminal background checks through the West Virginia Clearance for Access Registry System.

Section 5 of the rule pertaining to Resident Rights, specifically regarding legal representatives, was amended to reflect that a legal representative may only act within the confines of the authority he or she has been given and may not “over-reach.” This section of the rule has also been updated to reflect advances in technology by granting residents the right to use computer and other electronic communications.

Several substantive changes were made to Section 6 relating to Health Care Standards. These changes include: deleting and rewriting ambiguous language regarding seeking behavioral health treatment when a risk persists; updating provisions for administration of drugs and eliminating unused drugs; eliminating ambiguous language regarding implementing registered nurse care; services and staff training; and adding specificity to who qualifies as a “next of kin.”

Section 12, entitled Civil Penalties, License Restrictions, and Revocations has been deleted and broken down into four new sections dealing with licensing denials, revocations and suspensions, penalties and equitable relief, administrative due process, and administrative and judicial review. These sections contain the reasons, process, and procedure for acting upon a license issued to an assisted living residence. They also set out an informal dispute resolution process, grounds for denial, revocation, or suspension of a license and the effect of a denial, revocation, or suspension. Other sections provide the available penalties which may be levied, the equitable relief available, due process concerns and the process for appeals and judicial review.

The Senate made technical amendments to the rule on page 42, subdivision 11.8.1., by striking out the words “federal or state law or this rule” and inserting in lieu thereof the words “subdivision 11.8.2., of this rule.”

S. B. 170 Department of Health and Human Resources, Food Establishments, 64 CSR 17

This rule amends a current rule which establishes the minimum requirements for the design, construction, management, and operation of food establishments. The existing rule has not been amended since 2005. Federal requirements have changed since

that time, namely the US Department of Health and Human Resources, Public Health Services, Food and Drug Administration requirements. These requirements are tied to a grant which is expiring. Without updating West Virginia's standards to the federal standards, West Virginia is in a position not to gain renewal for our grant.

The primary purpose of the amendment is to reference the 2013 Federal Food Code.

S. B. 171 Department of Health and Human Resources, Food Manufacturing Facilities, 64 CSR 43

This rule amends a current rule. The changes are made necessary by the passage of Senate Bill No. 375 during the 2018 Regular Session of the Legislature. That bill directed that cottage foods, acidified foods, non-potentially dangerous foods, and other exempted foods sold at farmers markets would be regulated by the Department of Agriculture and not by the Department of Health and Human Resources as they had been in the past. The Department will retain regulatory authority over these types of food if they are sold in a setting other than a farmers' market.

S. B. 172 Department of Health and Human Resources, Newborn Screening System, 64 CSR 91

This rule amends a current rule. It sets forth the requirement for the Bureau for Public Health within the Department of Health and Human Resources to provide medical, dietary, and related assistance to children determined to be afflicted with a disease set out in code at W. Va. Code §16-22-3(a). These include:

- Phenylketonuria;
- Galactosemia;
- Hypothyroidism;
- Sickle cell anemia;
- Congenital adrenal hyperplasia;
- Cystic fibrosis;
- Biotinidase; and
- Other diseases specified by the bureau.

The diseases required to be tested for are set forth in the rule. These were originally set forth in W. Va. Code §64-91-4 with various dates of implementation for the required testing. All of the implementation dates have passed, and this section has now been repealed and the required tests are set forth in subsection 5.2 of the rule.

The previous rule sets out a fee schedule, including a cap of \$125.00 per newborn birthing screening kit after July 1, 2008. The current rule eliminates the fee and permits the Bureau for Public Health to charge a birthing facility or individual attending the birth for each newborn screen consistent with prevailing health insurance reimbursement rates for newborn screening.

The Senate Committee on Health and Human Resources adopted an amendment, which is contained in the Committee Substitute, requiring screening for the following diseases: Lysosomal Storage Disorders; X-Linked Adrenoleukodystrophy, X-ALD; and Spinal Muscular Atrophy (SMA).

S. B. 173 Department of Health and Human Resources, Medication Assisted Treatment – Office-Based Medication-Assisted Treatment, 69 CSR 12.

This rule amends a current rule to reflect the changes necessitated by the passage of Senate Bill No. 273 during the 2018 session of the Legislature. Those changes were made to decrease the regulatory burden the current rule places on practitioners and to allow for more latitude in the professional discretion of medical personnel.

The rule sets out the standards and operation for medication-assisted treatment at an office-based facility which would traditionally involve suboxone.

The rule reduces the required training for newly-employed counselors and other non-physician clinical staff from 20 hours to 12 hours and eliminates unnecessary training requirements. It removes over-specificity in the training requirements and job descriptions to allow facilities more flexibility. The training requirements are set by the various licensing boards of the medical professionals employed by the facility.

The amendment eliminates risk management requirements from the rule, allowing facilities to set individual policies applicable to the facility. The medication storage portion of the rule was updated to give more latitude in alternative treatments and patient interaction regarding medication. Additionally, other regulations regarding matters more applicable to the Board of Pharmacy were also eliminated.

The procedures for the required drug testing are set forth in the rule. These are required to be conducted monthly, which provides for less frequent, but random tests, after the initial test and with patient continued compliance.

The rule specifies how special populations are dealt with, including patients with alcohol and polysubstance abuse patients, behavioral health needs, HIV, patients with chronic pain, pregnant patients, and persons in the criminal justice system. Procedures relative to treatment of these types of populations are set forth in the rule.

The House of Delegates amended the rule to add language on page 39, by inserting a subsection, 22.9 to read as follows: “Each OBMAT program shall provide or make referrals for each patient to obtain contraceptive drugs, devices or procedures.”

S. B. 174 Department of Health and Human Resources, Chronic Pain Management Clinic Licensure, 69 CSR 08

This rule amends a current rule, pertaining to licensing procedures and requirements for operation of a pain clinic in West Virginia. The Office of Health Facilities Licensure and Certification began the process of reviewing clinics in July of 2014.

The changes to the rule were made necessary by the passage of Senate Bill No. 273 during the 2018 session of the Legislature.

The rule makes two substantive changes. The first is required due to the passage of Senate Bill 273 last session. In that bill, the Legislature clarified that for purposes of defining an entity as a “pain clinic,” the threshold is that 50% or more of the patients treated are prescribed or dispensed Schedule II opioids or other Schedule II controlled substances. Prior language provided that the threshold was that 50% or more of the patients treated were prescribed or dispensed opioids, not the more addictive Schedule II opioids.

The second change updates the criminal background check to require that it be processed through the West Virginia Clearance for Access. This is the current process used by the Department to conduct all criminal background checks.

S. B. 176 Health Care Authority, Cooperative Agreement Approval and Compliance, 65 CSR 6

This rule is new. It implements the provisions of the cooperative agreement approval and compliance requirements of W. Va. Code §16-29B-28.

The rule requires the Health Care Authority (HCA) to review cooperative agreements between qualified hospitals and other health care providers (including other hospitals) for the provision of health care services. The rule sets out procedures for review of the agreements and the standards of review. The rule requires an annual report containing the most recent quality metrics published by the Centers for Medicare and Medicaid Services selected by each hospital. The annual report shall be used by the HCA to perform active supervision.

If the performance scores are below the 50th percentile, a corrective action plan is required. The HCA may accept, modify, or reject the plan.

The HCA may issue rebates to health plans if services exceed the Consumer Price Index by two percent.

The rule also provides for investigation, penalties, and due process and adopts a \$75,000 application fee and a yearly supervision fee not to exceed \$75,000.

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: March 6, 2019

ACTION BY GOVERNOR: March 26, 2019

Senate Bill 177

COMMITTEE SUBSTITUTE

SHORT TITLE: Fire Commission rule relating to State Building Code.

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

SUMMARY:

This rule amends a current legislative rule relating to the State Building Code by adding a required sunset provision and by updating an energy efficiency standard for commercial buildings from the 2007 edition, to comply with the 2010 edition of the International Property Maintenance Code.

DATE OF PASSAGE: January 31, 2019

EFFECTIVE DATE: January 31, 2019

ACTION BY GOVERNOR: Signed February 14, 2019

Senate Bill 187

COMMITTEE SUBSTITUTE

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

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

SUMMARY:

This bill contains 12 Department of Revenue rules which constitute Bundle 7.

Senate Bill 187 State Tax Department, Exchange of Information Agreement Between the Commissioner of the Tax Div. of the Dept of Revenue and the Commissioner of the Div. of Labor of the Dept of Commerce, the Commissioner of the Insurance Commission of the Dept of Revenue (Repeal), 110 CSR 50D

This rule repeals a current rule in order to consolidate the content of this series and other related rules into a single new rule under 110 CSR 50C.

The current rule authorizes the Commissioner of the Tax Division to exchange tax information, pursuant to a written interagency agreement, with the Commissioner of the Division of Labor of the Department of Commerce, the Commissioner of the Insurance Commission of the Department of Revenue, the Commissioner of the Division of Motor Vehicles of the Department of Transportation, the Commissioner of the Bureau of Employment Programs, and the Office of the Governor.

Senate Bill 180 State Tax Department, Payment of Taxes by Electronic Funds Transfer, 110 CSR 10F

The rule currently requires that certain tax types be paid by electronic funds transfer (EFT) if the total amount of the tax due is \$25,000 or greater. The rule now subjects three additional tax types to that requirement: Motor Carrier Road Tax, Fireworks Safety Fee Tax, and Medical Cannabis Tax. The rule carves out an exemption for the Medical Cannabis Tax, stating that EFT is not required if the transfer would violate state or federal law.

The rule also eliminates obsolete references to methods of wire transfer that are no longer in operation and forms that the Department no longer uses.

Senate Bill 181 State Tax Department, Aircraft Operated Under a Fractional Ownership Program, 110 CSR 15K

This rule is new. A bill that passed during the 2018 Regular Session (House Bill 4022) provides a consumer sales and service tax and use tax exemption for certain services and tangible personal property sold for the repair, remodeling, and maintenance of aircraft operated under a fractional aircraft ownership program. The exemption is available for eligible sales occurring after September 1, 2018. Prior to the enactment of this new section, commercial aircraft owners enjoyed a tax exemption for aircraft-related sales and services, but fractional ownership program owners did not. As required by the new statute, the rule sets forth the process for administering the new tax exemptions for fractional aircraft ownership programs.

On a basic level, fractional ownership programs for aircraft are programs in which multiple owners of a two or more aircraft share the costs of purchasing, leasing, and operating the aircraft. Well-known commercial program managers for such programs include NetJets, Flexjet, PlaneSense, and AirSprint. A fractional ownership program is defined in the Code and the rule by reference to Federal Aviation Administration Regulation Part 91, Subpart K, Section 91.1001. Fractional ownership “means the ownership of an interest or holding of a multi-year leasehold interest and/or a multi-year leasehold interest that is convertible into an ownership interest in a program aircraft.”

Pursuant to W. Va. Code §11-15-9p, the rule provides that sales of the following are exempt from the state’s Consumer Sales and Service Tax and the Use Tax:

1. Aircraft repair, remodeling, and maintenance services to an aircraft operated under a fractional ownership program;
2. Aircraft repair, remodeling, and maintenance services to an engine or other component of an aircraft operated under a fractional ownership program;
3. Tangible personal property that is permanently affixed or attached as a component part of an aircraft operated under a fractional ownership program; and
4. Sales of machinery, tools, or equipment directly used or consumed exclusively in the repair remodeling or maintenance of an aircraft operated under a fractional ownership program.

There are three ways to apply for the exemption in West Virginia. First, a purchaser may pay the tax imposed at the point of sale and then apply for a refund from the Tax Commissioner. Second, the purchaser may provide the vendor with his or her West Virginia direct pay permit number. Third, the purchaser can execute a certificate of exemption using a form and deliver the form to the vendor at the point of sale.

The rule requires a person claiming the exemption to maintain appropriate books and records for three years or for so long as the taxable period is open, whichever is longer.

Senate Bill 182 State Tax Department, Citizen Tax Credit for Property Taxes Paid, 110 CSR 21B

This rule amends a current legislative rule by altering the requirements for notice that the Department must issue to certain taxpayers regarding a refundable personal income tax credit available to low income citizens qualifying for the ad valorem property tax homestead exemption. The Code provides that taxpayers who are allowed the homestead exemption for the ad valorem property tax (a \$20,000 exemption for citizens 65 and older and permanently disabled citizens) are also allowed a tax credit if the tax payer is “low income.” “Low income” is defined as receiving an annual income of 150% or less of the federal poverty guidelines. Currently, the Department is required to issue notice of the availability of the credit to all taxpayers who are allowed the ad valorem property tax homestead exemption, whether or not they are eligible for the credit. The amendment would alter the rule to require that notice be issued to only the following taxpayers:

1. Eligible taxpayers who claimed the credit in the prior year;
2. Taxpayers who are newly eligible for the tax credit as determined by the Commissioner; and
3. Any taxpayer requesting notice, who reasonable believes he or she is eligible and will file for the credit.

This rule also changes the term “senior citizen” to “citizen” throughout the rule, as persons who are permanently disabled but not senior citizens can also qualify for the credit under certain circumstances.

Senate Bill 183 State Tax Department, Administration of Tax on Purchases of Wine and Liquor, 110 CSR 49

This rule is new. The rule implements Senate Bill 275 which passed during the 2018 Session to change how alcohol excise tax proceeds are divided between municipalities and counties. The new statutory language specifically mandates that the Tax Commissioner promulgate rules regarding procedures for the collection of the excise tax in accordance with the new requirements.

As required by the new statutory provisions, the rule requires that alcohol excise tax collected after January 1, 2019, on sales sourced within a municipality’s boundaries be remitted to the municipality and alcohol excise tax collected on sales sourced outside of municipal boundaries be remitted to the county in which the sale was sourced. Formerly, excise tax collected on sales sourced within a one-mile radius, but outside of a municipal boundary were remitted to the municipality. The rule also promulgates the new statutory requirement applying the local sourcing rules for collection and payment of sales tax to the collection and sale of the excise tax.

Although the Tax Department has collected alcohol excise tax for some time, there was no requirement for a legislative rule providing general collection procedures. The rule therefore details the Department's ongoing procedures for excise tax collection by defining terms, describing the alcohol excise tax base, listing the information that taxpayers are required to provide the Department, and establishing a quarterly schedule for remittance of tax proceeds to counties and municipalities.

Senate Bill 184 State Tax Department, Exchange of Information Between Tax Division and Division of Environmental Protection (Repeal), 110 CSR 50A

This rule repeals a current rule in order to consolidate the content of this series and other related rules into a single new rule under 110 CSR 50C.

The current rule authorizes the Commissioner of the Tax Division to exchange tax information, pursuant to a written interagency agreement, with the Division of Environmental Protection to permit the two agencies to more efficiently and effectively perform their respective responsibilities for tax collection and surface coal mining permitting.

Senate Bill 185 State Tax Department, Exchange of Information Agreement Between the State Tax Division and the Alcohol Beverage Control Administration (Repeal), 110 CSR 50B

This rule repeals a current rule in order to consolidate the content of this series and other related rules into a single new rule under 110 CSR 50C.

The current rule authorizes the Commissioner of the Tax Division to exchange tax information, pursuant to a written interagency agreement, with Alcohol Beverage Control Administration to permit the two agencies to more efficiently and effectively perform their respective responsibilities for tax collection and licensing.

Senate Bill 186 State Tax Department, Exchange of Information Pursuant to Written Agreement, 110 CSR 50C

This rule authorizes the Tax Commissioner to enter into a written agreement with certain agencies to exchange information for the purpose of facilitating premium collection, tax collection, or enforcing tax-related licensure requirements.

The Tax Commissioner is already authorized by legislative rule to enter into an information exchange agreement with a number of agencies. With regard to the following agencies, this rule simply consolidates existing rules permitting such agreements for organizational purposes: The Division of Environmental Protection; the Alcohol Beverage Control Administration; the Division of Labor; the Division of Motor Vehicles; WorkForce West Virginia (previously the Bureau of Employment Security or Programs); the West Virginia Lottery; the State Fire Marshal; and the Office of the Governor.

This rule authorizes new information exchange agreements, which have not previously been authorized, with the following agencies: The Division of Forestry; the Public Service Commission; and the Insurance Commission.

In accordance with statutory law, the rule requires that all information exchange agreements must be published on the State Register and must contain provisions protecting the confidentiality of tax information.

Senate Bill 188 State Tax Department, Exchange of Information Between the State Tax Department and the West Virginia Lottery (Repeal), 110 CSR 50E

This rule repeals a current rule in order to consolidate the content of this series and other related rules into a single new rule under 110 CSR 50C.

The current rule authorizes the Commissioner of the Tax Division to exchange tax information, pursuant to a written interagency agreement, with the West Virginia Lottery to facilitate premium collection, tax collection, or licensure requirements.

Senate Bill 189 State Tax Department, Exchange of Information Agreement Between the State Tax Department and the Office of the State Fire Marshal (Repeal), 110 CSR 50F

This rule repeals a current rule in order to consolidate the content of this series and other related rules into a single new rule under 110 CSR 50C.

The current rule authorizes the Commissioner of the Tax Division to exchange tax information, pursuant to a written interagency agreement, with the Office of the State Fire Marshal to facilitate enforcement of the Reduced Cigarette Ignition Propensity Standards and Fire Prevention Act.

Senate Bill 178 Lottery Commission, West Virginia Lottery Sports Wagering Rule, 179 CSR 9

This rule is new. The rule provides regulatory requirements pursuant to the West Virginia Lottery Sports Wagering Act (“the Act”), which was enacted during the 2018 Regular Legislative Session to legalize wagering on professional or collegiate sports (or “sports betting”) operations by the state’s existing casinos. Casinos licensed to engage in sports betting are referred to as “operators.” Management services providers and suppliers are referred to as “intermediaries.”

The rule defines terms and sets out general requirements that all sports wagering operators and intermediaries must follow. General requirements applying to all types of sports wagering operations include the following:

- Operators must follow the video surveillance and security standards for cashier’s cages contained in the legislative rules regulating casinos table games, which the sports betting rule incorporates by reference.

- Operators must maintain a minimum cash reserve that is adequate to cover the outstanding sports pool.
- Operators must obtain a pre-launch and annual system integrity and security assessment by a licensed, independent professional.
- Operators must follow a policy of investigating and responding to patron complaints within ten calendar days.
- Operators may *only* accept wagers from patrons located in the state of West Virginia while placing the wager.
- Operators must provide the Lottery Commission with direct access to all sports betting systems.

The Commission exercises extensive approval authority over operators' and intermediaries polices for meeting these requirements, as well as the statutory authority to impose more specific requirements not contained in this rule through the Commissions Minimum Internal Control Standards (MICS).

Monitoring and reporting unusual/suspicious activity

The rule requires operators to have internal controls and integrity monitoring systems in place to identify unusual and suspicious betting activity. Unusual activity is defined as abnormal wagering activity that may indicate suspicious activity, and suspicious activity is defined as "betting activity which cannot be explained and is indicative of match-fixing" or other illegal activity.

Integrity monitoring systems must provide for the sharing of information with the other operators (the casinos) in the state and send reports of unusual betting activity to sports wagering intermediaries services providers in the state, as well as appropriate regulatory entities. Operators must notify all other operators in the state if they have experienced similar unusual betting activity.

If an operator observes suspicious activity, the operator must immediately notify all other operators in the state, the Lottery Commission, appropriate regulatory entities, and the West Virginia State Police. Operators can suspend betting on reports of suspicious activity but can only cancel wagers with Commission approval.

