

WEST VIRGINIA LEGISLATURE SENATE COMMITTEE ON THE JUDICIARY



WV Legislative Photography, Photo by Will Price

2020 BILL SUMMARIES



COMMITTEE ON THE JUDICIARY
WEST VIRGINIA SENATE

EIGHTY-FOURTH LEGISLATURE
REGULAR SESSION



MARCH 2020

SENATE COMMITTEE ON THE JUDICIARY

2020 Regular Legislative Session

Staff Members

The seal of the West Virginia Senate Committee on the Judiciary is a large, circular emblem in the background. It features a central image of the West Virginia State Capitol building, surrounded by a wreath of laurel and oak leaves. The words "WEST VIRGINIA SENATE" are inscribed around the top inner edge, and "COMMITTEE ON THE JUDICIARY" around the bottom inner edge. The motto "MONTANI SEMPER LIBERI" is at the very 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
James Fuerhoff	Analyst/LRMRC	Full Time
<hr/>		
Evelyn Ciccarello	Receptionist	Per Diem
Leslie Smith	Secretary to Chairman	Per Diem
Debra A. Graham	Counsel	Per Diem
Laura Goins	Counsel	Per Diem
Chris Alder	Counsel	Per Diem
Edith Martinez	Concord University	Per Diem
Tom Smith	Chief Counsel	Per Diem

*Cover designed by Beverly Douglas. Photo credit Will Price, Photographer,
West Virginia Legislature's Office of Reference and Information and Beverly Douglas.*



Paul Hardesty
(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)



Ryan Weld
Vice Chair
(R – Brooke, 01)

84th Legislature
West Virginia Senate

COMMITTEE ON THE JUDICIARY



2020 COMMITTEE MEMBERS



CHAIRMAN
Charles Trump
(R – Morgan, 15)

Tom Takubo
Majority Leader
(R – Kanawha, 17)



Charles Clements
(R – Wetzel, 02)



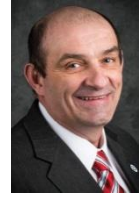
Stephen Baldwin
(D – Greenbrier, 10)



John Pitsenbarger
(R – Nicholas, 11)



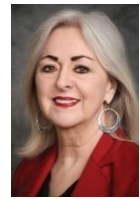
Randy Smith
(R – Tucker, 14)



Glenn Jefferies
(D – Putnam, 08)



Sue Cline
(R – Wyoming, 09)



Mike Woelfel
(D – Cabell, 05)



WEST VIRGINIA LEGISLATURE
SENATE COMMITTEE ON THE JUDICIARY
STATISTICS 2020

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

BILLS:	2,389
RESOLUTIONS:	98
CONCURRENT RESOLUTIONS:	210
<u>JOINT RESOLUTIONS:</u>	<u>25</u>
TOTAL:	2,822

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

SENATE BILLS:	856
SENATE RESOLUTIONS:	80
SENATE CONCURRENT RESOLUTIONS:	66
<u>SENATE JOINT RESOLUTIONS:</u>	<u>9</u>
TOTAL:	1,011

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

HOUSE BILLS:	1,533
HOUSE RESOLUTIONS:	18
HOUSE CONCURRENT RESOLUTIONS:	144
<u>HOUSE JOINT RESOLUTIONS:</u>	<u>116</u>
TOTAL:	1,811

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

BILLS:	7
<u>CONCURRENT RESOLUTIONS:</u>	<u>3</u>
TOTAL:	10

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

SENATE BILLS:	316
HOUSE BILLS:	172
SENATE CONCURRENT RESOLUTIONS:	4
SENATE JOINT RESOLUTIONS:	9
HOUSE CONCURRENT RESOLUTIONS:	0
<u>HOUSE JOINT RESOLUTIONS:</u>	<u>0</u>
TOTAL:	501

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

SENATE BILLS:	85
HOUSE BILLS:	64
RULES BILLS:	157
JOINT RESOLUTIONS:	2
<u>CONCURRENT RESOLUTIONS:</u>	<u>6</u>
TOTAL:	314