The Commission must have access to integrity monitoring systems, in order to monitor unusual or suspicious activity and operator actions taken in response. Beyond the purposes of the rule, information from integrity monitoring systems is confidential.

Mandatory internal Controls; House Rules

The Act and the rule both require operators to file appropriate internal controls with the Commission before commencing sports wagering. Internal controls must address the following: user access controls for all sports pool personnel; segregation of duties; automated and manual risk management procedures; procedures for identifying and reporting fraud and suspicious conduct; procedures to prevent wagering by patrons prohibited from sports pool participants; description of anti-money laundering

compliance standards; types of wagers available to be offered by the system; and a description of all integrated third-party systems.

Operators are also required to adopt and conspicuously display house rules which will address the following: method for of calculation and payment of winning wagers; effect of schedule changes; method of notifying patrons of odds or proposition changes; acceptance of wagers at terms other than those posted; expiration of any winning ticket one year after the date of the event; method of contacting the operator for questions and complaints; description of prohibited sports pool participants; and method of funding a sports wager.

Patron wagers

Operators and intermediaries must provide the Lottery Director with notice before accepting a new type of wager (i.e. in-play wager) or accepting wagers on a new type of sporting event. The Director may prohibit the acceptance of wagers and may order the cancellation of wagers for any event for which wagering is contrary to the public policies of the state.

Operators and intermediaries may only accept wagers on events: for which the outcome can be verified; for which the outcome can be generated by a reliable and independent process; for which the outcome will not be affected by any wager placed; and which is conducted in conformity with all applicable laws.

The rule establishes the currencies with which wagers may be made, requires television display of the available wagers that may be placed, and requires operators to allow patrons to redeem winning tickets by mail. An operator may accept a layoff wager from another operator.

Revenue reporting; taxes

A sports pool system must be able to generate reports containing the figures necessary to calculate the 10% privilege tax on adjusted gross sports wagering receipts. To this end, the rules establish methods for calculating gross wagering receipts, adjusted gross wagering receipts, and daily win amounts.

Accounting controls

The rule establishes requirements for reconciling amounts collected from kiosks for wagering transactions with transaction records and requires the reporting of any variance of \$500 or more to the Lottery Director.

The rule also establishes strict requirements for monitoring collections by ticket writers. A ticket write must complete a sports wagering count sheet at the end of each shift and a shift supervisor must compare net receipts to the count sheet and reconcile any discrepancies. Discrepancies that cannot be resolved must be reported to the Commission.

Interim license approvals

The rule allows the Commission to grant an interim management services or supplier's license pending full review of an application and payment of the application fee. An intermediary can conduct operations for 270 days under an interim license, and the Commission can approve a full license any time during that period.

Special requirements for online sports wagering systems

a. General requirements

The rule establishes minimum patron and wager information that all online sports wagering systems must record and maintain, as well as minimum functions that a system must be able to perform. The rule requires that online sports pool systems must be tested by an independent testing laboratory prior to operation and perform an authentication process every 24 hours. Sports pool systems must have controls in place to review the accuracy and timeliness of data feeds used to settle wagers. Any vouchers issued by an online sports pool system must contain certain information.

The rules require any online system that offers in-play wagering to provide the following: accurate and timely update of odds for in-play wagers; the ability to notify the patron of any change in odds after a wager is attempted; the ability for the patron to confirm the wager after notification of the odds change; and the ability to freeze or suspend the offering of wagers when necessary.

b. Location of online patrons; geolocation

The rule, along with the Act, requires any patron placing a sports wager through an online sports system to be physically located in West Virginia. To ensure compliance, the rule requires online sports systems to utilize a geolocation system to locate a player placing a wager and block unauthorized attempts to place wagers from out of state.

c. Sports wagering accounts

All patrons engaging in online sports wagering must establish sports wagering accounts. Operators must collect key identifying information about each patron establishing an account and verify the patron's identity through standards specified in the rule. Personal information and patron communications must be encrypted.

Operators must prevent individuals that are prohibited from wagering (i.e. employees of the operator or persons under the age of 21) and individuals on problem-gambling exclusion lists from participating in sports wagering.

Patron accounts for sports wagering are non-transferable and must be distinct from any other casino accounts. The rule sets forth the methods patrons may use to fund accounts. Operators must review transactions for accuracy, provide account statements

on demand, and allow patrons to easily close accounts. Operators are required to maintain funds in a West Virginia bank account greater than or equal to the sum of daily ending cashable balances of all wagering accounts, pending wagers, and pending withdrawals.

d. Additional requirements

Operators and intermediaries must file internal controls with the Lottery Commission dealing with all aspects of system security, operations, accounting, and programs for problem gamblers. These controls must address security of patron accounts and login. Operators are limited to three individually branded online sports pool websites and accompanying mobile applications. Websites and mobile applications must conspicuously bear the name of the casino-operator with which the website or app is affiliated.

Online sports pool systems must maintain separate copies of all information on a separate and independent logging device or contained in a secure transaction file. The system must be able to generate all reports required by the Lottery Commission.

Third-party applications and digital platforms

Third-party provided applications and digital platforms for sports wagering systems must have internal controls approved by the Commission and provide IT department monitoring for suspicious behavior. Such systems must undergo annual assessments for integrity and security by an independent professional. The Lottery Director must be able to access remote gaming systems and access all data contained therein.

Racetrack Modernization Fund and Historic Hotel Fund reimbursement

As provided in the Act, acquisition of sports wagering equipment is considered “facility modernization improvements” eligible for recoupment of costs from the Racetrack Modernization Fund, and for the casino at the Greenbrier Hotel, the Historic Resorts Hotel Modernization Fund. The rule requires that requests for reimbursement be submitted to the Lottery Director.

Advertising; promotional play

The rules require all advertising of sports wagering to be approved by the Lottery Director. The Commission may set a certain amount of an operator’s revenue that may be offered to patrons as promotional play, but any excess is accounted for as taxable revenue.

Senate Bill 179 Racing Commission, Thoroughbred Racing, 178 CSR 1

This rule amends a current legislative rule which regulates all aspects of Thoroughbred Racing in West Virginia. The substantive changes, which were modified by the agency after public comment, only incorporate new provisions relating to

establishing a jockey concussion protocol. The rule creates a new section 11 that adopts most of the jockey concussion protocol provisions of the current Model Rule of the Association of Racing Commissioners International (RCI). The rule:

1. Requires each horse racing tract to adopt, post, and implement a protocol for diagnosis and management of concussion of jockeys after approval by the Racing Commission. (See VIII below);
2. Requires each jockey to acknowledge these protocols in writing;
3. Requires a minimum assessment, which shall include the most current sport concussion assessment tool examination, when necessary, and be performed by a medical professional authorized in the State of West Virginia to perform the evaluation;
4. Requires a “return to ride” guideline to “clear a jockey who has been concussed, or is believed to have been concussed, once he or she is declared fit to ride by a medical professional authorized to do so;”
5. Require the “return to ride” guideline to include the use of the Medical Authorization form set forth in Table 178-1H end of the rule; and
6. Requiring the Stewards be notified “when a jockey is not permitted to ride and when a jockey has been authorized to return to ride.”

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: March 6, 2019

ACTION BY GOVERNOR: March 26, 2019

Senate Bill 190

INTRODUCED VERSION AS AMENDED

SHORT TITLE: DOH promulgate legislative rule relating to employment procedures.

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

SUMMARY:

Senate Bill 2003, which passed during the 2017 Regular Session, authorized the Division of Highways to develop and implement a special hiring procedure to ensure and provide for the selection and retention of qualified and competent personnel, so that the Division can maintain a workforce sufficient to keep roadways safe for the citizens of West Virginia. In response, the State Personnel Board approved a new pay plan for the Division that allows salaried and hourly classified service employees to be compensated for hours actually worked after the accumulation of 40 hours for the work week, even if annual or sick leave was used during that time. The employee must occupy a position that is paid either premium or straight-time for overtime hours worked. The rule adds a required sunset provision.

DATE OF PASSAGE: March 5, 2019

PROPOSED EFFECTIVE DATE: March 5, 2019

ACTION BY GOVERNOR: Vetoed March 27, 2019

Senate Bill 199

COMMITTEE SUBSTITUTE AS AMENDED

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

CODE REFERENCE: §64-9-1, §64-9-2, §64-9-3, §64-9-4, §64-9-5, §64-9-6, §64-9-7, §64-9-8, §64-9-9, §64-9-10, and §64-9-11 (Amends and Reenacts)

SUMMARY:

This bill is known as the Miscellaneous Rules bundle which authorizes and directs the promulgation of 31 rules and the repeal of one rule which constitute Bundle 9.

Senate Bill No. 199 Athletic Commission, Administrative Rules of the West Virginia State Athletic Commission, 177 CSR 1

This rule amends a current legislative rule. The rule adds a new Section 46a to the rule, which allows promoters to schedule single-night semi-professional boxing or kick-boxing events using one of three different formats. The current rule only allows two-night semi-professional events, using an elimination-style format. The amended rule also adds a Cruiserweight class (184 to 215 lbs.) for semi-professional boxers and increases the Heavyweight class to those weighing more than 215 lbs. The changes to the weight classes are intended to allow for more equal and fair matches between contestants and increase the safety of participants.

Senate Bill No. 191 Commissioner of Agriculture, Animal Disease Control, 61 CSR 1

This rule amends a current legislative rule. The rule establishes general operating rules and procedures of the Animal Health Division which has been established to prevent, suppress, control, and eradicate communicable diseases of livestock and poultry.

The rule is amended by adding definitions for “feral swine”, and “immediate slaughter”, as well as adding a new section regarding the prohibition of transporting and possessing of feral swine.

Specifically, the rule prohibits the transportation and possession of live feral swine and the intentional release of domesticated swine for purposes of establishing a feral swine population. Chronic neglect of domestic swine fencing that could result in creating a feral swine population is considered an intentional release. Also, intentional feeding of feral swine is also prohibited.

Senate Bill No. 192 Commissioner of Agriculture, Industrial Hemp, 61 CSR 29

This rule amends a current legislative rule. The rule establishes requirements for licensing, cultivating, testing, supervision, production, process, and sale of industrial Hemp in West Virginia through the issuance of the license.

This rule specifies that a qualified person may be licensed to grow industrial hemp, sets forth a time limit on the application process, replaces the registration fee with an annual application fee, as well as establishes an annual license fee, reestablishes the annual license renewal fee, and establishes an alteration fee. It provides that all fees are nonrefundable. It requires that all licensees are to file a report on sale and distribution within 30 days following harvesting, rather than filing the report “at least” 30 days following harvesting. The rule is also amended to require the licensee to contact the West Virginia Department of Agriculture (WVDA) at least 30 days prior to intended harvest date to schedule a sampling of the crop by the WVDA to test for THC levels.

It also requires a licensee to certify to the Commissioner of Agriculture that he or she has provided a copy of that license to both the sheriff of the county in which the hemp is being grown and the local detachment of the West Virginia State Police.

Senate Bill No. 193 Commissioner of Agriculture, Rural Rehabilitation Loan Program, 61 CSR 33

This rule amends a current legislative rule which was promulgated to establish various requirements and qualifications for the Rural Rehabilitation Loan Program within the WVDA and to establish and set minimum requirements and qualifications for the membership of the Rural Rehabilitation Loan Committee. The rule sets requirements for the loan committee, receiving loans, loan usage, sufficient collateral, the loan application process, refinancing, delinquencies, collection proceedings, advertising the program, applicable interest rates on loans, and other aspects of the loan program.

The rule defines the terms: “application for restructuring”, “distressed loan”, “refinance” and “restructure” of a loan. The rule also clarifies that the Rural Rehabilitation Loan Committee is established by and its members serve at the will and pleasure of the Commissioner of Agriculture, provides for the refinancing of existing loans in good standing, expands the purposes for use of the loans to include any agricultural or related purpose, adds requirements and procedures for collateral and the purchase of collateral, provides for the determination and the restructuring of distressed loans, and establishes specific remedial actions and late fees for delinquent loans.

Senate Bill No. 194 Commissioner of Agriculture, Captive Cervid Farming, 61 CSR 34

This rule amends a current legislative rule. It provides for the regulation of captive cervid farming by the WVDA. It provides for the regulation, protection, and promotion of

biosecurity, licensing, animal identification, fencing, record keeping, health testing requirements, herd movement, and fees for captive cervid farming.

This rule incorporates the Code of Federal Regulations (9 CFR, Part 81) Chronic Wasting Disease in Deer, Elk, and Moose and the CWD Program Standards defined by the USDA/Veterinary Services.

The rule specifies the effective date of June 12, 2012 from the federal regulations.

Senate Bill No. 195 Commissioner of Agriculture, Farm to Food Bank Tax Credit, 61 CSR 36

This rule is new and implements a law which was passed during the 2017 Regular Session. The law provides an incentive for qualified farmers to donate fresh produce and food that might otherwise be thrown-out or left unharvested.

The farm to food bank tax credit is available to qualified donors who make eligible and certified donations of agricultural products after December 31, 2017. The rule establishes procedures for certification of donations to qualifying nonprofit food programs. The rule was originally filed as an emergency rule so that the procedures would be in place for donations which occurred beginning after the statutory set date of December 31, 2017.

Section 5 of the rule establishes the procedures to be followed by the Department concerning an application for the tax credit. This section includes how to determine the value of a donated product, how to calculate the credit allowed, and further includes limits on the total number of tax credits available per year to \$200,000 on first come first served basis, with each tax payer eligible for a maximum of \$2500 credit per tax year.

A new subsection was added clarifying that all applicants for tax credits must be received by the WVDA no later than January 31 of the following year in which the donation was made.

Senate Bill No. 196 Commissioner of Agriculture, Agritourism, 61 CSR 37

This is a new rule which implements the Agritourism Responsibility Act which passed during the 2018 Session. The law established the duties of agritourism professionals and participants, clarifies the relationship between agritourism and other laws, and promotes agritourism.

Section 3 of the rule establishes the duties of agritourism businesses including the posting of warning signs containing specified language. The notice must also be in any contracts that are used. Failure to give proper warnings will result in the denial of immunity from liability. This section also includes language requiring agritourism professionals to evaluate a participant's abilities and includes the right to deny service to those participants that might create a safety risk. This section also requires agritourism professionals to inspect and provide equipment in safe working condition.

Section 4 establishes the duties of agritourism participants, including the assumption of risks and legal responsibilities for injury, loss, or damage to people and property. Participants are required to follow all instructions and warnings and to provide information regarding relevant medical conditions or circumstances to the operating professionals. Finally, participants are required to remain at the scene of an accident until contact information is provided.

Section 5 of the rule concerns the maintenance of property status for certain purposes like taxation and building codes, but also includes exceptions.

Section 6 relates to marketing and promotion of agritourism. It authorizes the Commissioner of Agriculture to establish a support program for agritourism businesses and indicates that agritourism businesses are eligible to participate in promotion efforts by the West Virginia Tourism Office.

Senate Bill No. 197 Commissioner of Agriculture, Farmers Market, 61 CSR 38

This rule is new and is in response to the passage of Senate Bill No. 375 during the 2018 Regular Session of the Legislature, relating to the regulation of farmers markets. That bill moved the authority to promulgate necessary rules from the Department of Health and Human Resources to the Department of Agriculture.

The rule sets out a registration process that includes necessary information which must be included in the registration. There are also effective dates and a late fee of \$20 if the registration is not received prior to the deadline set forth in the rule. Additionally, the rule provides that a “consignment farmers market” is required to obtain a food establishment permit from the appropriate local health department.

Included in the rule are various lists of those items which do not require a farmers market vendor permit, and those which do require a permit, as well as a list of items which require both a farmers’ market permit and a food establishment permit. Finally, the rule includes a list of those items which may not be offered for sale at a farmers market.

The rule provides requirements for vendors, which include a process for preparing and preserving products, record keeping, requirements regarding private water supplies, training courses, delivery requirements – in person and not shipped - and requirements for the kitchens used to prepare the food.

The rule also sets out a vendor permit process which includes the necessary information on the application form, an effective date, the fee (set forth in code), a late fee, timelines for the Department to follow in approving the application, and a list of vendors who are exempt from the permit requirements. This section also requires the permit to be conspicuously displayed and contains a one-year exemption for 2018 that allows the food establishment permit granted by the local health department to fulfill the permit requirements and waives the \$35 fee.

The rule includes sections which permit the WVDA and local health departments to inspect farmers markets and permit the WVDA to inspect kitchens used in food preparation. This section provides a fee for the inspection of \$27 per hour. The minimum elements which may be monitored during an inspection are also set out in the rule. There is also a requirement to obtain food establishment permits in certain instances, pertaining to entities who wish to sell meat, poultry, dairy, fish, and eggs. The rule also includes provisions for providing sampling, according to requirements set by the WVDA in their Farmers Market Vendor Guide, which is incorporated into the rule by reference.

The final two provisions in the rule pertain to enforcement of the rule which has a graduated system for first, second, and third offenses and provides for suspension of the permit and a hearings procedure for persons who feel aggrieved by an action of the WVDA

Senate Bill No. 198 Commissioner of Agriculture, Seed Certification Program, 61 CSR 39

This rule is new and implements Senate Bill 475 which passed during the 2018 Session and relates to a seed certification program for industrial hemp.

The purpose of seed certification is to ensure that the highest quality seed is available to farmers and to ensure the genetic identity and purity of the seeds. Different plant varieties have been bred to elicit different traits that are desirable to farmers and consumers. Over time, through successive plantings and harvestings, the desired traits can slowly begin to disappear, often through cross-pollination. Seed certification ensures that genetically pure varieties are available to farmers and consumers.

This rule makes the WVDA the official seed certification agency in the state for industrial hemp.

This rule is adopted from the Association of Official Seed Certifying Agencies (AOSCA) and the Seed Certification Handbook. The AOSCA's seed certification standards are a minimum requirement for seed certification.

The rule details which seed varieties are available for certification in West Virginia and how to bring new varieties into certification. The bulk of the rule details general requirements for seed certification for any type of seed. The rule details the responsibilities of the participant and what makes seeds ineligible for certification. The rule also provides guidance on the inspection, sampling, and analysis by the WVDA.

The last section of the rule provides for the specific crop requirements for industrial hemp. All crops are required to meet the minimum standards provided for in the rule, in addition to the specific requirements for each individual crop.

Currently, only industrial hemp standards are written, but the rule does give the WVDA the authority to use the crop standards of another AOSCA member agency if a participant wants to certify a crop other than industrial hemp.

Senate Bill No. 200 West Virginia Board of Licensed Dietitians, Licensure and Renewal Requirements, 31 CSR 1

This rule amends a current legislative rule by reducing the reinstatement fee from \$125 to \$50 and by adding a paper license verification fee of \$10.

Senate Bill No. 201 Board of Medicine, Licensing and Disciplinary Procedures: Physicians, Podiatric Physicians and Surgeons, 11 CSR 1A

This rule amends a current legislative rule to comply with Senate Bill 499 which passed during the 2018 Regular Session. It reduces the number of years of post-graduate medical training which an international medical school graduate must complete from three to two years and eliminates the requirement that the training must be in the United States or Canada.

The rule also clarifies which malpractice settlements and judgements must be reported to the Board of Medicine to align the Board's malpractice reporting standards with other reporting requirements for malpractice, including the National Practitioner Data Bank.