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

SENATE BILLS:	168
<u>HOUSE BILLS:</u>	<u>188</u>
TOTAL:	356*

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

SENATE CONCURRENT RESOLUTIONS:	20
<u>HOUSE CONCURRENT RESOLUTIONS:</u>	<u>63</u>
TOTAL:	83

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

SENATE BILLS:	54
<u>HOUSE BILLS:</u>	<u>61</u>
TOTAL:	115

**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:	53
<u>HOUSE BILLS:</u>	<u>55</u>
TOTAL:	108**

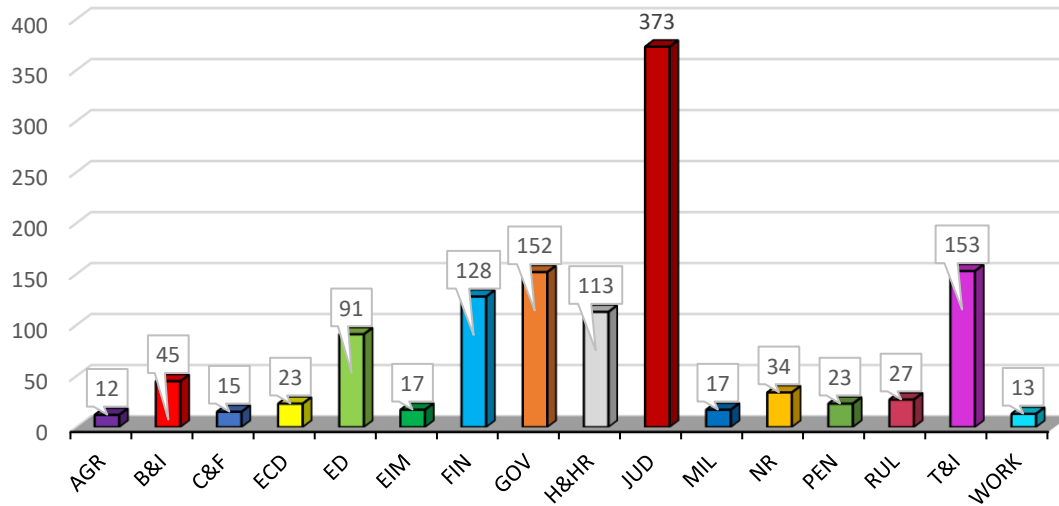
(Senate Judiciary Totals include Rules Bundles as a single bill)

(*Of the 356 Bills that Completed Legislative Action, there were 5 vetoes)

(**Of the 108 Bills reported that Completed Legislative Action, three bills were vetoed:
Senate Bill 692, House Bill 4159, and House Bill 4573.)

STATISTICS 2020

2020 Regular Legislative Session Bills and Resolutions Referred to Committees



2020 Regular Legislative Session Bills and Resolutions Reported from Committees

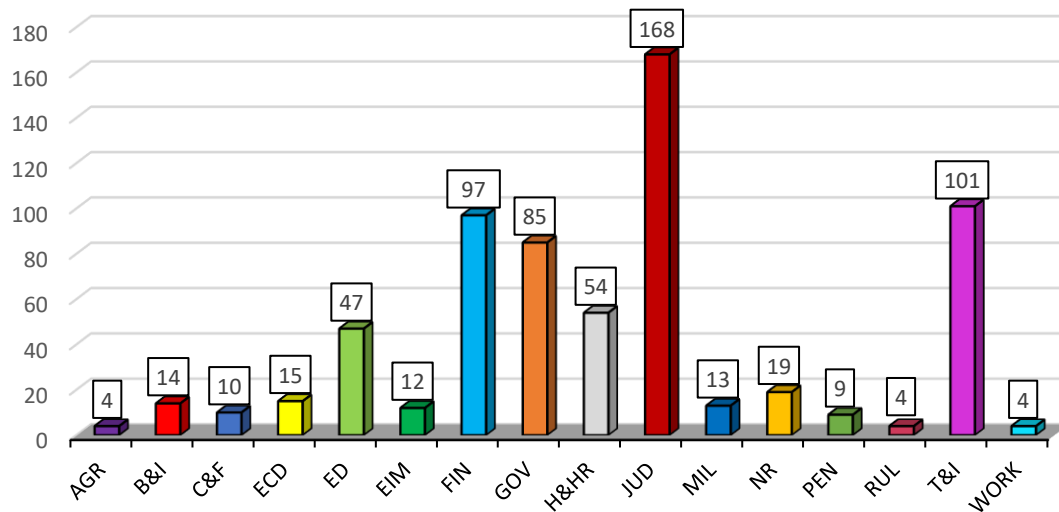


TABLE OF CONTENTS

<u>BILL NO.</u>	<u>SHORT TITLE</u>	<u>PAGE NO.</u>
SB 6	Allowing DOH issue permits for certain tractors with certain trailers not exceeding specified maximum axle weights	1
SB 16	Creating Protect Our Right to Unite Act.....	2
SB 35	Limiting civil penalty for littering conviction to \$2,000.....	3
SB 46	Defining "pepper spray" and exempting from definition of "deadly weapons"	4
SB 51	Specifying forms of grandparent visitation	5
SB 94	Providing persons with physical disabilities ability to vote by electronic absentee ballot	6
SB 96	Prohibiting municipalities from limiting persons' rights to possess certain weapons	8
SB 120	Establishing priorities for expenditures for plugging abandoned gas or oil wells.....	9
SB 125	Prohibiting victim from being subjected to certain physical examinations for sexual offenses.....	10
SB 130	Relating to procedure for driver's license suspension and revocation for DUI.....	11
SB 136	Prohibiting certain misleading lawsuit advertising practices	14
SB 144	Creating misdemeanor penalty for making materially false statement in course of misdemeanor investigation.....	16
SB 195	Updating powers of personal representatives of deceased person's estate.	17
SB 201	Relating generally to criminal offenses of stalking and harassment	18
SB 208	Protecting consumers from unfair pricing practices during state of emergency	19

SB 213	Relating to administration of trusts	20
SB 232	Removing outdated prohibitions against electronic or mechanical ticket dispensers and readers	21
SB 240	Requiring hotels and restaurants secure manhole covers of certain grease traps.....	22
SB 261	Creating criminal penalties for introducing ransomware into computer with intent to extort	23
SB 308	Creating criminal penalties for violation of orders issued for protection of victims of financial exploitation.....	24
SB 311	Relating to court-ordered community service.....	25
SB 321	Relating to collection of tax and priority of distribution of estate or property in receivership	26
SB 323	Authorizing Department of Administration promulgate legislative rules .	27
SB 339	Authorizing DHHR promulgate legislative rules	31
SB 357	Authorizing Department of Revenue promulgate legislative rules.....	45
SB 364	Authorizing Department of Transportation promulgate legislative rules .	49
SB 449	Authorizing Department of Commerce promulgate legislative rules	52
SB 472	Providing alternative sentencing program for work release	61
SB 490	Relating to criminal offenses against agricultural facilities	62
SB 522	Relating to compensation awards to crime victims	63
SB 529	Establishing limitations on claims and benefits against state	64
SB 534	Allowing temporary legislative employees be eligible for unemployment benefits coverage.....	65
SB 547	Relating to employer testing, notice, termination, and forfeiture of unemployment compensation	66
SB 554	Relating to termination, expiration, or cancellation of oil or natural gas leases	67
SB 562	Expunging certain criminal convictions	69

SB 597	Relating to judicial branch members' salaries and pensions	70
SB 610	Removing resident manager requirement for Alcohol Beverage Control Administration	71
SB 620	Authorizing Division of Corrections and Rehabilitation approve home plans for inmates.....	72
SB 642	Correcting incorrect code citation in WV Consumer Credit and Protection Act.....	73
SB 660	Regulating electric bicycles.....	74
SB 662	Removing restrictions on fiduciary commissioners.....	76
SB 668	Enacting Uniform Trust Decanting Act.....	77
SB 670	Amending service of process on nonresident persons or corporate entities	78
SB 678	Waiving fines and fees for completing Getting Over Addicted Lifestyles Successfully Program	79
SB 692	Clarifying persons indicted or charged jointly for felony offense can move to have separate trial.....	80
SB 711	Relating to juvenile jurisdiction of circuit courts	81
SB 717	Relating generally to adult protective services	82
SB 765	Modifying "Habitual Offender" statute	83
SB 785	Establishing uniform electioneering prohibition area	86
SB 810	Implementing federal Affordable Clean Energy rule	87
SB 838	Directing state police establish referral program for substance abuse treatment.....	88
SB 848	Clarifying persons charged with DUI may not participate in Military Service Members Court.....	89
SB 849	Relating to military service as factor in certain insurance coverage rates	90