Senate Bill No. 202 Board of Medicine, Permitting and Disciplinary Procedures: Educational Permits for Graduate Medical Interns, Residents and Fellow, 11 CSR 12

This rule is new. The rule implements the provisions of House Bill 4027 which passed during the 2018 Session and creates a permit to participate in graduate medical training such as internship, residency or fellowship training. The fee for a permit is \$100.

Senate Bill No. 203 Board of Osteopathic Medicine, Licensing Procedures for Osteopathic Physician, 24 CSR 1

This rule amends a current legislative rule. It extends the Patient Injury Compensation Fee of \$125 from June 30, 2020, to December 31, 2021.

Senate Bill No. 204 Board of Pharmacy, Licensure and Practice of Pharmacist Care, 15 CSR 1

This rule amends a current legislative rule. In reorganizing its rules, the Board has removed sections related to pharmacist licensure and pharmacy permits and moved them to 15 CSR 15 and 15 CSR 16.

Senate Bill No. 205 Board of Pharmacy, Registration of Pharmacy Technicians, 15 CSR 7

This rule amends a current legislative rule in response to House Bill 4025 which passed during the 2018 Regular Session. It permits a pharmacy technician who is nationally certified as a pharmacy technician and has practiced in another jurisdiction for

at least a year to be registered. It also exempts a sales clerk from licensure as a pharmacy technician.

The rule also modifies the hours and time frame of training necessary for a pharmacy technician trainee, which comports with standards recently promulgated by the national certification organization.

Senate Bill No. 206 Board of Pharmacy, Regulations Governing Pharmacy Permits, 15 CSR 15

This rule is new. The rule contains the provisions, previously in section 14, Series 1, regulating pharmacy permits.

Senate Bill No. 207 Board of Pharmacy, Regulations Governing Pharmacists, 15 CSR 16

This rule is new. The rule contains the provisions regulating pharmacists, previously in sections 5 and 6 from 15 CSR 1.

Senate Bill No. 208 Board of Pharmacy, The Substitution of Biological Pharmaceuticals, 15 CSR 17

This rule is new. The rule allows a pharmacist to substitute a less expensive interchangeable biological product, as defined and set forth in federal law (42 U.S.C. § 262(k)(4)), for a biological product, unless the prescriber specifically prescribes a brand name pharmaceutical. The rule also sets out a requirement that the pharmacist place the prescriber on notice within five days of the dispensing of an interchangeable biological product. This notice must include the specific product dispensed. The notice may be sent electronically, or by other means. The rule also sets forth record-keeping requirements.

Senate Bill No. 209 Real Estate Appraiser Licensing and Certification Board, Requirements for Licensure and Certification, 190 CSR 2

This rule amends a current legislative rule by deleting language regarding previous educational requirements for real estate appraisers. New educational requirements were added to qualify for Certified Residential Appraiser certification. An alternative to a bachelors' degree has been added for a person who has held a Licensed Residential credential for a minimum of 5 years, which mirrors federal requirements.

Senate Bill No. 210 Board of Examiners for Registered Professional Nurses, Policies, Standards, and Criteria for the Evaluation, Approval and National Nursing Accreditation of Prelicensure Nursing Education Programs 19 CSR 1

This rule amends a current legislative rule. It was modified to reflect changes in the law effected by the passage of House Bill 4156 during the 2018 Regular Session. That bill effectively removed responsibility for accreditation of registered professional nursing

programs from the Board of Examiners. Instead, nursing programs that are nationally accredited are automatically Board-approved and exempt from the Board's approval rules, as long as accreditation is maintained. House Bill 4156 provided that all existing programs must achieve accreditation by July 1, 2022. The bill also stated that nursing programs commenced after July 1, 2018, have 5 years to obtain national accreditation, with the Board having approval authority over the program until the program is accredited. House Bill 4156 also affected the requirements for full and part-time nursing faculty members.

The modifications to the rule implement the provisions and intent of House Bill 4156. References to the Board's accreditation of nursing education programs are changed to the Board's approval of the programs throughout the rule. The definition of "Board approved" in Section 2.5 of the rule makes clear that all nationally accredited nursing programs are considered Board-approved and are exempt from rules related to Board approval.

In Section 6, the rule sets out the process for establishing a new nursing program that is consistent with House Bill 4156. The rule also provides for the continuing evaluation and approval of nursing programs in Section 7, and, consistent with House Bill 4156, ends those evaluations once the program receives national accreditation. In Section 11, the rule sets out standards for full and part-time faculty members that conform to the standards in House Bill 4156.

Sections 3, 4, and 5 of the rule are new and address the purposes for nursing program approval, nursing education standards, and required criteria for nursing education programs. The language in these sections reflects national model provisions. Section 13 adds provisions that allow a program to use simulation as a substitute for traditional clinical experiences for up to 50% of its clinical hours and sets forth standards related to simulation.

Senate Bill No. 211 Board of Examiners for Registered Professional Nurses, Requirements for Registration and Licensure and Conduct Constituting Professional Misconduct 19 CSR 3

This rule amends a current legislative rule. The Board added a criminal background check for endorsement applicants and removes unnecessary language concerning the Commission of Foreign Nursing Schools. It allows the Board to consider licensure of any applicant on a case by case basis if the applicant's criminal history record reports criminal offenses.

Senate Bill No. 212 Board of Examiners for Registered Professional Nurses, Advanced Practice Registered Nurse 19 CSR 7

This rule amends a current legislative rule by adding a 10-year sunset date and makes other technical changes.

Senate Bill No. 213 Board of Examiners for Registered Professional Nurses, Standards for Scope of Professional Nursing Practice 19 CSR 10

This rule amends a current legislative rule. The changes are to update to reflect national model language. It sets out standards of practice within the areas of professional accountability (Section 2.1); scope of practice (Section 2.2); patient advocacy (Section 2.3); and the organization, management, and supervision of the practice of nursing (Section 2.4).

Senate Bill No. 214 Board of Examiners for Registered Professional Nurses, Fees for Services Rendered by the Board and Supplemental Renewal Fee for the Center for Nursing 19 CSR 12

This rule amends a current legislative rule, by removing outdated language on methods for paying fees and by removing outdated fees.

Senate Bill No. 215 Board of Examiners for Registered Professional Nurses, Dialysis Technicians 19 CSR 13

This rule amends a current legislative rule. The changes are required by the passage of House Bill 4023 during the 2018 Regular Session. The rule permits a dialysis technician who is practicing on a temporary permit to renew the temporary permit one time for a period of 18 months. It also deletes the cumbersome reciprocity process and adds a criminal background check requirement.

Senate Bill No. 216 Secretary of State, Filing and Formatting Rules and Related Documents and Other Documents for Publication in the State Register 153 CSR 6

This rule repeals and replaces a current legislative rule. It establishes the processes for filing and formatting legislative, legislative-exempt, procedural, interpretive and emergency rules. It also establishes the processes for filing related documents for publication in the State Register. The rule has been in effect since 1996 and many of the provisions are now obsolete.

The rule adds several new definitions and new requirements regarding electronic rule filing. It also notes the requirement for sunset provisions in new and existing rules filed after April 1, 2016.

Additionally, the rule clarifies that new serious rules shall be completely underlined.

Senate Bill No. 217 Secretary of State, Loan and Grant Programs Under the Help America Vote Act (HAVA) for the Purchase of Voting Equipment, Election Systems, Software, Services and Upgrades 153 CSR 10

This rule repeals and replaces a current legislative rule. It establishes procedures for administration and eligibility of West Virginia counties to apply for and receive funding to improve the administration of elections for Federal office payable from the County Assistance Voting Equipment Fund created by the Help America Vote Act (HAVA). The rule sets forth the application process as well as eligibility requirements for grants and loans.

Senate Bill 548 which passed during the 2018 Regular Session authorized the use of funds (\$3 million) that have previously gone unused for grants and/or loans. Subsequently, the State received \$3.7 million in funds. The funds are to be used as grants to counties to purchase election systems, upgrades, and physical security enhancements.

Senate Bill No. 218 Secretary of State, Early Voting In-Person Precincts 153 CSR 13

This rule amends a current legislative rule. It amends the criteria for early voting satellite precincts. The rule was last amended in 2010. In 2011, W. Va. Code §3-3-2a changed, and the rule has been out of compliance since that time.

The current rule does not take into consideration the statutory change in 2011, which provided greater flexibility in operating satellite voting sites. The rule incorporates changes that are necessary for ExpressVote systems which are in use in 13c counties. In addition, the rule makes accommodations for older voting systems.

Specifically, a satellite precinct must be available for a minimum of five consecutive days during in-person voting, but it need not be available for the entire period of early in-person voting beginning the 13th day before the election and continuing through the 3rd day before the election. Further, a satellite precinct is no longer required to be open on Saturdays, as long as it is open for at least five consecutive days.

Senate Bill No. 219 Secretary of State, Notaries (Repeal) 153 CSR 46

This is a repeal of an existing rule. Some portions of this rule are duplicative to W. Va. Code §39-4-1 *et seq.*, and other portions of this rule are now in conflict with changes made during the 2018 Regular Session.

Senate Bill No. 220 Board of Social Work Examiners, Qualifications for the Profession of Social Work 25 CSR 1

This rule amends a current legislative rule. The rule modifies the training, registration, and application requirements for clinical supervisors of individuals seeking to become Licensed Independent Clinical Social Workers. The rule also expands the permissible use of HIPPA compliant technology to meet the supervision requirements.

Senate Bill No. 221 Board of Social Work Examiners, Code of Ethics 25 CSR 7

This rule amends a current legislative rule. The rule updates the reference to the Code of Ethics to the most recently adopted code by the National Association of Social Workers

Senate Bill No. 221 Treasurers Office, Reporting and Claiming Unknown and Unlocatable Interest Owners Reserved Interests 112 CSR 16

This rule is new. During the 2018 Regular Session, the Legislature passed House Bill 4268 which created two new Acts. The first Act (W. Va. Code §37B-1 *et seq.*) allows oil and gas operators to extract oil and gas from mineral properties in certain circumstances where at least 75% of the owners agree to it. For those who do not agree, because they are either unknown or unlocatable, the Act requires the oil and gas operators to set aside “a prorata share of production royalty” and remit it to the State Treasurer as the Unclaimed Property Administrator.

The second new Act (W. Va. Code §37B-3-1 *et seq.*) prescribes the information that must be provided to the State Treasurer about the unknown or unlocatable owners and what the State Treasurer is to do with their royalties. The State Treasurer must administer a new special revenue account known as the Unknown and Unlocatable Interest Owners Fund into which the royalties are to be deposited. The State Treasurer may also invest the funds with the West Virginia Board of Treasury Investments, conduct investigations to locate owners and pay their claims, and deduct reasonable administration costs.

The rule does the following:

- Adds definitions;
- Sets forth information known about the owner that the holder must send to the State Treasurer when remitting the owner’s royalties to the State Treasurer;
- Provides deadlines for submitting the reports and remitting the owner’s royalties and authorizing penalties for failure to do so;
- Authorizes the State Treasurer to use advertising that would be in the best interest of the owners;
- Requires the State Treasurer to create an account for each owner and authorizes investment of the amounts received;
- Provides procedures for paying owners when they file a claim;
- Provides statutes of limitations for actions against holders and exceptions; and
- Authorizes the State Treasurer to examine holders’ records and compel accurate payments.

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: March 8, 2019

ACTION BY GOVERNOR: March 22, 2019

Senate Bill 223

COMMITTEE SUBSTITUTE AS AMENDED

SHORT TITLE: Authorizing Department of Commerce promulgate legislative rules.

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

SUMMARY:

This bill contains eight rules relating to the Department of Commerce. These rules from the Division of Labor, the Office of Miners' Health Safety and Training, and the Division of Natural Resources constitute Bundle 10.

Senate Bill No. 223 Division of Labor, Wage Payment and Collection, 42 CSR 5

This rule incorporates amendments made to the Wage Payment and Collection Act during the 2018 Regular Legislative Session. It amends the definition of "illegal deduction" to include deductions that do not comply with the provisions of W. Va. Code §21-5-4(f) concerning employer provided property, adds a new definition of "wages" to include the annual increment for state employees, and adds new provisions regarding overpayments to state employees. A state employee who has been overpaid may voluntarily enter into a written wage assignment to repay the overpayments and 25% of a state employee's net wages are exempt from assignment.

Senate B. 224 Division of Labor, Child Labor 42 CSR 9

This rule incorporates amendments made to the Child Labor Act during the 2018 Regular Legislative Session. The amendments remove the requirement that a 14 or 15 year old minor who completes an application for a work permit personally appear before the county superintendent, modify the requirements for 16 and 17 year old minors to be employed by, or elected as, a member of a VFD by providing that instead of successfully completing the minimum training requirements, the minor can be enrolled in or participating in specific programs, and eliminates the reference to the federal rules that are incorporated into the current rule.

Senate Bill No. 225 Division of Labor, Regulation of Heating, Ventilating and Cooling Work, 42 CSR 34

Senate Bill 506, which passed during the 2018 Regular Session, created a new category for licensure, the HVAC Residential Technician license. This rule contains a new section 7, concerning the minimum qualifications, requirements, and scope of work for

the new HVAC Residential Technician category. It also establishes fees for the new HVAC Residential Technician license.

Senate Bill No. 226 Office of Miners' Health Safety and Training, Rule Governing the Safety of Those Employed In and Around Surface Mines in West Virginia, 56 CSR 3

During the 2018 Regular Session, Senate Bill 626 passed which required the Director of the Office of Miners Health, Safety and Training (OMHST) to revise this rule by promulgating an emergency rule to reflect that the Mine Safety and Health Administration (MSHA) approved surface ground control plan shall serve as the state-approved plan. Further, Senate Bill 626 required automated external defibrillators (AED) on all surface mining operations.

Specifically, Section 6, relating to the powers and duties of the Director of OMHST, is completely rewritten. In Section 8, the Director of OMHST is directed to execute a bond in the sum of \$10,000. The current bond is \$2,000. In Section 10, the salary of surface mine inspectors is changed from "not less than \$17,000 per year" to not less than "\$53,904 per year."

In Section 11, the Mine Inspectors' Examining Board is abolished, and the duties of that entity are imposed upon the Board of Coal Mine Health and Safety.

In Section 21, the minimum salary of a mine foreman examiner is increased from \$13,500 to \$31,032. In Section 30, subsection 30.8. is added to provide that the MSHA-approved surface ground control plan shall serve as the state-approved plan.

In Section 48, a new subsection 48.4. requires that at least one AED be stored on the permitted area of all surface operations in a controlled environment with manufacturers' recommendations. Further, all mine personnel must be trained on the operation of the AED, and a written record must be retained. In Section 52, the requirement for filing reports was revised from monthly to quarterly.

Senate Bill No. 227 Office of Miners' Health Safety and Training, Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia, 56 CSR 8

During the 2018 Regular Session, Senate Bill 626 passed which required the Director of the Office of Miners Health, Safety and Training to promulgate an emergency rule detailing the requirements for mine safety programs to be established by coal operators as provided in W. Va. Code §22A-1-36(b).

This rule amends a current legislative rule. It provides that the comprehensive mine safety program is not subject to annual review by the Director, except when there has been a fatality, a serious accident involving bodily harm, or a pattern of mine safety violations. The Director now has 90 days, as opposed to 30 days, to approve an initial submission of a program or to approve any proposed modifications or revisions. A

program's annual evaluation must now include accident investigations conducted during the previous one-year period. Finally, it allows an operator or independent contractor to petition the Director to be removed from annual review.

Senate Bill No. 228 Office of Miners' Health Safety and Training, Operating Diesel Equipment in Underground Mines in West Virginia, 56 CSR 23

During the 2018 Regular Session, Senate Bill 626 passed which required the Director of the Office of Miners Health, Safety and Training to amend the state rules to permit the use of diesel generators in underground mines as long as the generator is vented directly to the return and at least one person is present within sight and sound of the generator.

This rule also contains two new sections that relate to the operation of underground diesel-powered electric generators (§28) and electrical provisions for diesel-powered electrical generators (§29).

Senate Bill No. 229 Division of Natural Resources, Commercial Whitewater Outfitters, 58 CSR 12

This rule amends a current legislative rule. It pertains to the regulation of commercial whitewater outfitter guide services. The rule does the following:

1. Allows commercial outfitters and guides to provide equipment rental services in a new section of the New River where such services are currently prohibited (section 14);
2. Imposes safety requirements for general outfitters who operate and provide services in specified whitewater zones (section 13);
3. Raises the minimum monetary threshold for required reporting of accidents from \$500 in non-vehicular property damage to \$2000 (section 11); and
4. Strengthens the requirements for the type of personal flotation devices that are to be provided.

Senate Bill No. 230 Division of Natural Resources, Cabwaylingo State Forest Trail System Two Year Pilot Project Permitting ATV's and ORV's, 58 CSR 36

This rule is new. It implements a two-year pilot project allowing all-terrain vehicles (ATV's) and off-highway recreational vehicles (ORV's) on designated roads and trails within Cabwaylingo State Forest. The pilot project was established by legislation passed during the 2018 Regular Session in Senate Bill 498, which expressly authorized the Division of Natural Resources Director to promulgate legislative rules to effectuate the project.

The rule requires persons using the trail system to comply with the ATV, UTV, and Motorcycle Responsibility Act (W. Va. Code §20-15-1 et seq.), and the Equestrian Activities Responsibility Act (W. Va. Code §20-4-1, *et seq.*), which are incorporated by reference. It also subjects persons operating a motor vehicle within the trail system to the traffic laws and regulations of the State (W. Va. Code §17C-1-1, *et seq.*), except where those laws and regulations conflict with the rule.

In addition, the rule sets out general provisions governing use of the trail system, including prohibiting possessing or consuming alcohol; limiting use of the system by drivers to daylight hours; and restricting use of vehicles, bicycles, and trail animals to designated and marked trails. It also imposes safety requirements for operating and riding motor vehicles, including the use of seat belts in UTV's and similar vehicles, the wearing of protective helmets, and limiting operation and riding of motor vehicles on the trail system by those under the age of 16.

The rule makes any violation of its provisions a misdemeanor, with penalties as set forth in W. Va. Code §20-7-9, which is the general penalty provision applicable to the state's Natural Resources laws, contained in Chapter 20 of the Code. Upon conviction, a person shall be fined not less than \$20 nor more than \$300, confined to jail not less than 10 nor more than 100 days, or both fined and jailed, for each offense.

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: March 6, 2019

ACTION BY GOVERNOR: March 22, 2019

Senate Bill 237

COMMITTEE SUBSTITUTE

SHORT TITLE: Improving ability of law enforcement to locate and return missing persons

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

SUMMARY:

The purpose of this bill is to create a new article delineating standard procedures for agencies involved in missing person investigations and the identification of human remains.

The bill provides minimum steps for all law-enforcement agencies receiving and investigating missing person complaints. The bill requires a law-enforcement agency with jurisdiction to accept a missing person complaint and specifies the minimum information that law-enforcement agencies must attempt to collect from a complainant. The bill also requires law-enforcement agencies receiving a missing person complaint to ensure that a report of the complaint and relevant information is entered into the state-level West Virginia Automated Police Network and when applicable, several other national databases, including those maintained by the Federal Bureau of Investigation. The bill requires law-enforcement to assess whether a person meets certain risk categories and take immediate action to submit information related to high risk cases to appropriate databases, but in all circumstances, submit information to databases expeditiously. Juvenile missing persons are always considered to be high-risk. Once a missing person is located, lead law-enforcement agencies must remove the person's information from all missing person databases.