SB 851	Requiring Governor's Committee on Crime, Delinquency, and Correction propose rule in coordination with law enforcement and certain medical boards	91
HB 2086	Uniform Real Property Electronic Recording Act	92
HB 2419	Relating to the authorization to release a defendant or a person arrested upon his or her own recognizance	93
HB 2478	Modifying the Fair Trade Practices Act	96
HB 2497	Relating to the whistle-blower law	98
HB 2602	Including possession of known stolen property in the offense of receiving or transferring stolen property	99
HB 2646	Providing a safe harbor for employers to correct underpayment or nonpayment of wages and benefits due to separated employees	100
HB 2892	Including digital and virtual information in the definition of property that can be searched and seized by a warrant.....	101
HB 2922	Relating to requirements to obtain a final order of discharge and dismissal for possession of opiates or opioids.....	102
HB 3039	Relating to a court's consideration of the expression of a preference by a child in certain child custody matters	103
HB 3098	Allowing the same business owner to brew and sell beer to also distill and sell liquor.....	104
HB 4004	Creating the West Virginia Sentencing Commission	105
HB 4007	Born-Alive Abortion Survivors Protection Act	107
HB 4009	Relating to the process for involuntary hospitalization	108
HB 4020	Removing authority of municipalities to require occupational licensure if licensure for the occupation is required by the state	110
HB 4061	Health Benefit Plan Network Access and Adequacy Act.....	111
HB 4069	West Virginia Student Religious Liberties Act	113

HB 4088	Disposition of funds from certain oil and natural gas wells due to unknown or unlocatable interest owners.....	115
HB 4092	Relating to foster care	116
HB 4123	Clarifying that 911 telecommunication workers are included in the definition of those individuals who perform "emergency services" during a disaster	119
HB 4159	Relating to the manufacture and sale of hard cider	121
HB 4166	Prohibiting certain sex offenders from being in a supervisory position over children	122
HB 4179	Recognition of Emergency Medical Services Personnel Licensure Interstate Compact.....	123
HB 4217	Authorizing the Department of Environmental Protection to promulgate legislative rules.....	125
HB 4252	Authorizing miscellaneous agencies and boards to promulgate legislative rules	131
HB 4275	Authorizing Department of Military Affairs and Public Safety promulgate legislative rules relating to the Fire Commission	160
HB 4361	Relating to insurance law violations.....	162
HB 4362	Relating to penalties for neglect, emotional abuse or death caused by a caregiver	164
HB 4375	Speech-Language Pathologists and Audiologists Compact	165
HB 4377	The Protection of Vulnerable Adults from Financial Exploitation Act	167
HB 4388	Limiting the Alcohol Beverage Control Commissioner's authority to restrict advertising	169
HB 4393	Relating to making suffocation and asphyxiation crimes	170
HB 4422	The Patient Brokering Act.....	171
HB 4444	Establishing Medals of Valor and Medals for Bravery for emergency medical services, firefighters, and law-enforcement officers.....	172