The bill prohibits a law-enforcement agency from delaying a missing person investigation pursuant to a written or unwritten policy requiring that a certain time period pass from receipt of a complaint or the date on which the person was last seen before an investigation may commence. After 30 days have passed since receipt of a missing person complaint or the date on which the person was last seen, the lead law-enforcement agency in a missing person investigation must attempt to gather additional evidence, including DNA samples, fingerprints, additional photographs, or x-rays and dental records that may assist in an investigation.

The bill also establishes minimum standards for law-enforcement officers and medical examiners discovering or coming into custody of unidentified human remains. The bill requires any law-enforcement officer or other official to immediately notify and seek the assistance of the Office of the Chief Medical Examiner if the officer or official

discovers or otherwise comes into custody of unidentified human remains or materials that he believes may be human remains.

Medical examiners are required to make reasonable attempt to promptly identify human remains by taking certain steps, including taking photographs, x-rays, fingerprints, and DNA or biological samples, when possible. The bill prohibits a medical examiner from disposing of or altering human remains before taking any obtainable samples that may aid in identification. Medical examiners are required to attempt to obtain DNA analysis of biological samples from unidentified remains within 30 days, and to submit DNA information into the National Missing and Unidentified Persons System database and to the West Virginia State Police, for submission into appropriate law-enforcement databases. When unidentified human remains are identified as belonging to a missing person, a medical examiner must notify the appropriate law-enforcement agency, and the law-enforcement agency must promptly make efforts to inform family members.

Finally, the bill creates a misdemeanor crime of knowingly and willfully filing a false missing persons complaint. Penalties for the misdemeanor include a fine of not less than \$25 nor more than \$200, confinement in jail for five days, or both the fine and confinement.

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: June 3, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 238

COMMITTEE SUBSTITUTE

SHORT TITLE: Increasing fines for passing stopped school bus.

CODE REFERENCE: §17C-12-7 (Amends and Reenacts)

SUMMARY:

This bill does the following:

1. Increases fines for illegally passing a school bus.
 - a. First offense – from \$250-\$500 to \$500-\$1,000
 - b. Second offense – from \$500-\$1,000 to \$1,000 to \$1,500
 - c. Third or subsequent offense – from \$1,000-\$1,500
2. Increases license suspensions;
 - a. First offense – 30 days to 60 days
 - b. Second offense – 90 days to 180 days
 - c. Third or subsequent offense – 180 days to 1 year
3. Increases fines from \$500-\$2,000 to \$2,000-\$5,000 for passing a bus causing serious bodily injury;
4. Makes the offense a felony and increases fines from \$1,000-\$3,000 to \$5,000-\$10,000 for passing a bus causing death;
5. Requires that school buses purchased after July 1, 2019 be equipped with operating forward-facing and rear-facing cameras.

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 240

COMMITTEE SUBSTITUTE AS AMENDED

SHORT TITLE: Repealing certain legislative rules no longer authorized or are obsolete.

CODE REFERENCE: §64-12-1 *et seq.* (New)

SUMMARY:

This bill repeals the following legislative rules which are obsolete or for which there is no longer authority.

Department of Administration

Department of Administration legislative rule relating to the state Purchasing Card Program, 148 CSR 7.

Department of Environmental Protection

Department of Environmental Protection legislative rule relating to abandoned mine lands reclamation rule, 59 CSR 1.

Department of Environmental Protection legislative rule relating to certification of gas wells, 35 CSR 7.

Department of Military Affairs and Public Safety

Regional Jail and Correctional Facility Authority legislative rule relating to handbook of inmate rules and procedures, 94 CSR 5.

Regional Jail and Correctional Facility Authority legislative rule relating to furlough program for regional jails, 94 CSR 6.

Regional Jail and Correctional Facility Authority legislative rule relating to criteria and procedures for determination of projected cost per day for inmates incarcerated in regional jails operated by the authority, 94 CSR 7.

Regional Jail and Correctional Facility Authority legislative rule relating to work program for regional jail inmates, 94 CSR 8.

Regional Jail and Correctional Facility Authority legislative rule relating to West Virginia minimum standards for construction, operation, and maintenance of jails, 95 CSR 1.

Department of Tax and Revenue

Insurance Commission legislative rule relating to health insurance benefits for temporomandibular and craniomandibular disorders, 114 CSR 29.

Insurance Commission legislative rule relating to guaranteed loss ratios as applied to individual sickness and accident insurance policies, 114 CSR 31.

Insurance Commission legislative rule relating to external review of coverage denials, 114 CSR 58.

Insurance Commission legislative rule relating to small employer eligibility requirements, 114 CSR 73.

Department of Transportation

Division of Motor Vehicles legislative rule relating to eligibility for reinstatement following suspension or revocation of driving privileges, 91 CSR 16.

Miscellaneous Agencies, Boards, and Commissions

Board of Social Work Examiners legislative rule relating to applications, 25 CSR 4.

Bureau of Commerce

Division of Labor legislative rule relating to the Safety Glazing Act, 42 CSR 13.

DATE OF PASSAGE: February 11, 2019

EFFECTIVE DATE: February 11, 2019

ACTION BY GOVERNOR: February 19, 2019

Senate Bill 264

COMMITTEE SUBSTITUTE

SHORT TITLE: Requiring courts to order restitution to crime victims where economically practicable.

CODE REFERENCE: §61-11A-4 (Amends and Reenacts)

SUMMARY:

The purpose of this bill is to expressly include the West Virginia Crime Victim's Fund as an entity which may obtain reimbursement from defendants for money given to a victim.

The bill also clarifies language requiring that when the court orders the defendant to make restitution, that it be to the greatest extent economically practicable when considering the defendant's financial circumstances.

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Signed March 22, 2019

Senate Bill 272

COMMITTEE SUBSTITUTE

SHORT TITLE: Updating code relating to Commission on Special Investigations.

CODE REFERENCE: §§4-5-1 through 5 (Amends); §4-5-7 and §4-5-8 (New)

SUMMARY:

Under current law, the Commission is composed of five members from each house. This bill specifies that the President and the Speaker are to be one of the members from each of their respective houses and that they are to serve as chairs of the Commission.

The bill requires that any action taken by the Commission requires a vote by a quorum of the members appointed as opposed to the current requirement of a “majority.”

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

The bill requires a quorum vote to enter into executive session. It also does away with the requirement that Commission expenses must be approved by the Joint Committee as it is redundant given the makeup of the Commission. Additionally, the bill allows the commission to request rather than subpoena records for state, county, and local government entities.

A new section has been added making it a misdemeanor to impersonate a Commission member or staff, or obstruct a member or employee acting in his or her official capacity. The penalty is a \$500-\$2,500 fine, up to one year in jail, or both fin and jail. The new section also prohibits obstruction but provides that failure to produce information or records is not obstruction when the disclosure is prohibited by state or federal law.

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

DATE OF PASSAGE: February 22, 2019

EFFECTIVE DATE: May 23, 2019

ACTION BY GOVERNOR: Signed February 28, 2019

Senate Bill 295

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to crimes against public justice.

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

SUMMARY:

The purpose of this bill is to include court security officers, the state fire marshal assistant, and deputy fire marshals in the definition of persons against whom obstructing an officer is a crime.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 317

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing three or more adjacent counties form multicounty trail network authority

CODE REFERENCE: §§20-17-1 *et seq.*, and §§20-17A-1 *et seq.* (New)

SUMMARY:

The purpose of the bill is to create two new articles of codes, authorizing three or more contiguous counties to form a multi-county trail network authority. The new article is loosely modeled after the article creating the Hatfield McCoy Regional Recreation Authority and allows multi-county trail network authorities to incorporate private land into authority-managed trail systems. The bill provides legislative findings, highlighting the economic benefits that increased and well-managed trail-oriented recreation could bring to the state.

Creation of an Authority; Board

A multi-county trail authority organized pursuant to the new article will be a public corporation and a joint development entity. The bill allows adjacent counties to join existing authorities, upon approval of the board of an authority and the newly joining county's commission. Additionally, two existing authorities may merge into one authority, upon approval of the boards of both merging authorities.

A multi-county trail authority is authorized to negotiate and enter into agreements with private landowners to acquire property rights or permission from landowners necessary to incorporate private land into the trail network. Each authority will be governed by a board. Each participating county must appoint two board members, to represent specified local interests related to the trail network. Board members will serve for four-year terms, with one member from each county being appointed to a two-year term for the initial appointment, to stagger terms. An authority is a public body for purposes of the Freedom of Information Act.

The board must meet quarterly and is required to elect officers. A majority of board members constitutes a quorum, and the board is authorized to promulgate rules and bylaws governing the use of the trail system and the business of the board. The board must review and approve an annual budget for an authority. The board is authorized to employ an executive director, who may hire and oversee other personnel necessary to carry out the business of an authority. The executive director must submit an annual budget and appropriate accounting records to the board and to each participating county.

An authority is required to contract for and obtain an annual independent financial audit. If an authority receives any state funds by appropriation or otherwise, the authority is subject to audit by the Legislative Auditor.

As a joint development entity and public corporation, an authority is authorized, among other things, to exercise basic property rights (own, lease, mortgage, etc.); procure insurance; maintain sinking funds and reserves; sue and be sued; enter into contracts; accept grants and gifts; maintain offices; borrow money; and issue notes. An authority is also authorized to construct and maintain trails; to enter into agreements with the Division of Natural Resources for law-enforcement services; to enter into contracts and agreements with landowners; to collect fees for use of the trail network; to operate and manage recreational activities in the network; and to carry out other tasks necessary to operate the project.

Prohibited Acts for Trail Users; Criminal Penalties

The bill prohibits certain acts by trail users on trail network land. Trail users are prohibited from the following: entering land without a permit (with an exception for owners and authorized agents); operating or riding on a bike without an appropriate helmet; failing to obey traffic standards; failing to remain on designated trails; igniting a fire outside of a designated area; or operating a motor vehicle or utility terrain vehicle on a trail.

A person who violates the above prohibitions is guilty of a misdemeanor and shall be fined not more than \$100.

Limited Liability for Landowners

The bill limits liability of landowners participating in the trail network. The bill states that a landowner owes no duty of care to keep premises safe or to post warnings of conditions. A landowner does not incur a liability, extend any assurances of safety, or assume responsibility for injuries occurring on the land by participating in the trail network. The landowner does not confer any duty of care on landowners to any person entering the land as a trail user, whether the person is a trespasser or permitted user.

Purchasing Requirements; Criminal Penalties

The bill establishes purchasing requirements for an authority. For purchases of services or commodities for \$25,000 or more, a contract must be based on competitive bid, by public notice of solicitation for sealed or electronic bids. For purchases under \$25,000, the executive director may solicit bids in any appropriate manner so long as he or she obtains the lowest (responsible) bid. Purchasing requirements do not apply to leases of real property for trails. A person who violates the purchasing requirements of the new article is guilty of a misdemeanor and upon conviction, shall be confined in jail for 10 days to one year, or fined \$10-\$1,000, or both fined and confined.

The bill also specifies that provisions of the Ethics Act and the criminal code, prohibiting county officials from having a pecuniary interest in a contract over which they have control, apply to multi-county trail board members and personnel. A county commission of a participating county may challenge the validity of contracts for commodities or services that violate the purchasing requirements of the article, and a court may declare such contracts or purchases to be void.

The bill provides that the provisions of the new article are severable, in the event of a legal challenge thereto.

Mountaineer Trail Network Authority

The bill also includes a new article of Code, §20-17A-1 *et seq.*, which creates the Mountaineer Trail Network Authority, comprised of the counties of Barbour, Grant, Harrison, Marion, Mineral, Monongalia, Preston, Randolph, Taylor, and Tucker. As a multi-county trail network authority, the Mountaineer Trail Network Authority is subject to the requirements contained in 20-17-1 *et seq.*

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 318

COMMITTEE SUBSTITUTE

SHORT TITLE: Transferring Medicaid Fraud Control Unit to Attorney General's office.

CODE REFERENCE: §9-7-1, §9-7-3, §9-7-6, and §9-7-6a (Amends and Reenacts)

SUMMARY:

This bill transfers the Medicaid Fraud Control Unit from the Department of Health and Human Resources (DHHR) to the Office of the Attorney General and continues its operation in the Office of the Attorney General after October 1, 2019.

All employees of the Medicaid Fraud Control Unit will be transferred and become employees of the Office of the Attorney General at their existing hourly rate or salary and with all accrued benefits. The Medicaid Fraud Control Unit's authorities, powers, and duties will remain unchanged by the transfer.

The bill provides that on or before December 31, 2022, the Legislative Auditor shall study and report to the Joint Committee on Government and Finance regarding the performance of the Medicaid Fraud Control Unit within the Office of the Attorney General during the previous three years in comparison to the performance of the unit while it operated within DHHR.

The bill provides that after the effective date the Secretary and DHHR must fully cooperate with the Office of the Attorney General on any investigation, prosecution, or civil action and that the Secretary must promptly provide the Attorney General with any information or document requests. If the Attorney General declines to prosecute a civil action brought by the Medicaid Fraud Control Unit, the civil action shall be maintained either by a prosecuting attorney or by any attorney in contract with or employed by DHHR.

Section 9-7-6a limits the liability of DHHR, the Office of the Attorney General, or any of their employees or agents for any action taken under this article so long as it was taken in good faith.

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: October 1, 2019

ACTION BY GOVERNOR: March 25, 2019

Senate Bill 340

COMMITTEE SUBSTITUTE

SHORT TITLE: Repealing obsolete provisions of code relating to WV Physicians Mutual Insurance Company.

CODE REFERENCE: Repeals §33-20F-1 *et seq.*

SUMMARY:

This bill repeals Article 20F of the insurance code, which created the Physicians' Mutual Insurance Company Act. The purpose of Article 20F, originally enacted in 2001 and subsequently amended, was to create a mechanism for the formation of a physicians' mutual insurance company that would provide a means for physicians to obtain medical liability insurance that is affordable, while also compensating persons who suffer injuries as a result of medical professional liability. The Board of Risk and Insurance Management (BRIM) was tasked with implementing the initial formation and organization of the company. The article creates a special revenue account, specifies that the company is to have a board of directors of certain members, and provides for the transfer of policies from BRIM to the company.

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: March 22, 2019

Senate Bill 356

COMMITTEE SUBSTITUTE

SHORT TITLE: Requiring MAPS provide state and federal prosecutors information.

CODE REFERENCE: §15A-1-7 (Amends and Reenacts)

SUMMARY:

The purpose of this bill is to require the Department of Military Affairs and Public Safety to release certain information related to past or present employees' credibility to state prosecutors and United States Attorneys in the prosecution of a criminal action. The bill:

1. Limits the responsibility of disclosure to circumstances where the agency has knowledge that a past or current employee is being called as a government witness;
2. Requires the agency to supply the name of a prospective employee witness that has engaged in conduct which may constitute impeachment evidence;
3. Leaves responsibility for supplying evidence to defense counsel on the prosecutor; and
4. Immunizes the agency, officials, and employees from liability for good-faith compliance.

DATE OF PASSAGE: February 21, 2019

EFFECTIVE DATE: May 22, 2019

ACTION BY GOVERNOR: Signed March 7, 2019

Senate Bill 360

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to third-party litigation financing.

CODE REFERENCE: §46A-6N-1 *et seq.* (New)

SUMMARY:

This bill provides consumer protections with regard to third-party litigation financing transactions.

Section 46A-6N-1 defines various terms. A “litigation financing transaction” is defined as “a non-recourse transaction in which financing is provided to a consumer in return for a consumer assigning to the litigation financier a contingent right to receive an amount of the potential proceeds of the consumer’s judgment, award, settlement, or verdict obtained with respect to the consumer’s legal claim.” Persons or entities engaged in litigation financing are bound by the requirements of the new Article 6N.

Section 46A-6N-2 requires all litigation financiers to register with the Secretary of State. The section provides for certain registration requirements, including securing a bond or irrevocable letter of credit in the amount of \$50,000 from the office of the West Virginia Attorney General.

Section 46A-6N-3 provides certain requirements for litigation financiers, including:

1. Consumer must be provided a completed, written agreement;
2. The contract must contain a right of rescission within five days of receiving funds; and
3. The contract must contain certain written acknowledgements.

Section 46A-6N-4 prohibits a litigation financier from paying, offering to pay, or accepting any commissions or referral fees to or from any attorney, law firm, medical provider, chiropractor, or physical therapist. The litigation financier may not use false or misleading advertisements, may not refer a consumer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist, nor may they attempt to waive any of the consumer’s remedies or right to jury trial. Litigation financiers are not permitted to assign the litigation financing contract to other third-parties, except to a wholly owned

subsidiary of the litigation financier, or an affiliate of the litigation financier that is under common control with the litigation financier.

Section 46A-6N-5 provides certain form disclosures that must be incorporated into every contract.

Section 46A-6N-6 provides that unless otherwise stipulated or ordered by the court a party shall, without awaiting a discovery request, provide to the other parties any agreement under which any litigation financier, other than an attorney permitted to charge a contingent fee representing a party, has a right to receive compensation that is contingent on and sourced from any proceeds of the civil action, by settlement, judgment, or otherwise.

Section 46A-6N-7 provides that any violation shall render the litigation financing contract unenforceable. A court may award a successful plaintiff costs and attorneys' fees.

Section 46A-6N-8 provides for the assignability of the contingent right to receive an amount of the potential proceeds of a legal claim for the purposes of obtaining litigation financing from a litigation financier, and for priority of liens attaching to the legal proceeds.

Section 46A-6N-9 states that a litigation financier may not charge a consumer an annual fee of more than 18 percent of the original amount of money provided to the consumer. The annual fees may not be charged more than once per year with regard to any single legal claim, and the fees may not compound more frequently than semiannually. Finally, fees may not be assessed for a period exceeding 42 months.

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: March 25, 2019

Senate Bill 369

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to generic drug products.

CODE REFERENCE: §30-5-12b (Amends and Reenacts)

SUMMARY:

This bill adds definitions for the terms “covered entity” and “covered individual.” It provides that if a pharmacist substitutes a generic drug, the patient pays only the cost of the substituted drug. This provision may not apply if the patient is a covered individual.

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: March 25, 2019

Senate Bill 373

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to financial responsibility of inmates.

CODE REFERENCE: §15A-4-11 (Amends and Reenacts)

SUMMARY:

This bill allows the Division of Corrections to withhold monies received by inmates from court judgments and civil settlements even if an awarding court fails to deduct such obligated monies from the initial award. The bill allows deduction of attorneys' fees and litigation costs and all known outstanding child support, restitution, spousal support, and court costs. These fees shall be deducted prior to depositing funds in the inmate's account and shall apply to civil actions filed after July 1, 2019.

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: June 3, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 377

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Relating to minimum wage and maximum hour standards.

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

SUMMARY:

This bill excludes any seasonal employee of an amusement park who works for the park for less than seven months in any calendar year from the definition of the term “employee” for the purposes of the Minimum Wage and Maximum Hours Standards law. The bill also adds a definition for “amusement park.”

DATE OF PASSAGE: February 20, 2019

EFFECTIVE DATE: May 21, 2019

ACTION BY GOVERNOR: Signed March 1, 2019

Senate Bill 387

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to extradition.

CODE REFERENCE: §5-1-6 through §5-1-12 (Repeal); §62-14A-1 (New article)

SUMMARY:

This bill does the following:

1. Repeals W. Va. Code §5-1-6 through §5-1-12, which deals with extradition, and relocates the provisions to a new article in Chapter 62 for the purposes of clarity;
2. Adds new Article 14A to Chapter 62, which incorporates language from the repealed sections;
3. Adds language which clarifies that persons in other states who are improperly released from custody before completion of a sentence are subject to extradition; and
4. Updates titles of designated persons and entities in other jurisdictions involved in the extradition process.