HB 4470	Relating to persons 18 years of age or older in the custody of the Bureau of Juvenile Services	173
HB 4474	Relating to peer-to-peer car sharing programs	174
HB 4476	Providing for the timely and efficient collection, submission, testing, retention, and disposition of forensic evidence in sexual assault cases....	175
HB 4477	West Virginia Mutual to Mutual Insurance Holding Company Act.....	176
HB 4478	Creating a lifetime ban for commercial drivers involved in human trafficking	178
HB 4501	Relating to the ability to refuse offenders for commitment to a jail	179
HB 4509	Transferring the Parole Board to the Division of Corrections and Rehabilitation for purposes of administrative and other support	180
HB 4510	Prohibiting bodily intrusion by an inmate upon any person at any correctional facility	181
HB 4510	Prohibiting bodily intrusion by an inmate upon any person at any correctional facility	182
HB 4513	Increasing the replacement costs required of a person causing injury or death of game or protected species.....	157
HB 4524	Making the entire state "wet" or permitting the sale of alcoholic liquors for off-premises consumption	184
HB 4529	Relating to the collection of assessments and the priority of liens on property within a resort area	185
HB 4530	Authorizing daily passenger rental car companies to charge reasonable administrative fees	186
HB 4544	Relating to possession of any controlled substance on the premises of or within 200 feet of a public library	187
HB 4559	Modifying the limitations on civil actions against the perpetrator of sexual assault or sexual abuse upon a minor.....	188
HB 4560	Relating to deliveries by a licensed wine specialty shop	189

HB 4573	Relating to Medicaid subrogation liens of the Department of Health and Human Resources	190
HB 4576	Establishing a procedure for correcting errors in deeds, deeds of trust and mortgages	191
HB 4585	Providing immunity from civil or criminal liability for making good faith reports of suspected or known instances of child abuse or neglect	193
HB 4593	Authorizing the assignment of poll workers to serve more than one precinct under certain circumstances.....	194
HB 4615	West Virginia Critical Infrastructure Protection Act.....	193
HB 4618	Relating to deadly weapons for sale or hire.....	197
HB 4668	Creating the misdemeanor crime of trespass for entering a structure that has been condemned.....	198
HB 4697	Removing the restriction that a mini-distillery use raw agricultural products originating on the same premises	199
HB 4715	Authorizing municipalities to take action to grant certain fire department employees limited power of arrest.....	200
HB 4797	Authorizing municipalities to enact ordinances that allow the municipal court to place a structure, dwelling or building into receivership	201
HB 4852	Relating to the penalties for the manufacture, delivery, possession, or possession with intent to manufacture or deliver methamphetamine	202
HB 4882	Authorizing limited sampling and limited sale of wine for off-premises consumption to wineries not licensed in the state	203
HB 4929	Relating to the administrative closing of stale or unprogressed estates..	204
HB 4958	Relating to eliminating the ability of a person’s driver license to be suspended for failure to pay court fines and costs	205

TOPICAL INDEX

ACTIONS, SUITS, AND LIENS

SB 136	Prohibiting certain misleading lawsuit advertising practices	14
SB 308	Creating criminal penalties for violation of orders issued for protection of victims of financial exploitation.....	24
HB 2478	Modifying the Fair Trade Practices Act	96
HB 4559	Modifying the limitations on civil actions against the perpetrator of sexual assault or sexual abuse upon a minor.....	188

AGRICULTURE

SB 490	Relating to criminal offenses against agricultural facilities	62
--------	---	----

ALCOHOLIC LIQUORS AND BEERS

SB 610	Removing resident manager requirement for Alcohol Beverage Control Administration	71
HB 3098	Allowing the same business owner to brew and sell beer to also distill and sell liquor	104
HB 4159	Relating to the manufacture and sale of hard cider	121
HB 4388	Limiting the Alcohol Beverage Control Commissioner's authority to restrict advertising.	169
HB 4524	Making the entire state "wet" or permitting the sale of alcoholic liquors for off-premises consumption	184
HB 4560	Relating to deliveries by a licensed wine specialty shop	189
HB 4697	Removing the restriction that a mini-distillery use raw agricultural products originating on the same premises	199
HB 4882	Authorizing limited sampling and limited sale of wine for off-premises consumption to wineries not licensed in the state	203

BOARDS AND COMMISSIONS

HB 4020 Removing authority of municipalities to require occupational licensure if licensure for the occupation is required by the state110

HB 4444 Establishing Medals of Valor and Medals for Bravery for emergency medical services, firefighters, and law-enforcement officers.....172

CLAIMS

SB 529 Establishing limitations on claims and benefits against state 64

CONSUMER PROTECTION

SB 208 Protecting consumers from unfair pricing practices during state of emergency 19

SB 642 Correcting incorrect code citation in WV Consumer Credit and Protection Act..... 73

HB 2478 Modifying the Fair Trade Practices Act 96

CORRECTIONS

SB 472 Providing alternative sentencing program for work release 61

SB 620 Authorizing Division of Corrections and Rehabilitation approve home plans for inmates..... 72

HB 4470 Relating to persons 18 years of age or older in the custody of the Bureau of Juvenile Services173

HB 4509 Transferring the Parole Board to the Division of Corrections and Rehabilitation for purposes of administrative and other support 180

HB 4510 Prohibiting bodily intrusion by an inmate upon any person at any correctional facility181

COUNTY OFFICIALS

HB 4529 Relating to the collection of assessments and the priority of liens on
property within a resort area 185

COUNTIES

HB 4544 Relating to possession of any controlled substance on the premises of or
within 200 feet of a public library187

COURTS

SB 562 Expunging certain criminal convictions 69

SB 597 Relating to judicial branch members' salaries and pensions 70

SB 670 Amending service of process on nonresident persons or corporate entities
..... 78

SB 678 Waiving fines and fees for completing Getting Over Addicted Lifestyles
Successfully Program 79

SB 692 Clarifying persons indicted or charged jointly for felony offense can move
to have separate trial80

SB 711 Relating to juvenile jurisdiction of circuit courts 81

HB 2922 Relating to requirements to obtain a final order of discharge and dismissal
for possession of opiates or opioids 102

HB 3039 Relating to a court's consideration of the expression of a preference by a
child in certain child custody matters 103

HB 4958 Relating to eliminating the ability of a person's driver license to be
suspended for failure to pay court fines and costs 205

CRIME

SB 35 Limiting civil penalty for littering conviction to \$2,000..... 3

SB 46	Defining "pepper spray" and exempting from definition of "deadly weapons"	4
SB 96	Prohibiting municipalities from limiting persons' rights to possess certain weapons.....	8
SB 125	Prohibiting victim from being subjected to certain physical examinations for sexual offenses	10
SB 144	Creating misdemeanor penalty for making materially false statement in course of misdemeanor investigation.....	16
SB 201	Relating generally to criminal offenses of stalking and harassment	18
SB 261	Creating criminal penalties for introducing ransomware into computer with intent to extort	23
SB 490	Relating to criminal offenses against agricultural facilities.....	62
SB 522	Relating to compensation awards to crime victims	63
SB 562	Expunging certain criminal convictions.....	69
SB 692	Clarifying persons indicted or charged jointly for felony offense can move to have separate trial.....	80
SB 765	Modifying "Habitual Offender" statute	83
SB 848	Clarifying persons charged with DUI may not participate in Military Service Members Court.....	89
SB 851	Requiring Governor's Committee on Crime, Delinquency, and Correction propose rule in coordination with law enforcement and certain medical boards.....	91
HB 2419	Relating to the authorization to release a defendant or a person arrested upon his or her own recognizance	93
HB 2602	Including possession of known stolen property in the offense of receiving or transferring stolen property	99
HB 2892	Including digital and virtual information in the definition of property that can be searched and seized by a warrant.....	101

HB 4166	Prohibiting certain sex offenders from being in a supervisory position over children	122
HB 4362	Relating to penalties for neglect, emotional abuse or death caused by a caregiver	164
HB 4393	Relating to making suffocation and asphyxiation crimes	170
HB 4509	Transferring the Parole Board to the Division of Corrections and Rehabilitation for purposes of administrative and other support	180
HB 4510	Prohibiting bodily intrusion by an inmate upon any person at any correctional facility	181
HB 4668	Creating the misdemeanor crime of trespass for entering a structure that has been condemned.....	198
HB 4852	Relating to the penalties for the manufacture, delivery, possession, or possession with intent to manufacture or deliver methamphetamine	202

DOMESTIC RELATIONS

SB 51	Specifying forms of grandparent visitation	5
HB 3039	Relating to a court's consideration of the expression of a preference by a child in certain child custody matters	103

EDUCATION (K12)