DATE OF PASSAGE: February 21, 2019

EFFECTIVE DATE: May 22, 2019

ACTION BY GOVERNOR: Signed March 7, 2019

Senate Bill 393

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Protecting right to farm.

CODE REFERENCE: §19-19-2 (Amends and Reenacts); §19-19-7 and §19-19-8 (New)

SUMMARY:

This bill protects the right to farm and protects agricultural operations from nuisance litigation if the facility has been in operation for more than one year.

The bill amends the definitions of “agriculture” and “agricultural land” in W. Va. Code §19-19-2 and adds a definition for “agricultural operation.”

The bill adds a new section, §19-19-7, which provides for additional limitations on nuisance actions, as follows:

Subsection (a) provides that in addition to the limitations on actions brought against an agricultural operation in W. Va. Code §19-19-4, this section shall also apply to any nuisance action brought against an agricultural operation in any court of this state.

Subsection (b) lists the requirements allowing a person to file a public or private nuisance action to recover damages against an agricultural operation.

Subsection (c) provides that no agricultural operation which has been in operation for a period of more than one year shall be considered a nuisance, either public or private, as a result of any changed condition in or about the locality where the agricultural operation is located. Proof that the agricultural operation has existed for one year or more is an absolute defense to the nuisance action, if the operation is in compliance with all applicable state and federal laws, regulations, and permits.

Subsection (d) provides that no state or local law-enforcement agency may bring a criminal or civil action against an agricultural operation for an activity that is in material compliance with all applicable state and federal laws, regulations, and permits.

Subsection (e) provides that no agricultural operation shall be or become a private or public nuisance if the operators are conducting the agricultural operation in a manner consistent with commonly accepted agricultural practice. If the operation is in material compliance with all applicable state and federal laws, regulations, and permits, it shall be presumed to be conducted in a manner consistent with commonly accepted agricultural practice.

Subsection (f) provides that no agricultural operation shall be considered a nuisance, private or public, if the agricultural operation makes a reasonable expansion, so long as the operation is in material compliance with all applicable state and federal laws, regulations, and permits, and it does not create a substantially adverse effect upon the environment or a hazard to public health and safety.

Subsection (g) provides that requirements of a municipality are not applicable to an agricultural operation situated outside of the municipality's corporate boundaries on the effective date of this chapter.

Subsection (h) provides that an agricultural operation is not, nor shall it become, a nuisance after it has been in operation for more than one year, if the operation was not a nuisance at the time the operation began, and the conditions or circumstances complained of as constituting the basis for the nuisance action are substantially unchanged since the established date of operation.

Subsection (i) provides that this section shall not apply (1) whenever a nuisance results from the negligent operation of any such agricultural operation, or (2) to affect or defeat the right of any person to recover for injuries or damages sustained because of an agricultural operation or portion of an agricultural operation that is conducted in violation of a federal, state, or local statute or governmental requirement applicable to the agricultural operation.

Subsection (j) provides that, once acquired, the protected status of an agricultural operation is assignable, alienable, inheritable, and may not be waived by the temporary cessation of operations or by diminishing the size of the operation.

The bill also adds a new section (§19-19-8) to the Code which provides for damages, as follows:

Subsection (a) makes a person who violates W. Va. Code §19-19-7(h) is liable to the agricultural operation for all costs and expenses incurred in defense of the action.

Subsection (b) provides that the total amount of damages in any successful nuisance action shall not exceed the diminished value of the subject property.

Subsection (c) outlines the exclusive compensatory damages that may be awarded to a claimant where the alleged nuisance originates from an agricultural operation and bars the award of punitive damages to claimants for nuisance actions originating from an agricultural operation.

Subsection (d) provides that if any claimant or claimant's successor in interest brings a subsequent private nuisance action against any agricultural operation, the combined recovery from all such actions shall not exceed the fair market value of his or her property.

Subsection (e) bars a claimant from being awarded punitive damages for nuisance actions originating from an agricultural operation.

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: June 3, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

Senate Bill 398

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to compensation for senior judges

CODE REFERENCE: §5-10-48, §50-1-6a, and §51-9-10 (Amends and Reenacts)

SUMMARY:

This bill limits the per diem rate of compensation for senior status justices and judges to an amount not to exceed \$430 per day (\$5 less than the current rate of compensation established by the Supreme Court of Appeals) and provides that a senior status judge or justice may not receive a combined total of retirement benefits and per diem compensation in a calendar year that exceeds the annual salary of a sitting circuit judge. The bill also limits the per diem rate of compensation for senior status magistrates to \$200 per day (the current rate of compensation established by the Supreme Court of Appeals) and provides that a senior status magistrate may not receive a combined total of retirement benefits and per diem compensation in a calendar year that exceeds the annual salary of a sitting magistrate.

The bill provides an exception to the annual limitation on combined per diem compensation and retirement benefits for senior status judges, justices, and magistrates, whereby the Chief Justice of the Supreme Court of Appeals may issue an administrative order certifying that protracted illness or the lengthy suspension of a sitting judicial officer requires the extended assignment of the senior status judge, justice, or magistrate. If the Chief Justice issues such an order and submits the order to the State Auditor and State Treasurer, a senior status judge, justice, or magistrate may continue to receive per diem compensation for his or her service after exceeding the annual limitation on the aggregate of per diem compensation and retirement benefits during a calendar year. The bill also allows senior status judges, justices, and magistrates to receive reimbursement for actual expenses incurred in performance of their duties. The bill clarifies, in the section of the Code generally addressing reemployment of retired state employees (§5-10-48), that the recall of senior justices, judges, and magistrates does not constitute reemployment under those provisions.

The bill significantly amends the section of the Code that addresses the recall and assignment of senior status justices and judges (§51-9-10). This section of the Code was declared void and unconstitutional by the Supreme Court of Appeals, at the time composed of temporarily assigned circuit judges, during the impeachment proceedings of 2018. The bill sets forth extensive legislative findings regarding the legislative history of the section of the Code, the history of constitutional and statutory law regarding the recall of senior status judges in West Virginia, and the constitutional authority of the Legislature to set the salaries of judicial officers in this state.

Finally, the bill requires the State Treasurer, as custodian of state funds, to petition the Supreme Court of Appeals for a writ of prohibition prohibiting the State Auditor from issuing any warrants for the payment of a senior status judge or justice above the compensation limitations in the bill.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: March 9, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 402

COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing Division of Forestry investigate and enforce timber theft violations.

CODE REFERENCE: §19-1A-3b and §61-3-52 (Amends and Reenacts)

SUMMARY:

This bill designates the Division of Forestry as the primary investigative and enforcement agency of timber theft and destruction violations on all lands throughout the state, not just state forests.

A person who commits timber theft or intentional destruction, etc. of a value of \$2,500 or less is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$2,500 or jailed for up to 30 days, or both fined and jailed.

A person who commits second or subsequent violation with a value of more than \$2,500, occurring within 10 years of the first or previous violation, is guilty of a felony. Felony violations are punished by a fine equal to three times the value of the timber, or imprisonment one to three years, or both a fine and imprisonment.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 408

COMMITTEE SUBSTITUTE

SHORT TITLE: Determining indigency for public defender services.

CODE REFERENCE: §29-21-16 (Amends and Reenacts)

SUMMARY:

This bill clarifies who has the authority to make determinations of indigency for the purpose of eligibility for public defender services.

Under current law, in circuits with a public defender office, a designated employee of the office makes the determination of eligibility. In circuits without a public defender office, the circuit court makes the determination.

This bill gives the authority to make the determination to the trial court administrator in circuits that employ an administrator. In circuits that have no administrator, but do have a public defender's office, the determination will be made by a public defender office employee designated by the executive director. In circuits with neither an administrator nor a public defender office, the circuit judge makes the determination of eligibility.

DATE OF PASSAGE: March 4, 2019

EFFECTIVE DATE: June 2, 2019

ACTION BY GOVERNOR: Signed March 22, 2019

Senate Bill 440

INTRODUCED VERSION

SHORT TITLE: Relating to Antihazing Law.

CODE REFERENCE: §18-16-2 (Amends and Reenacts)

SUMMARY:

This bill modifies the definition of “hazing” in the Antihazing Law to include hazing by any type of organization whose members include students at any public or private institution of higher education. Currently, only an organization operating under the sanction of or recognized by an institution of higher education is covered by the anti-hazing law.

DATE OF PASSAGE: February 28, 2019

PROPOSED EFFECTIVE DATE: May 29, 2019

ACTION BY GOVERNOR: Vetoed March 27, 2019

Senate Bill 481

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to Judicial Vacancy Advisory Commission.

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

SUMMARY:

The purpose of this bill is to alter the statutory residency restrictions for members of the Judiciary Vacancy Advisory Commission (JVAC). Currently, no more than three members of the JVAC may be residents of the same congressional district of the state.

The bill would instead provide that no more than two members of the JVAC may be residents of the same state senatorial district. The bill also provides that if the state loses a congressional district, reducing the number of congressional districts in the state to two, then no more than four members may be residents of the same congressional district.

The bill provides that JVAC members appointed to, and already serving on, the commission upon the effective date of the updated residency requirements will not be disqualified from serving the remainder of their terms.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 22, 2019

Senate Bill 487

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to admissibility of health care staffing requirements in litigation.

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

SUMMARY:

This bill clarifies that meeting minimum staffing requirements in a health care facility includes the provision of adequate supervision in any action brought alleging inappropriate staffing or inadequate supervision. The bill creates, for health care facilities or health care providers, a conclusive presumption that appropriate staffing was provided and a rebuttable presumption that adequate supervision to prevent accidents were provided, if the health care facility or health care provider has demonstrated compliance with the minimum staffing requirements under state law. The jury must be instructed regarding the presumption.

The bill also provides that if staffing does not meet the requirements dictated by state law, there is a rebuttable presumption that there was inadequate supervision of patients and that inadequate staffing or inadequate supervisions was a contributing cause of the patient's fall and injuries or death arising therefrom. The jury must be instructed regarding the presumption.

DATE OF PASSAGE: March 9, 2019

PROPOSED EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Vetoed March 27, 2019

Senate Bill 491

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Extending effective date for voter registration in conjunction with driver licensing

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

SUMMARY:

The purpose of this bill is to extend the statutory deadline for the implementation of automatic voter registration in conjunction with certain Division of Motor Vehicles (DMV) transactions from July 1, 2019 to July 1, 2021. The bill also requires the Commissioner of the Department of Motor Vehicles (DMV), the Department of Transportation, and the Secretary of State to file a report with the Joint Committee on Government and Finance and the Joint Committee on the Judiciary on or before September 1, 2019, containing a full and complete list of all infrastructure each agency requires to implement automatic voter registration by the extended deadline.

Additionally, the bill requires the DMV to obtain an applicant's United States citizenship status, along with other information that must be collected and released to the Secretary of State as part of an automatic voter registration application. Current law requires the applicant to "attest that he or she meets all voter eligibility requirements; including United States citizenship status."

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: March 6, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 510

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to medical professional liability.

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

SUMMARY:

This bill amends the prerequisites for filing a medical professional liability claim. Prior to filing a medical professional liability claim in West Virginia, a 30-day notice is required to be signed by a health care provider qualified as an expert under the West Virginia Rules of Evidence. This is known as a certificate of merit. The bill also makes a number of changes to that process, including:

1. It requires that the 30-day notice for filing a claim include specified information about any agents, servants, employees, or officers of the health care provider who is to be named in the potential suit if the suit is premised on the act or failure to act of the agents, servants, employees, or officers of the health care provider.
2. It requires that a health care provider who signs a certificate of merit is qualified as an expert under the West Virginia Rules of Evidence, meets the requirements of W. Va. Code §55-7B-7(a)(5) and W. Va. Code §55-7B-7(a)(6), and devotes, at the time of medical injury, 60 percent of his or her professional time annually to the active clinical practice in his or her medical field or specialty, or to teaching in his or her medical field or specialty in an accredited university.
3. If the health care provider who signs the certificate of merit meets the above qualifications, it establishes a presumption that the health care provider is qualified as an expert for the purposes of executing a certificate of merit.
4. It updates the requirements for what a certificate of merit shall state with particularity and include, specifically that a list of all medical records and other information reviewed by the expert executing the certificate of merit be included.
5. It provides that no challenge to the notice of claim may be raised prior to receipt of the notice of claim and the executed screening certificate of merit.

DATE OF PASSAGE: February 28, 2019

EFFECTIVE DATE: May 29, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 511

COMMITTEE SUBSTITUTE

SHORT TITLE: Creating alternating wine proprietorships.

CODE REFERENCE: §60-4-3b, §60-8-3, and §60-8-17 (Amends and Reenacts); §60-1-5c, §60-8-3a, and §60-8-6b (New)

SUMMARY:

The bill does the following:

1. Permits farm wineries and wineries to enter into alternating wine proprietorship agreements, allowing other farm entities to use the same physical plant to produce separate brands of wine;
2. Clarifies that a fair or festival may be held on the premises of a winery or farm winery;
3. Provides that a winery or farm winery may to conduct tastings, samplings, and sales at off-site festivals;
4. Clarifies that wine specialty shops can conduct samplings with a limit of three samples of two fluid ounces per person in any one day;
5. Permits charities with a one-day license to auction wines with an annual event limit of six;
6. Permits Division II and III colleges to have sports stadium wine sales;
7. Allows curbside web-based purchases of wine at grocery stores;
8. Allows delivery of wine by wine specialty shops according to similar requirements of direct shipping law, which ensure the age of the purchaser; and
9. Clarifies licensing requirements and imposes a \$150 late registration fee.

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 518

COMMITTEE SUBSTITUTE AS AMENDED

SHORT TITLE: Restricting sale and trade of dextromethorphan.

CODE REFERENCE: §60A-4-417 (New)

SUMMARY:

This bill prohibits a person from knowingly or willfully selling or trading a finished drug product containing any quantity of dextromethorphan to a person under the age of 18. It also prohibits a minor under the age of 18, unless emancipated, from purchasing the same. The bill does not relate to valid prescriptions. A person found guilty of violating these provisions is guilty of a misdemeanor and subject to a fine of \$100 to \$250.

A person making a retail sale of a finished drug product containing any quantity of dextromethorphan must obtain proof of age from the purchaser before completing the sale, unless based on the purchaser's appearance the person making the sale would reasonably presume the purchaser to be at least 25 years of age.

DATE OF PASSAGE: March 2, 2019

EFFECTIVE DATE: May 31, 2019

ACTION BY GOVERNOR: March 22, 2019

Senate Bill 529

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Clarifying provisions of Nonintoxicating Beer Act.

CODE REFERENCE: §11-16-3, §11-16-5, §11-16-6a, §11-16-6b, §11-16-8, §11-16-9, §11-16-10, §11-16-12, and §11-16-17a (Amends and Reenacts); and §11-16-6c and §11-16-11b

SUMMARY:

The bill does the following:

1. Authorizes temporary events license, for existing Class A licensee's, through a nonintoxicating beer floor plan extension to utilize extra space for one day extension;
2. Allows growlers no larger than 128 fluid ounces to be sold and filled and removes growler limit;
3. Allows a fee for late license applications and adds a fee schedule therefore;
4. Authorizes a 30-day requirement to issue or deny a license;
5. Authorizes licenses for one-day charitable nonintoxicating beer events, and sets fees therefore;
6. Allows certain grocery stores to sell and deliver beer to persons pre-ordering and picking up the beer at the retail site and adds a license fee;
7. Allows for licensing of representatives and delivery vehicles;
8. Removes certain bond requirements for brewers, resident brewers, and distributors;
9. Adds a \$100 fee for licensees and establishes a special revenue account;
10. Raises alcohol by volume limits from 11.9 – 15%;
11. Generally, sets out and updates requirements for certain licenses; and
12. Authorizes rulemaking.

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 561

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Permitting Alcohol Beverage Control Administration request assistance of local law enforcement.

CODE REFERENCE: §7-1-3ss, §11-16-18, §60-6-7, §60-6-8, §60-6-9, §60-7-2, §60-7-3, §60-7-4, §60-7-5, §60-7-6, §60-7-12, §60-8-34, and §60-8-27 (Amends and Reenacts); and §60-2-17a, §60-2-17b, §60-7-6a, and §60-7-8a (New)

SUMMARY:

This bill does the following:

1. Creates a county option election on forbidding nonintoxicating beer, wine, or alcoholic liquors to be sold, given, or dispensed after 10 am on Sundays in lieu of a county option election to permit such sales.
2. Permits the Alcohol Beverage Control Administration (ABCA) to request and obtain the assistance of local law enforcement in enforcing liquor laws. ABCA limits the jurisdiction of such requested law enforcement assistance, similar to existing law regarding the State Police.
3. Implements a \$100 operations fee for vendors, manufacturers, distributors, and retailers, similar to what was done for beer in Senate Bill 529. Establishes a special revenue account.
4. Clarifies laws against public consumption of alcoholic liquors;
5. Clarifies that the sale of liquor by the drink is lawful while clearly prohibiting bottle sales of liquor;
6. Permits sale of bottles of wine at Class A retailers, distinguishing wine from liquor;
7. Authorizes pre-mixed frozen drink machines to contain alcohol and sets sanitation standards for the machines;
8. Creates a private fair and festival license for sale of liquor, wine, and beer at such events. This is similar to the current wine and beer festival license;
9. Creates a private hotel license for hotels of one to three acres;

10. Creates a private nine-hole golf course license;
11. Allows private resort hotel licensees to operate an interconnected resident brewery and brew pub;
12. Requires the ABCA to act on license applications within 30 days of receipt;
13. Adds reactivation/late fee of \$150, same as the current fee for beer and wine;
14. At the Commissioner's discretion, allows a business with a Class A and Class B license to operate both on same premises if under one owner;
15. Clarifies that state licensed gaming is lawful in a private club, which syncs the law up with the Lottery Act;
16. Permits minors to attend a private hotel, private nine-hole golf course, and a private fair or festival under certain conditions.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 600

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to preservation of biological evidence obtained through criminal investigations and trials.

CODE REFERENCE: §15A-1-8 (New)

SUMMARY:

This bill directs the Department of Military Affairs and Public Safety to:

1. Investigate modes and methods of storing and preserving biological evidence from criminal cases; and
2. Submit to the Senate President and Speaker of the House a proposed plan and draft legislation for biological evidence storage and preservation on or before January 1, 2020.

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: March 8, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

Senate Bill 601

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to mandatory supervision of adult inmates.

CODE REFERENCE: §15A-4-17a (New)

SUMMARY:

This bill authorizes the Division of Corrections and Rehabilitation to release an inmate 180 days prior to his or her discharge date if he or she has not been released on discretionary parole. The inmate may be placed on electronic monitoring during the period of supervision. An inmate under such provision is considered to be on parole and subject to revocation of parole for violations.

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: March 8, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 622

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to regulation and control of financing elections

CODE REFERENCE: §3-8-1a, §3-8-2, §3-8-4, §3-8-5, §3-8-5b, §3-8-5e, §3-8-7, §3-8-8 §3-8-9, and §3-8-12 (Amends and Reenacts); §3-8-5c, 3-8-5g, §3-8-9a, §3-8-9b, and §3-8-9c (New)

SUMMARY:

The bill makes numerous changes to article eight, chapter three of the code of West Virginia, relating to the state’s regulation and oversight of campaign finance.

Definitions

The bill updates and adds certain definitions to the code. Most notably, the bill amends the definition of “political action committee” (PAC) to mean a committee organized by one or more persons, the *primary purpose* of which is to support or oppose the nomination or election of one or more candidates. The bill also amends the definition of “independent expenditure” to include expenditures expressly advocating the election or defeat of the candidates of a political party, rather than just those expressly advocating the election or defeat of a particular candidate.

“Last Minute” Independent Expenditure Reporting

The bill raises the dollar threshold for reporting of “last minute” pre-election independent expenditures for statewide, legislative, or multicounty judicial candidate elections, from \$1,000, in current code, to \$5,000. “Last minute” refers to expenditures or electioneering communications occurring after the 15th day preceding an election, but more than 12 hours before the election. The bill would require persons making “last minute” independent expenditures aggregating \$5,000 or more to file expenditure disclosure reports, within 24 hours of making the expenditure(s) meeting the threshold, with the Secretary of State. After the person files a first “last minute” expenditure disclosure report, the bill would also require the person to file additional “last minute” expenditure disclosure reports, within 24 hours of making any additional expenditures aggregating \$5,000 or more for the same election.

Contribution Limitations

The bill raises the state’s campaign contribution limits to mirror the federal campaign contribution limits:

- The bill permits contributions to a candidate in a primary or general election campaign up to \$2,800 per election. Current code permits contributions up to \$1,000.
- The bill permits contributions to a state party executive committee, or a local subsidiary thereof, or to a caucus campaign committee of up to \$10,000 per calendar year. Current code permits contributions up to \$1,000 in a calendar year.
- The bill permits contributions to a PAC, of up to \$5,000 per election. Current code permits contributions up to \$1,000.

The bill also provides that a person seeking nomination may receive general election contributions during the pre-candidacy period but cannot expend any such funds until after the date that the candidate's nomination is declared.

Foreign Nationals

The bill completely prohibits any contributions or donations, or independent expenditure, by foreign nationals, and prohibits any person from soliciting or accepting such a contribution or donation. The definition of foreign national mirrors the Federal Election Commission (FEC) definition.

Reporting; Filing Requirements

The bill makes numerous modifications to existing code regarding requirements for filing various reports with the Secretary of State.

Financial Reporting Deadlines

The bill changes the schedule for the filing of all financial reports, including independent expenditure reports and PAC financial statements, to a quarterly schedule. Currently, the Code requires an initial report at the end of March, a pre-primary election report, a post-primary election report, and a pre-general election report.

The bill also requires a candidate or candidate's committee to file detailed, itemized financial pre-primary election and pre-general election statements, within four business days after the 15th day preceding the election.

Clarifying Federal Exemption

The bill clarifies that PACs registered with the FEC are exempt from the requirement to file financial statements with the State Election Commission (SEC) but must still file independent expenditure disclosure reports and electioneering disclosure reports when engaging in activity subject to those requirements.

Statements of Organization

The bill removes the requirement that statements of organization for PACs, candidate committees, or political party committees must be filed at least 28 days before

an election. These statements would still be required to be filed before a person could act as a treasurer for any PAC, candidate committee, or political party committee, but the bill would remove the deadline for filing such statements.

Electronic Filing

The bill requires that political committees and candidates for state-level offices, circuit judgeships, and family judgeships file all financial statements, required to be filed with the Secretary of State, electronically. The bill also requires that electioneering communication reports and independent expenditure reports be filed electronically.

Late Filing

The bill reduces the fee charged per day for each day that passes after the deadline before a person files required statements or reports with the Secretary of State, from \$25 per day to \$10 per day, but makes the fee mandatory (it is a discretionary fee in current Code). The bill requires the Secretary to publish a list of late filers online.

Recordkeeping

The bill increases the length of time for which persons must maintain records related to activity that must be reported to the Secretary of State from six months to two years, the period of time in which a person may be audited by the Secretary. The bill increases the length of time for which persons must maintain records related to electioneering activity from six months to five years.

Membership Organizations

The bill provides that membership organizations (unions, etc.) are subject to the contribution restrictions on corporations, meaning that these organizations must set up separate, segregated funds for the solicitation and making of contributions. These segregated funds are PACs and must meet all financial disclosure requirements for PACs.

Lawful Election Expenses of Political Committee

The bill adds to the permitted expenditures by political committees, to include:

- Payment for legal and accounting services rendered to a candidate or candidate committee if the services are solely related to the candidacy or campaign;
- Payment for food and drink for campaign-related purposes; and
- Payment of any fees associated with the campaign, except for fines.

Coordinated Expenditures

The bill provides that a coordinated expenditure is considered to be a contribution for the purposes of the campaign finance laws and is subject to contribution limits. A coordinated expenditure is an expenditure made in concert with, in cooperation with, or

at the request or suggestion of a candidate, candidate committee, or party committee, if the communication resulting from the expenditure is paid for by another person and the candidate, candidate committee, or party committee meets certain criteria indicating that the candidate or committee was involved in the creation or distribution of the communication.

One of the criteria indicating candidate/committee involvement in a communication, is a situation in which a person making, or otherwise involved in, the communication has been an employee or vendor of campaign services for the candidate, candidate committee, or party committee in the preceding four months. The bill provides a “safe harbor” provision, whereby a committee can implement a “firewall” to effectively screen the employee from the flow of information involving the communication, eliminating the involvement of the employee that would otherwise make the communication a coordinated expenditure.

The bill provides an exception for the state committee of a political party and a caucus campaign committee, allowing such committees to make coordinated expenditures up to \$5,000 in connection with the general election campaign for each state-level candidate and legislative candidate for the party with such expenditures being treated as contributions.

Joint Fundraising

The bill permits joint fundraising efforts by political committees, pursuant to a written joint fundraising agreement filed with the Secretary of State. The agreement must provide terms for the allocation of proceeds between or among committees involved in the effort. Any person soliciting funds for the joint fundraising effort must disclose the political committees involved. The Secretary of State is authorized to promulgate rules regarding joint fundraising efforts.

Miscellaneous

The bill allows unlimited transfers between or among state party executive committees, legislative caucus campaign committees, and national committees of the same party for get-out-the vote activities.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

Senate Bill 657

COMMITTEE SUBSTITUTE

SHORT TITLE: Providing consumer protection regarding self-propelled farm equipment

CODE REFERENCE: §46A-6A-2 (Amends and Reenacts)

SUMMARY:

The bill adds certain agricultural vehicles to the definition of “motor vehicle” for the purpose of including those vehicles within the coverage of the state’s consumer protections related to express manufacturer warranties.

Currently, motor vehicles falling under these consumer protections are limited to Class A or certain Class B motor vehicles, meaning cars, pickup trucks, vans, and self-propelled chassis of motor homes. The bill would add self-propelled vehicles designed primarily for, and used in, the occupation or business of farming, with a horsepower over 35, to the definition of motor vehicle.

As a result, consumers of agricultural vehicles would be entitled to numerous protections to ensure that a manufacturer honors any express warranty for the vehicle. Manufacturers would be required to make repairs to the agricultural vehicle when notified of any nonconformity with the warranty during the warranty period or within one year after purchase, whichever period is longer. If the manufacturer, or an authorized dealer, is unable to repair a defect or condition that substantially impairs the use or market value of the vehicle after a reasonable number of attempts, the manufacturer must replace the vehicle.

The code provides that a reasonable number of attempts is presumed to be three attempts, unless the condition or defect results in a condition likely to cause death or serious injury, in which case a reasonable number of attempts is one.

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

Senate Bill 664

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing certain members of federal judiciary perform marriages.

CODE REFERENCE: §48-2-406 (Amends and Reenacts)

SUMMARY:

This bill allows active and senior status Article III federal judges and United States Magistrates, who are state residents, to perform marriages. Article III judges are Supreme Court Justices, Courts of Appeals Judges, District Court Judges, and Judges of the United States Court of International Trade.

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: March 5, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

Senate Bill 669

ORIGINATING BILL

SHORT TITLE: Allowing appointment of commissioners to acknowledge signatures.

CODE REFERENCE: §39-4A-1 *et seq.* (New)

SUMMARY:

This bill creates a new article authorizing the Secretary of State to appoint a person, commissioned by the Secretary of State as a notary public, to acknowledge signatures outside the state on documents such as deeds, leases, and other writings pertaining to West Virginia property for recordation in the state. The bill authorizes the Secretary of State to promulgate legislative rules to implement this law.

To be qualified for an appointment, a person must be commissioned as a notary public. The term of the commission is 10 years. Every certificate of such commissioner shall be authenticated by his signature and official seal.

The bill includes provisions related to the application for a commission and the authority for the Secretary of State to deny, refuse to renew, revoke, suspend, or impose a condition on a commission for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a commissioner. The bill specifically sets out sanctionable acts or conduct.

An application for a commission requires the submission of a non-refundable fee of \$500. One-half of the fee is to be deposited in the General Revenue Fund and one-half may be retained by the Secretary of State for the operation of the Office of the Secretary of State.

Commissioners are prohibited from:

1. Assisting persons in drafting legal records, giving legal advice or otherwise practicing law;
2. Acting as an immigration consultant or an expert on immigration matters; or
3. Representing a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship, or related matters.

Finally, all requirements, duties, prohibitions, penalties, and procedures for notaries public also apply to commissioners, and the Secretary of State must include all

active commissioners in its database of notaries and clearly distinguish commissioners from notaries public. No provision of this section shall be construed to prohibit the practice of law by a duly licensed attorney.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 2049

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to a prime contractor's responsibility for wages and benefits.

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

SUMMARY:

This bill amends W. Va. Code §21-5-7, providing that when a contract employee is seeking redress for unpaid wages and benefits, the employee must: (1) notify the prime contractor by certified mail only that wages or fringe benefits have not been paid within 100 days of the date the wages or fringe benefits become payable to the employee and (2) commence the action within one-year of the date the employee delivered notice to the prime contractor.

Subsection (c) requires employers of employees to whom wages and benefits are owed to whenever feasible provide immediately upon request by the employee or the prime contractor complete payroll records relating to work performed under the contract with the prime contractor.

Subsection (d) requires a union or other plan administrator that represents an employee to whom wages and benefits are owed to, whenever feasible, immediately, upon notice of a claim cooperate with the employee and prime contractor, identify and quantify wages and benefits owed for work performed under the contract with the prime contractor. Further, if the union or any of its agents or other plan administrators become aware that an employer is not timely in the payment of wages and benefits, the union or other plan administrator shall immediately notify the affected employee and the prime contractor from whom the affected employee provided work.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2079

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Removing certain limitations on medical cannabis grower, processor and dispensary licenses.

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

SUMMARY:

This bill amends and adds new language to the West Virginia Medical Cannabis Act. The bill:

1. Merges definitions of “practitioner and physician” which are used as synonyms in the Act;
2. Adds duties for practitioners certifying patients as eligible for medical cannabis;
3. Reduces the number of allowable dispensaries from 165 to 100 and allows up to ten dispensary licenses per one person;
4. Eliminates the regional dispersion requirement for growers, processors, and dispensaries;
5. Establishes criteria for choosing the locations of dispensary permittees;
6. Allows vertical integration, i.e. growers and processors can operate and own dispensaries;
7. Deals with lab testing of medical cannabis products, providing that:
 - a) The test must be done under direction of the Bureau of Public Health;
 - b) The Department of Agriculture must to do testing, to the extent practicable;
 - c) Testing fees shall be deposited in the Agriculture Fee Fund; and
 - d) The Bureau of Public Health may utilize testers other than the Department of Agriculture, if it determines that the Department is unable perform testing to Bureau requirements;
8. Adds language to modify tax provisions to accommodate changes in vertical integration;

9. Extends the period for emergency rule-making to July 1, 2021;
10. Adds two osteopath physicians to the Advisory Board;
11. Indemnifies state employees for attorneys' fees if criminal charges or civil actions are brought by the federal government, as long as the employee is within the law and scope of employment;
12. Requires the Bureau to establish a fair and objective criteria for permit applicants based upon a numeric scoring system;
13. Allows for pre-registration of patients prior to July 1, 2019; and
14. Removes the requirement that a dispensary have a physician or pharmacist on-site.

DATE OF PASSAGE: March 9, 2019

PROPOSED EFFECTIVE DATE: March 9, 2019

ACTION BY GOVERNOR: Vetoed March 27, 2019

House Bill 2083

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Providing an identification card for released inmates who do not have a West Virginia identification card or driver's license.

CODE REFERENCE: §17B-2-1c (New)

SUMMARY:

The bill creates a new section of Code, authorizing the Division of Corrections and Rehabilitation (DOCR) to issue temporary identification cards to inmates in the week prior to the inmate's release from custody. An identification card issued pursuant to the new section has the same force and effect as a standard identification card issued by the Division of Motor Vehicles (DMV), but is only valid for 90 days. The DOCR is also required to assist inmates in obtaining personal identification documents during the six months leading up to the inmate's release.

The bill also requires the DMV to accept a valid identification card from the DOCR from as proof of the age, residency, and identity of a released inmate applying to the DMV for a standard identification card or driver's license. The bill also requires the DMV to accept, as proof of a released inmate's social security number for the purposes of a driver's license or standard identification application, verification of the social security by the DOCR.

Finally, the bill clarifies that nothing in the new section of code requires or permits the DMV to issue a license or identification for federal use, in violation of the federal Real ID Act of 2005.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2183

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Clarifying where a charge of DUI may be brought against an individual.

CODE REFERENCE: §17C-5-2 (Amends and Reenacts)

SUMMARY:

This bill excludes operating a vehicle solely and exclusively on one's own property from the offense of driving under the influence (DUI). DUI causing death, serious injury, or with a minor in or on the vehicle are still subject to the DUI proscriptions.

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: June 3, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2193

STRIKE AND INSERT AMENDMENT TO STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Providing a specific escheat of U.S. savings bonds.

CODE REFERENCE: §36-8-1 (Amends and Reenacts); §36-8-2a (New)

SUMMARY:

This bill creates an exception to the Uniform Unclaimed Property Act whereby the State Treasurer obtains title to abandoned U.S. savings bonds, allowing the State Treasurer to redeem the abandoned bonds and disburse the proceeds pursuant to the terms of the Uniform Unclaimed Property Act.

Section 36-8-1 is amended to include a new definition of “United States savings bond.”

Section 36-8-2a provides for the escheatment of ownership of U.S. savings bonds to the State of West Virginia after a Court ruling that the bonds are established under the terms of the statute. U.S. savings bonds are presumed to be abandoned if (1) the last known address of the owner of the U.S. savings bond is in West Virginia and (2) the U.S. savings bond has remained unclaimed and unredeemed for five years after final maturity. Bonds presumed abandoned and unclaimed include bonds in the possession of the administrator (i.e., the Treasurer), and those lost, stolen, or destroyed bonds registered to persons with a last known address in West Virginia.

All property rights and legal title to ownership, including all rights, powers, and privileges of survivorship of any owner, co-owner, or beneficiary vest with the State of West Virginia one year after abandonment. After the expiration of the one-year period prescribed in W. Va. Code §36-8-2a(b), if no claim has been filed pursuant to the provisions of W. Va. Code §36-8-15 and W. Va. Code §36-8-16 for the U.S. savings bonds, but before the savings bonds escheat to the State, the administrator must bring a civil action for escheatment in the circuit court of Kanawha County or in any other court of competent jurisdiction by service under West Virginia Rule of Civil Procedure 4(e).

Proceeds from redeemed escheated U.S. savings bonds are subject to payment of costs incident to recovery of the proceeds and then deposited in the “Unclaimed Property Fund” or into a separate account selected by the administrator.

Upon receipt of sufficient proof of the validity of such person’s claim, the administrator may, in his or her sole discretion, pay such claim less any expenses and

costs which have been incurred by the state in securing full title and ownership of such property by escheat. If payment has been made to any claimant, no action thereafter may be maintained by any other claimant against the state or any officer thereof, for, or on account of, such funds.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2362

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Ardala Miller Memorial Act.

CODE REFERENCE: §3-3-5c (New)

SUMMARY:

The bill provides that a county may adopt a policy extending emergency absentee voting procedures to persons who become confined, within the seven days preceding the election, to any location in a county because of illness, injury, physical disability, immobility due to extreme advanced age, or other medical reason. Currently, emergency absentee voting is only available to persons confined to a hospital or nursing home.

The bill would, in effect, allow counties to receive applications for emergency absentee ballots from medically confined persons after the seventh day preceding an election until noon of election day, and designate emergency ballot commissioners to deliver the ballots to such persons. The bill provides that a county may require written confirmation of the person's medical confinement by a licensed physician before permitting a person to vote an emergency absentee ballot.

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: June 4, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 2412

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to criminal acts concerning government procurement of commodities and services.

CODE REFERENCE: §5A-3-28, §5A-3-30, and §5A-3-31 (Repeals); §61-5B-1, §61-5B-2, and §61-5B-3 (New)

SUMMARY:

This bill moves certain criminal provisions related to state purchasing laws from Chapter 5A to Chapter 61. The bill also updates the language to make requirements applicable to all persons engaging in purchasing for state entities, not just the Division of Purchasing. Specifically, it creates new sections which do the following:

1. Section 61-5B-1 defines terms.
2. Section 61-5B-2 creates following offenses:
 - a. A state purchasing agent may not have an interest in a business doing business or attempting to do business with the entity for which the person is an agent;
 - b. Agents may not take things of value from business selling, attempting to sell, or contracting to sell items to the governmental entity for which the person is an agent; and
 - c. Sellers or potential sellers may not give agents anything of value without receiving fair value therefor.

All three offenses include ethics law exceptions as to gifts and ownership interest. The offenses are classified as misdemeanors with fines of \$50 to \$500, up to one year in jail, or both a fine and jail.

Section 61-5B-3 criminalizes conduct by business entities doing business with the state, creating the following offenses:

1. Obtaining things of value from the state by knowingly delivering inferior commodities or services; and
2. Knowingly accepting inferior commodities or services on behalf of the state.

Both offences are classified as felonies with fines of not more than \$10,000, one to five years in prison, or both a fine and prison. This provision expressly exempts change orders made in good faith.

DATE OF PASSAGE: March 8, 2019

PROPOSED EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Vetoed March 27, 2019

House Bill 2459

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Exercising authority to exempt individuals domiciled within the state from certain restrictions contained in federal law.

CODE REFERENCE: §9-2-3a (New)

SUMMARY:

This bill enables West Virginia to opt out of a federal law passed in 1996 (21 U.S.C. §862a(a)(2)) imposing a lifetime ban on receiving supplemental nutrition assistant program (SNAP) benefits on persons convicted of drug felonies. The federal law (21 U.S.C. §862a(d)(1)(A)) allows states to opt out. Since 1996, 47 states have modified the ban or opted out altogether. The bill allows West Virginia residents who have been convicted of a drug felony to receive SNAP benefits if they are otherwise qualified.

DATE OF PASSAGE: February 20, 2019

EFFECTIVE DATE: May 21, 2019

ACTION BY GOVERNOR: Signed February 28, 2019

House Bill 2462

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Issuing a certificate to correctional employees to carry firearms.

CODE REFERENCE: §15A-3-10 (Amends and Reenacts)

SUMMARY:

This bill provides that the Commissioner of the Division of Corrections and Rehabilitation may issue a certificate for correctional employees' use and handling of firearms where:

1. The correctional employee successfully completes an approved training program for firearms certification equivalent to that of deputy sheriffs;
2. The employee completes an annual firearms course equivalent to that of certified law enforcement;
3. The certificate for the firearms course is provided on a form prescribed by the Commissioner.

The Commissioner may authorize correctional employee meeting the requirements to carry of division-issued firearms in the performance of their duties, including travel to and from work.

DATE OF PASSAGE: February 11, 2019

EFFECTIVE DATE: May 12, 2019

ACTION BY GOVERNOR: Signed February 19, 2019

House Bill 2474

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Relating to a reserving methodology for health insurance and annuity contracts.

CODE REFERENCE: §33-7-9 (Amends and Reenacts)

SUMMARY:

This bill amends W. Va. Code §33-7-9, West Virginia’s “Standard Valuation Law,” which authorizes a principle-based reserving methodology for life, annuity, and health policies.

West Virginia adopted the National Association of Insurance Commissioners’ (NAIC) updated, model-based Standard Valuation Law in 2014. However, a small section of the model law pertaining to the minimum standard for accident and health insurance contracts was inadvertently omitted in the 2014 update.

The bill ensures that W. Va. Code §33-7-9 is internally consistent and that life insurance companies are properly calculating their reserves for accident and health insurance contracts.

In this context, the term “accident and health insurance” refers to contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness, or medical conditions. These are not comprehensive health insurance policies. These are limited benefit type policies written by life insurers, such as disability, accident, and sickness plans.

This is a revision or update to a NAIC Model Law that is an accreditation standard for state insurance departments effective January 1, 2020.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2479

COMMITTEE SUBSTITUTE

SHORT TITLE: Corporate Governance Annual Disclosure Act.

CODE REFERENCE: §33-33-2, §33-33-12, and §33-33-16 (Amends and Reenacts); §33-33-12a and §33-52-1 *et seq.* (New)

SUMMARY:

This bill improves the Insurance Commissioner's surveillance of the financial conditions of insurers. The bill requires insurers writing more than \$500 million or insurance groups writing more than \$1 billion in annual premium to maintain an internal audit function providing independent, objective, and reasonable assurance to the insurer's or insurance group's audit committee regarding the insurer's governance, risk management, and internal controls. In order to ensure objectivity, the internal audit function must be organizationally independent.

The internal audit function will not defer ultimate judgment on audit matters to others and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the Board of Directors. The head of the internal audit function must report to the audit committee regularly, but no less than annually on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits, and the appropriateness of corrective actions implemented by management as a result of audit findings.

Article 33-52-1 *et seq.*, the Corporate Governance Annual Disclosure Act, institutes a requirement that an insurer or insurer group must annually provide a confidential disclosure regarding its corporate governance practices. This law does not prescribe new corporate governance standards, but rather requires tailored, confidential reporting to ensure appropriate policies and procedures of insurers' Boards of Directors and internal oversight are in place and effective. The Model Act and Regulation together require an insurer or group of insurers to provide a detailed corporate governance annual disclosure (CGAD) allowing for more frequent review, consideration, and assessment of corporate governance practices. Currently, most of this information is only subject to review during periodic onsite examinations.

The insurer or group of insurers may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level, and/or the individual legal entity level, based on its determination of the

level at which decisions are made, oversight is provided, and governance accountability is assessed in relation to the insurance activities of the insurer.

This bill's passage ensures that the State of West Virginia will remain accredited with the National Association of Insurance Commissioners (NAIC).

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2481

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Permitting retail sale of alcoholic beverages on Sundays after 1 p.m.

CODE REFERENCE: §60-3A-18 and §60-3A-25 (Amends and Reenacts)

SUMMARY:

This bill permits retail sales of liquor on Sundays from 1:00 p.m. to 12:00 a.m., with the exception of Easter Sunday and Sundays on which Christmas falls. The bill amends §60-3A-25, which currently criminalizes Sunday sales, to conform that section to the new provisions permitting Sunday sales.

DATE OF PASSAGE: February 19, 2019

EFFECTIVE DATE: February 19, 2019

ACTION BY GOVERNOR: Signed February 28, 2019

House Bill 2486

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Using records of criminal conviction to disqualify a person from receiving a license for a profession or occupation.

CODE REFERENCE: §§30-1-22 (New); and 30-5-11, §30-5-11a, §30-10-8, §30-10-10, §30-13A-9, §30-13A-12, §30-20-8, §30-20-10, §30-21-7, §30-22-10, §30-23-9, §30-23-15, §30-23-17, §30-23-20, §30-25-8, §30-26-5, §30-26-13, §30-30-8, §30-30-10, §30-30-12, §30-30-14, §30-30-26, §30-31-8, §30-31-9, §30-38-12 and §30-39-6 (Amends and Reenacts).

SUMMARY:

Currently, the various Chapter 30 boards do not address prior criminal convictions in a uniform manner for purposes of initial licensure or certification applications. This bill does the following:

1. Prohibits a board from disqualifying an applicant for licensure because of a prior criminal conviction unless that conviction is for a crime that bears a rational nexus to the occupation requiring licensure;
2. Prohibits boards from using criteria such as moral character, moral turpitude, or other undefined standards in making licensure determinations;
3. Requires boards to afford an applicant to submit competent evidence of sufficient rehabilitation and present fitness;
4. Requires boards to allow an applicant to reapply five years from the date of conviction or date of release, if the applicant has not been convicted of any other crime during that time period;
5. Permits a person with a criminal record to petition a board for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license; requires the licensing authority to inform the individual of his or her standing within 60 days of receiving the petition; and permits the boards to charge a fee not to exceed \$25 for each petition;
6. States that nothing in the article alters the standards and procedures each licensing authority uses for evaluating licensure renewals;

7. Requires boards and licensing authorities to update legislative rules within the applicable time limit to be considered by the Legislature during its Regular Session in 2020.
8. Excludes Articles 2, 3, 3E, 14, 18 and 29 from the new requirements; and
9. Exempts articles, otherwise included, from the new requirements where there is a conflict with existing compacts or model acts;

DATE OF PASSAGE: March 9, 2019

PROPOSED EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Vetoed March 27, 2019

House Bill 2503

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to court actions.

CODE REFERENCE: §49-4-601 and §49-4-722 (Amends and Reenacts)

SUMMARY:

This bill does the following:

- 1) Clarifies provisions in abuse and neglect law relating to appointment of counsel.
 - a) Requires all parents, guardians, custodians, and persons standing *in loco parentis* be referenced in the petition. They must be named as either an abusing or non-abusing parent and afforded counsel up through the first hearing if such person is without retained counsel.
 - b) Requires the court to determine at the initial hearing whether persons charged can afford counsel.
- 2) Provides that non-offending persons may have appointed counsel upon request if qualified.
- 3) Clarifies, in cases of 18 to 21-year-olds incarcerated under the court's juvenile jurisdiction, who have been charged as adults which persons and entities are required to give and get notice of matters occurring during the adult case.
- 4) Authorizes the Commissioner to establish one or more facilities to house 18 to 21-year-olds remaining under the juvenile jurisdiction of the court to comply with federal sight and sound restrictions.

DATE OF PASSAGE: March 9, 2019

PROPOSED EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Vetoed March 27, 2019

House Bill 2509

INTRODUCED VERSION

SHORT TITLE: Clarifying that theft of a controlled substance is a felony.

CODE REFERENCE: §60A-4-403 (Amends and Reenacts)

SUMMARY:

This bill makes theft of a controlled substance a felony, regardless of the value of the controlled substance. The penalty is a fine of not more than \$30,000, one to four years in prison, or both a fine and imprisonment.

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: June 4, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2538

COMMITTEE SUBSTITUTE

SHORT TITLE: Providing banking services for medical cannabis.

CODE REFERENCE: §12-1-14 (New)

SUMMARY:

This bill provides banking services for medical cannabis by establishing a new section that does the following:

1. Provides definitions;
2. Provides that the Treasurer shall select, by competitive bid, one or more financial institutions to provide banking services for the fees, penalties, and taxes collected under the Medical Cannabis Act;
3. Authorizes the Medical Cannabis Program Fund to receive civil penalties;
4. Authorizes the Treasurer to hold the Medical Cannabis Program Fund in one or more accounts at a selected financial institution until the Treasurer is able to transfer the moneys to the main disbursement account of the state;
5. Permits moneys in the Medical Cannabis Program Fund to be invested and provides that earnings shall accrue to the Medical Cannabis Program Fund;
6. Permits the Treasurer to charge fees for providing banking services;
7. Creates the Treasurer's Medical Cannabis Fund to receive all fees charged by the Treasurer;
8. Provides that moneys in the Treasurer's Medical Cannabis Fund, shall be expended for expenses occurred, oversight, and compliance;
9. Prohibits the Commissioner of Financial Institutions from penalizing, incentivizing, or impairing a financial institution which processes medical cannabis funds for medical cannabis licensees;
10. Prohibits a cause of action against the Treasurer, other officials, and employees for compliance with the Medical Cannabis Act; and

11. Indemnifies officials and employees against legal costs due to complying with the Medical Cannabis Act.

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: March 5, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2540

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Prohibiting the waste of big game animals, game birds or game fish.

CODE REFERENCE: §20-2-5i (New)

SUMMARY:

This bill provides that it is unlawful for any person to cause through carelessness, neglect, or otherwise to let any edible portion of any big game or game fish to go to waste needlessly.

“Edible portion” with respect to big game, means either:

1. The meat of the front quarters to the knee;
2. The meat of the hind-quarters to the hook; or
3. The meat along the backbone between the front quarters and hind-quarters.
However, the edible portion of a wild turkey is the meat of the breast only.

“Edible portion,” with respect to game fish, means the fillet meat from the gill plate to the tail fin. “Edible portion” does not include bones, sinew, viscera, meat from the head or neck, meat that has been damaged or rendered inedible by method of taking, or meat that is reasonably lost as a result of close trimming of bones.

Further, it is unlawful for any person to take any big game and detach or remove from the carcass only the head, hide, antlers, tusks, paws, claws, gallbladder, teeth, beards, or spurs and leave the carcass to waste. If a person is unable to locate the carcass of any lawfully taken big game prior to its spoilage, it is not considered “waste” to detach or remove from the carcass the head, hide, antlers, tusks, paws, claws, gall bladder, teeth, beards, or spurs. If one of these items is removed or detached, it will count towards the daily, seasonal, bag, and possession limit.

Any person found guilty of waste of big game is subject to:

1. A \$500 to \$2,500 fine and/or 10 to 100 days in jail;
2. Suspension of the person’s hunting and fishing license for a period of five years;
and

3. All applicable forfeiture and replacement provisions in W. Va. Code §20-2-5a.

Any person found guilty of waste of game fish is subject to:

1. A \$100 to \$500 fine and/or 10 to 100 days in jail;
2. Suspension of the person's hunting or fishing license for a period of two years;
and
3. All applicable forfeiture and replacement provisions in W. Va. Code §20-2-5a.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 2547

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to the election prohibition zone.

CODE REFERENCE: §3-9-6 (Amends and Reenacts)

SUMMARY:

The purpose of this bill is to reconcile the section of code making it a misdemeanor to remain within a certain distance of a polling place during elections, with the general prohibition against such conduct in other provisions of the Code. In 2018, the Legislature enacted a bill to reduce the electioneering prohibition zone around polling places, during elections, from 300 feet to 200 feet.

One section, (W. Va. Code §3-9-6), which makes remaining in the prohibition zone a misdemeanor, was overlooked and still indicates that the crime involves remaining within 300 feet of a polling place. This bill corrects that error.

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: June 3, 2019

ACTION BY GOVERNOR: Signed March 19, 2019

House Bill 2579

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to the collection of tax and the priority of distribution of an estate or property in receivership.

CODE REFERENCE: §11-10-11 and §11-15-18a (Amends and Reenacts)

SUMMARY:

This bill clarifies conflicts within the code and creates uniformity relating to the collection of taxes, the priority of distribution of an estate, and the limitation of liability of a fiduciary charged with the distribution of an estate.

Currently, West Virginia law holds trustees, receivers, administrators, executors, or persons charged with the administration of an estate personally liable for taxes accrued and unpaid under Article 10 of Chapter 10.

The bill amends W. Va. Code §11-10-11, by adding language that makes all taxes due and unpaid to the state subject to: (1) the priority of liens in W. Va. Code §38-10C-1 and (2) the priority of taxes and debts due to the United States. The bill also removes the provision that imposes personal liability for any unpaid taxes on any trustee, receiver, administrator, executor, or person charged with the administration of an estate.

The bill rewrites W. Va. Code §11-15-18a to provide that consumers sales tax due and unpaid shall be paid from the first money available for distribution, subject to: (1) the priority of liens in W. Va. Code §38-10C-1 and (2) the priority of taxes and debts due to the United States. W. Va. Code §11-15-18a also imposes personal liability for any taxes accrued and unpaid under this article for any person responsible for the administration of an estate of a decedent who violates the provisions of this section.

DATE OF PASSAGE: March 7, 2019

PROPOSED EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Vetoed March 27, 2019

House Bill 2600

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to publication of sample ballots.

CODE REFERENCE: §3-4A-11a, §3-4A-15, §3-5-10, §3-5-13, §3-5-13a, and §3-6-3 (Amends and Reenacts)

SUMMARY:

This bill amends current requirements for the printing of sample ballots, as class I-o legal advertisements, ahead of elections, as well as the order in which races appear on primary election ballots.

The bill provides that in counties where electronic voting has been adopted, the ballot commissioners may print sample ballots in the form of photographic reproduction of the absentee ballot. Currently, the Code requires that sample ballots be printed no smaller than 65% percent of the size of the actual ballot. Additionally, the bill provides that when sample ballots for the precincts within a county contain different districts for certain offices or municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If a sample ballot must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The bill requires that the publisher of the newspaper containing the sample ballot submit a proof and arrangement of the ballot to the ballot commissioners for approval prior to publication.

The bill also provides that, beginning in 2020, the nonpartisan judicial ballot in primaries shall appear after the state ticket and before the county ticket. The nonpartisan ballot includes the races for Justice of the Supreme Court of Appeals, judge of the circuit court, family judge, magistrate nonpartisan elections for board of education, conservation district supervisor, any question to be voted upon. The bill also places the nonjudicial nonpartisan ballot after the county ticket and immediately before the district ticket, moves the national convention ticket to the end of the ballot, and places the candidates for congressional district delegates to the national convention after the at-large candidates.

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: March 26, 2019

House Bill 2609

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to presumptions of abandonment and indication of ownership in property.

CODE REFERENCE: §36-8-2 (Amends and Reenacts)

SUMMARY:

Currently, financial organizations are required to file an annual report with the Treasurer concerning property that is presumed abandoned. This report must contain information about demand, savings, or time deposits five years after the last indication by the owner of interest in the property.

This bill prevents unnecessary reporting and administrative costs associated with reporting of accounts held by a financial organization for active customers of the financial organization.

The bill adds a new subdivision ((d)(5)) regarding an indication of an owner's interest in property. Specifically, any indication of an owner's interest in "any demand, savings, and time deposit" held by the financial organization for that owner is an indication of the owner's interest in all demand, savings, and time deposits held by that financial organization.

DATE OF PASSAGE: March 4, 2019

EFFECTIVE DATE: June 2, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 2617

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to the form for making offer of optional uninsured and underinsured coverage by insurers.

CODE REFERENCE: §33-6-31d (Amends and Reenacts)

SUMMARY:

This bill requires the Insurance Commissioner to provide for the use of an electronic means of delivery and electronic signing of the form for making an offer of optional uninsured and underinsured motorist coverage by insurers. Any signature executed in conformity with the Uniform Electronic Transactions Act is enforceable.

The bill also requires an insurer, when offering to place an insured with an affiliate of the insurer, to make available a new uninsured and underinsured motorist coverage offer form. If the insured does not return the form to the insurer within 30 days, then the last form previously signed by the insured for the insurer or any affiliate governs the amount of uninsured and underinsured coverage provided by the newly issuing policy.

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: March 25, 2019

House Bill 2618

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Including undue influence as a factor in the definition of financial exploitation of an elderly person or protected person.

CODE REFERENCE: §55-7J-1 (Amends and Reenacts)

SUMMARY:

This bill amends the definition of “financial exploitation” to include the use of undue influence resulting in the diminishment of assets of an elderly person, protected person, or incapacitated adult. It creates a cause of action in magistrate and circuit court where an elderly person, protected person, or incapacitated adult is suffering financial exploitation due to the intentional misappropriation or misuse of funds or undue influence.

Any order issued by a magistrate may only be temporary and the matter must be immediately transferred to circuit court. The circuit court must hold a hearing within 20 days. The circuit court may issue a permanent protective order if it makes certain findings by a preponderance of the evidence.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: March 26, 2019

House Bill 2647

STRIKE AND INSERT AMENDMENT TO INTRODUCED VERSION

SHORT TITLE: Self Storage Limited License Act.

CODE REFERENCE: §33-12-38 (New)

SUMMARY:

This bill creates the Self-Service Storage Limited License Act which allows owners of self-service storage facilities to sell personal property insurance in connection with the lease or rental of space at their self-service storage facility under the supervision of a licensed insurance producer or an insurer.

Employees and authorized representatives of an owner may sell self-service storage insurance without a license if the owner obtains a limited lines license and the insurer issuing the insurance appoints a supervising entity to supervise the administration of the program including development of a training program, which is delivered to all employees and authorized representatives.

An owner may bill and collect the charges for self-service storage insurance, which if not included in the cost associated with the lease, must be itemized separately on the occupant's bill. If included in the costs of the lease, the owner must clearly and conspicuously disclose that fact to the occupant. Owners may receive compensation for billing and collection services.

Lastly, if an owner, his or her employee, or his or her authorized representative violates any of these provisions, the Insurance Commissioner may impose fines, suspend privileges at specific locations where violations occur, or suspend or revoke the ability of individual employees to act.

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: March 26, 2019

House Bill 2691

STRIKE AND INSERT AMENDMENT TO INTRODUCED VERSION

SHORT TITLE: Providing that a license to carry a concealed deadly weapon expires on the holder's birthday.

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

SUMMARY:

Under current law, concealed carry licenses expire five years from issuance. This bill makes licenses expire on one's birthday. Licenses in effect as of March 4, 2019 are good for five years or until a licensee's birthday in the fifth year, whichever is later. All new licenses and renewals run five years birthday to birthday.

DATE OF PASSAGE: March 4, 2019

EFFECTIVE DATE: March 4, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 2694

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to the state's ability to regulate hemp.

CODE REFERENCE: §19-12E-10 and §19-12E-11 (New)

SUMMARY:

This bill adds definitions to the Industrial Hemp Development Act, including changing the maximum THC content to reflect federal requirements. The section relating to criminal history record checks has been rewritten to allow the Commissioner to establish requirements relating to criminal history record checks for other persons involved with the industrial hemp program. The applicant must pay all costs relating to the record check. This bill specifically provides that a license is not necessary to possess, handle, transport, or sell hemp products or extracts and sets standards for the sale of industrial hemp products.

Section 10, which is new, authorizes the Commissioner to submit a plan under which the state monitors and regulates the production of industrial hemp to the Secretary of the United States Department of Agriculture for his or her approval. Industrial hemp may be produced in this state whether or not the Commissioner submits a plan or whether or not the Secretary approves the plan.

Section 11, which is also new, provides that an industrial hemp producer failing to comply with any approved plan is subject to the penalties set forth in W. Va. Code §19-12E-11, if the Department of Agriculture determines the industrial hemp producer has negligently violated the state plan by:

1. Failing to provide a legal description of the land on which the producer produces hemp;
2. Failing to obtain a license or other required authorization from the West Virginia Department of Agriculture; or
3. Failing to produce industrial hemp containing 0.3% or less of THC.

An industrial hemp producer in negligent violation of the above provisions must comply with any requirements established by the West Virginia Department of Agriculture to correct the violation.

The bill provides that an industrial hemp producer that negligently violates the approved plan three times in a five-year period is ineligible to produce hemp for a period of five years, beginning on the date of the third violation.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 2709

INTRODUCED VERSION

SHORT TITLE: Relating to hunting licenses.

CODE REFERENCE: §20-2-27 (Amends and Reenacts)

SUMMARY:

This bill provides that the names, addresses, and other contact information provided to the Division of Natural Resources for the purpose of obtaining hunting licenses or stamps is exempt from disclosure under the West Virginia Freedom of Information Act. The bill provides, however, that the records shall be available to all law-enforcement agencies and other governmental entities authorized to request or receive such records.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2740

COMMITTEE SUBSTITUTE

SHORT TITLE: Barring a parent from inheriting from a child in certain instances.

CODE REFERENCE: §42-1-1 (Amends and Reenacts); §42-1-11 and §42-1-12 (New)

SUMMARY:

This bill amends the definition of “parent” in W. Va. Code §42-1-1 by adding a sentence that references the new section (W. Va. Code §42-1-11) which bars a parent from inheriting from or through a child in certain instances.

W. Va. Code §42-1-11 bars a parent from inheriting from a child if: (1) the parent’s parental rights were terminated by court order and the parent-child relationship has not been judicially reestablished; or (2) the child died before reaching the age of 18 and there is clear and convincing evidence that immediately before the child’s death, the parental rights of the parent could have been terminated under the law on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child. W. Va. Code §42-1-11 further provides that for the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

W. Va. Code §42-1-12 authorizes a child to inherit from or through a barred parent as long as the child is not an adoptee of an adoptive parent.

This bill is in response to the Supreme Court of Appeals of West Virginia’s decision in *Hall v. Hall*, 241 W. Va. 12 (2018), in which the Court held that a child could not inherit from the child’s biological father’s estate.

DATE OF PASSAGE: March 1, 2019

EFFECTIVE DATE: May 30, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 2746

AMENDMENT TO INTRODUCED VERSION

SHORT TITLE: Relating to administration of estates.

CODE REFERENCE: §44-2-19a (New); §44-3A-24 (Amends and Reenacts)

SUMMARY:

This bill provides a procedure to allow the county commission to administratively close unprogressed or dormant estates. If the county commission administratively closes an estate, the personal representative is still liable in a civil action to heirs, beneficiaries, or interested parties for property or assets of the decedent or the estate.

DATE OF PASSAGE: February 28, 2019

EFFECTIVE DATE: May 29, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 2759

AMENDMENT TO INTRODUCED VERSION

SHORT TITLE: Providing for the ancillary administration of West Virginia real estate owned by nonresidents by affidavit and without administration.

CODE REFERENCE: §41-5-13 and §44-1-4 (Amends and Reenacts); §44-1-14b (New)

SUMMARY:

This bill simplifies the procedure by which a West Virginia real estate property owned by a nonresident decedent is probated. The bill allows for the ancillary administration of the estate of nonresident decedents. The bill permits a personal representative to file an affidavit to evidence the probate of a will in another jurisdiction.

The bill also provides a procedure for property passing intestate.

DATE OF PASSAGE: March 1, 2019

EFFECTIVE DATE: May 30, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2761

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Modernizing the self-service storage lien law.

CODE REFERENCE: §38-14-2, §38-14-3, §38-14-4, §38-14-5, §38-14-7, §38-14-8, and §38-14-9 (Amends and Reenacts);

SUMMARY:

This bill defines several new terms and redefines others. It allows an operator to have a lien for late fees and changes the reference to destruction of property to disposition of property.

The bill provides that a rental agreement must contain a statement advising the occupant that personal property stored in the leased space may be towed or removed from the self-service storage facility if the personal property is a motor vehicle, trailer, or watercraft and the occupant is in default for more than 60 days.

The agreement must contain a statement advising the occupant that a sale of personal property stored in the leased space to satisfy the lien, if the occupant is in default, may be advertised in a newspaper of general circulation in the jurisdiction where the sale is to be held or where the self-service storage facility is located. The notice may be published by electronic mail or on an online website.

Under current law, the owner may charge a monthly late fee not to exceed \$10 or 10% of the monthly rental fee, whichever is greater, for each month the occupant defaults for a period of 15 days or more. This bill permits the owner to charge a monthly late fee not to exceed \$20 or 20% of the monthly rental fee, whichever is greater, for each month the occupant defaults for a period of five days or more.

Default notice can be given by hand delivery, verified mail, or electronic mail. A sale may be held at the self-service storage facility where the personal property is stored, on an online auction website, or at any other location reasonably determined by the operator. Current law does not provide for an online auction. The occupant may satisfy the lien and redeem the personal property any time before the sale.

Finally, the bill removes the prohibition on insurance sales. The operator is no longer required to maintain inventory two years after disposition of property. Language requiring the operator to notify law enforcement of stored hazardous materials is removed.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2809

INTRODUCED BILL

SHORT TITLE: Relating to prohibited acts and penalties in the Hatfield-McCoy Recreation Area.

CODE REFERENCE: §20-14-8 (Amends and Reenacts)

SUMMARY:

Currently, a person who does not remain within and on a designated and marked trail while within the Hatfield-McCoy Recreation Area is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$100. This bill increases the criminal penalty to a fine of not less than \$1,000. Additionally, persons who do not remain within and on a designated and marked trail and cause damage to a landowner's property or interfere with a landowner's use of the property will be subject to a fine of not less than \$2,000.

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2872

STRIKE AND INSERT AMENDMENT TO INTRODUCED VERSION

SHORT TITLE: Authorizing law-enforcement officers to assist the State Fire Marshall.

CODE REFERENCE: §29-3-12 (Amends and Reenacts)

SUMMARY:

This bill adds to the powers and duties of the State Fire Marshall by:

1. Authorizing any member of the West Virginia State Police, any Natural Resources Police Officer, or any county or municipal law-enforcement officer to assist the Fire Marshall or his or her employees upon request;
2. Authorizing the State Fire Marshall, a full-time deputy fire marshal, or a full-time assistant fire marshal to carry a firearm while performing official duties. The bill also establishes initial and recertification requirements; and
3. Granting the State Fire Marshall, a full-time deputy fire marshal, and a full-time assistant fire marshal arrest powers as to persons obstructing them in their official duties.

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: June 4, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 2907

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Requiring a form of a certified commitment order to the Division of Corrections and Rehabilitation.

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

SUMMARY:

This bill updates Division of Corrections and Rehabilitation commitment forms and requires the use of the statutory forms beginning July 1, 2019.

A prison commitment order must be transmitted by the clerk of a circuit court to the Commissioner of the Division of Corrections and Rehabilitation and signed by the circuit judge with jurisdiction.

A jail commitment order must be transmitted by the clerk of a circuit court or magistrate court to the Commissioner of the Division of Corrections and Rehabilitation and signed by the circuit judge or magistrate with jurisdiction.

The clerks shall immediately transmit a certified copy of the commitment order to the Central Office Inmate Records Manager of the Division of Corrections and Rehabilitation.

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: March 6, 2019

ACTION BY GOVERNOR: Signed March 22, 2019

House Bill 2933

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Modifying the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury.

CODE REFERENCE: §61-8D-3 & §61-8D-4 (Amends and Reenacts)

SUMMARY:

This bill relates to criminal penalties for child abuse or child neglect resulting in injury.

The bill increases the penalty for child abuse causing bodily injury from one to five years imprisonment to two to ten years imprisonment. The bill increases the penalty for child abuse causing serious bodily injury from two to ten years imprisonment to five to fifteen years imprisonment. The bill also increases the penalty for a person with a prior conviction from a fine of \$100-\$1,000 and six months of confinement to a fine of not more than \$3,000 and three to fifteen years imprisonment, or both the fine and imprisonment. For two or more prior convictions, the bill increases the penalty from a fine of \$1,000-\$3,000 and one to three years imprisonment to a fine of not more than \$3,000 and five to fifteen years imprisonment, or both a fine and imprisonment.

The penalty for child neglect that creates a substantial risk of death or serious bodily injury has been reduced from a fine of \$1,000 to \$3,000 to a fine of \$100 to \$1,000 and from imprisonment for one to five years to confinement for not more than two years, or both the fine and confinement. The bill also increases the penalty for a person with a prior conviction from a fine of \$100-\$1,000 and six months of confinement in jail to a fine of not more than \$3,000 and three to fifteen years confinement, or both a fine and imprisonment. For two or more prior convictions, the bill increases the penalty from a fine of \$1,000-\$3,000 and one to three years of imprisonment to a fine of not more than \$3,000 and five to fifteen years imprisonment, or both a fine and imprisonment.

DATE OF PASSAGE: March 9, 2019

PROPOSED EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Vetoed March 27, 2019

House Bill 2934

STRIKE AND INSERT AMENDMENT FOR INTRODUCED VERSION

SHORT TITLE: West Virginia Lottery Interactive Wagering Act.

CODE REFERENCE: §29-22E-1 *et seq.* (New)

SUMMARY:

The purpose of this bill is to enact a new article, permitting and regulating interactive gaming, or interactive wagering, through the existing casinos in the state. Interactive wagering refers to the offering of any games traditionally available on the casino floor through digital or mobile platforms or applications.

Authority of the Lottery Commission

The article gives the Lottery Commission the power and authority to regulate interactive wagering. Included in this authority is the ability to adopt rules, including emergency rules (by July 1, 2019) regulating interactive wagering. Regulation of interactive wagering operations may include: specifications for systems and platforms for interactive wagering; 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 interactive wagering operations.

Licenses and Duties

Licenses that will be required under the new article are: Operator Licenses (\$250,000 application fee; five-year fee); Supplier Licenses (\$10,000 application fee; annual fee); Occupational Licenses (\$100 application fee; annual fee); and Management Services Licenses (\$100,000 application fee; annual fee).

An applicant for any of these licenses must apply to the Lottery Commission and submit to a state and federal background check. In addition to applicants, persons having “control” of an applicant must meet licensing eligibility requirements, i.e. corporate holding companies, key executives, holders of proprietary interest in an entity.

A license may not be granted to applicants who have committed certain crimes or committed other malfeasance related to wagering. A commission employee may not hold a license. The Lottery Commission may deny, suspend, or revoke a license on certain grounds, such as commission of crimes or malfeasance.

- Operator's Licenses:

Operator's licenses are required of those gaming facilities operating West Virginia Lottery interactive wagering. Operators are considered to be agents of the Lottery, and all interactive wagering games will be West Virginia Lottery games owned by the state. The Lottery may only issue up to five operators licenses. The fee for an operator's license will be \$250,000 for application and for renewal every fifth year. Licensed operators must comply with numerous Lottery Commission requirements, including:

- 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:

- 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.
- Maintain sufficient cash and other supplies for interactive wagering.
- Maintain adequate records.
- Conspicuously post minimum and maximum wagers permitted.

- Management Services Providers Licenses:

An entity providing management services on behalf of a licensed operator must pay an application fee of \$100,000, and an annual renewal fee of \$100,000.

Operators are required to seek the Commission's approval of management services contracts, prior to entering into the contract.

- Supplier Licenses:

These licenses are required for persons or entities wishing to sell or lease interactive wagering equipment. There is an application fee of \$10,000 and a \$10,000 annual renewal fee.

A licensed supplier must submit inventory lists to the commission, as required by the commission, and ensure that all equipment, systems and service must comply with lottery regulations.

- Occupational Licenses

All employees engaged in interactive wagering activities must hold an occupational license. The application fee and annual renewal fee for an occupational license is \$100, which may be paid by an employer.

Fees and Taxes

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

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

The state will collect 15% of an operator's adjusted gross interactive wagering receipts, on a weekly basis. Proceeds will be deposited in the Interactive Wagering Fund.

The 15% 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 interactive wagering is exempt from sales and use tax, as well as similar municipal or county taxes.

Expenditures by operators on interactive 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 interactive wagering investment.

Distribution of the Interactive 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.
- One percent of the net profit (after the above deductions) is distributed evenly among the pension funds maintained by racetrack licensees, and the remaining net profit is deposited in the State Lottery Fund.

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 interactive 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.

Miscellaneous Wagering Requirements

- Only persons of 21 years of age or older may wager.
- The bill expressly allows the Lottery 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 an interactive wagering agreement with the Commission,
- Gaming facility employees are prohibited from wagering at an employer's facility.
- Lottery Commission employees are prohibited from wagering at all.
- The Commission may enter into a memorandum of understanding with the West Virginia State Police for law enforcement services related to gambling, including interactive wagering, at the casinos.
- The new article expressly preempts any local laws preventing interactive betting.

Civil Penalties

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

Crimes and Penalties

The bill creates several new crimes related to interactive wagering:

- The committee substitute makes it a felony for an organization, person, or commercial enterprise, *other than a licensed gaming facility*, to conduct interactive 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 6 months, or both; and as a third offense, for a fine of \$25,000 to \$100,000 or confinement for 1 to 5 years, or both.
- The bill makes it a misdemeanor, for a licensee to do any of the following:
 - Operate interactive wagering without authority or by an unauthorized means.
Knowingly allow interactive 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 wager.
- Exchange tokens or other credit for wagering for anything of value, other than money or credits to an interactive 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:
 - Change or alter the normal outcome or reporting of a game result.
 - 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.
 - 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.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Became Law Without Signature

House Bill 2968

AMENDMENT TO INTRODUCED VERSION

SHORT TITLE: Adding remote service unit to the definition of customer bank communications terminals.

CODE REFERENCE: §31A-8-12b (Amends and Reenacts)

SUMMARY:

This bill permits the installation and operation of “remote service units” (RSUs) by adding “remote service units” to the definition of “customer bank communication terminal.” W. Va. Code §31A-8-12b governs customer bank communication terminals, which include ATMs and Automated Loan Machines.

An RSU is defined as an automated facility, operated by a customer of a bank, that conducts banking functions such as receiving deposits, paying withdrawals, or lending money, and includes an unmanned or automated teller machine, an automated loan machine, and an automated device for receiving deposits. An RSU may be equipped with a telephone or video device that allows contact with bank personnel.

This bill also requires operators of RSUs to maintain a physical location in this state.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2975

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to imposition of sexual acts on persons incarcerated.

CODE REFERENCE: §§61-8B-2 and §61-8B-10 (Amends and Reenacts)

SUMMARY:

This bill makes persons employed in an alternative sentence programs (Day Report, etc.), authorized by the Community Corrections Act, subject to the criminal prohibition against imposition of sexual acts on persons incarcerated or under supervision. Upon conviction, such person is guilty of a felony and will be fined not more than \$5,000, imprisoned for one to five years, or both fined and imprisoned.

The bill also adds the potential penalty of both a fine and imprisonment to convictions of employees or volunteers of a correctional facility, parole officers, and adult or juvenile probation officers.

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: March 5, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 3057

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to the Adult Drug Court Participation Fund.

CODE REFERENCE: §62-15-9a (Amends and Reenacts); §62-15B-1 *et seq.* (New)

SUMMARY:

This bill continues the Adult Drug Court Participation Fund in the State Treasurer's office, to be administered by the West Virginia Supreme Court of Appeals. The fund consists of moneys received from individuals participating in an adult drug court program. Any amount remaining in the fund at the end of a fiscal year remains in the fund and is available for expenditure during the next fiscal year.

A new article permits the West Virginia Supreme Court of Appeals to create a Family Drug Treatment Court pilot program in at least four circuits. These courts are specialized court dockets within the existing structure of the court system and jurisdiction is restricted to individuals with substance use disorders who are involved in a child abuse and neglect case. It also allows the West Virginia Supreme Court of Appeals to:

1. Provide oversight for the distribution of funds;
2. Provide technical assistance
3. Provide training for judges who preside over family drug treatment courts;
4. Provide training to the providers of administrative case management and treatment services;
5. Establish a state family drug treatment court advisory committee that will evaluate and recommend standards for the planning and implementation, assist in the evaluation of effectiveness and efficiency, and report by January 1 annually to the Legislative Oversight Commission on Health and Human Resources Accountability regarding legislation to enhance the program. The committee will be comprised of:
 - a. The Chief Justice of the Supreme Court of Appeals (Chair) or a designee and include a circuit court judge who presides over a family drug treatment court;
 - b. The Director of the Office of Drug Control Policy or the executive assistant to the director;

- c. The Cabinet Secretary of the Department of Health and Human Resources or a designee;
 - d. The commissioners or a designee of the Bureau for Children and Families, Bureau for Public Health, and Bureau for Behavior Health;
 - e. The Executive Director of the West Virginia Prosecuting Attorneys Institute or a designee;
 - f. The Executive Director of the West Virginia Public Defender Services or a designee; and
 - g. The Executive Director of West Virginia CASA Association or a designee.
6. Establish a local family drug treatment court advisory committee to ensure quality, efficiency, and fairness in the planning, implementation, and operation of the program. The committee membership will include but not be limited to the following people or their designees:
- a. The family drug treatment court judge;
 - b. The prosecuting attorney of the county
 - c. The public defender or a member of the county bar who represents individuals in child abuse and neglect cases;
 - d. The Community Service Manager of the Bureau of Children and Families of the Department of Health and Human Resources;
 - e. A court appointed special advocate, as applicable; and
 - f. Any other individuals selected by the family drug treatment court advisory committee.

Participation in the court will be voluntary and pursuant to a written agreement between the adult respondent and the Department of Health and Human Resources, with the concurrence of the court.

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 3083

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Adding temporary work during the legislative session as exclusion to the term employment for purposes of unemployment compensation.

CODE REFERENCE: §21A-1A-17 (Amends and Reenacts)

SUMMARY:

This bill amends W. Va. Code §21A-1A-17 by excluding temporary employees of the Legislature employed during the legislative session from the definition of “employment” for the purposes of eligibility for unemployment compensation.

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: June 3, 2019

ACTION BY GOVERNOR: Signed March 19, 2019

House Bill 3143

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to requirements for consumer loans in West Virginia.

CODE REFERENCE: §46A-4-101 and §46A-4-107 (Amends and Reenacts)

SUMMARY:

This bill adjusts limits on consumer loans in West Virginia where certain finance charges may be imposed.

On a loan of \$3,500 or less which is unsecured by real property, the loan finance charge may not exceed 31 percent per year on the unpaid balance of the principal amount. On a loan of greater than \$3,500 up to a loan of \$15,000 or which is secured by real property, the loan finance charge may not exceed 27 percent per year on the unpaid balance of the principal amount. However, the loan finance charge on any loan greater than \$15,000 may not exceed 18 percent per year on the unpaid balance of the principal amount. If the loan is nonrevolving and greater than \$3,500, the permitted finance charge may include a charge of not more than a total of two percent of the amount financed for any origination fee, points, or investigation fee.

A regulated consumer lender may, on a loan not secured by real estate of \$3,500 or less, contract for and receive interest at a rate of up to 31 percent per year on the unpaid balance of the principal amount, together with a nonrefundable loan processing fee of not more than two percent of the amount financed.

The licensing provisions of the bill do not pertain to any “collection agency” as defined in, and licensed by, the “Collection Agency Act of 1973.”

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019