HB 4069	West Virginia Student Religious Liberties Act	113
---------	---	-----

ELECTIONS

SB 94	Providing persons with physical disabilities ability to vote by electronic absentee ballot	6
SB 785	Establishing uniform electioneering prohibition area	86
HB 4593	Authorizing the assignment of poll workers to serve more than one precinct under certain circumstances.....	195

ENERGY

HB 4615 West Virginia Critical Infrastructure Protection Act.....195

ENVIRONMENT

SB 120 Establishing priorities for expenditures for plugging abandoned gas or oil wells..... 9

SB 810 Implementing federal Affordable Clean Energy rule 87

ESTATES AND TRUSTS

SB 195 Updating powers of personal representatives of deceased person's estate 17

SB 213 Relating to administration of trusts 20

SB 321 Relating to collection of tax and priority of distribution of estate or property in receivership 26

SB 662 Removing restrictions on fiduciary commissioners..... 76

SB 668 Enacting Uniform Trust Decanting Act..... 77

HB 4929 Relating to the administrative closing of stale or unprogressed estates..204

ETHICS

HB 2497 Relating to the whistle-blower law 98

HEALTH

SB 610 Removing resident manager requirement for Alcohol Beverage Control Administration71

HB 4007 Born-Alive Abortion Survivors Protection Act 107

HB 4009 Relating to the process for involuntary hospitalization 108

HB 4422 The Patient Brokering Act..... 171

HUMAN RIGHTS

SB 16 Creating Protect Our Right to Unite Act..... 2
HB 4377 The Protection of Vulnerable Adults from Financial Exploitation Act167

HUMAN SERVICES

SB 717 Relating generally to adult protective services 82
HB 4470 Relating to persons 18 years of age or older in the custody of the Bureau of
Juvenile Services173
HB 4573 Relating to Medicaid subrogation liens of the Department of Health and
Human Resources 190

INSURANCE

SB 849 Relating to military service as factor in certain insurance coverage rates. 90
HB 4061 Health Benefit Plan Network Access and Adequacy Act 111
HB 4361 Relating to insurance law violations..... 162
HB 4474 Relating to peer-to-peer car sharing programs174

INSURANCE COMMISSION

HB 4477 West Virginia Mutual to Mutual Insurance Holding Company Act.....176

JUVENILES

SB 711 Relating to juvenile jurisdiction of circuit courts 81
HB 4092 Relating to foster care116
HB 4470 Relating to persons 18 years of age or older in the custody of the Bureau of
Juvenile Services173
HB 4585 Providing immunity from civil or criminal liability for making good faith
reports of suspected or known instances of child abuse or neglect 193

LABOR

HB 2646 Providing a safe harbor for employers to correct underpayment or nonpayment of wages and benefits due to separated employees 100

LEGAL GAMING

SB 232 Removing outdated prohibitions against electronic or mechanical ticket dispensers and readers21

SB 610 Removing resident manager requirement for Alcohol Beverage Control Administration71

LEGISLATURE—RULE MAKING

SB 323 Authorizing Department of Administration promulgate legislative rules. 27

SB 339 Authorizing DHHR promulgate legislative rules31

SB 357 Authorizing Department of Revenue to promulgate legislative rules..... 45

SB 364 Authorizing Department of Transportation promulgate legislative rules . 49

SB 449 Authorizing Department of Commerce promulgate legislative rules 52

MOTOR VEHICLES

SB 6 Allowing DOH issue permits for certain tractors with certain trailers not exceeding specified maximum axle weights1

SB 130 Relating to procedure for driver's license suspension and revocation for DUI 11

SB 660 Regulating electric bicycles..... 74

SB 678 Waiving fines and fees for completing Getting Over Addicted Lifestyles Successfully Program 79

HB 4478 Creating a lifetime ban for commercial drivers involved in human trafficking178

HB 4958	Relating to eliminating the ability of a person’s driver license to be suspended for failure to pay court fines and costs	205
---------	---	-----

MUNICIPALITIES

SB 311	Relating to court-ordered community service.....	25
HB 4020	Removing authority of municipalities to require occupational licensure if licensure for the occupation is required by the state	110
HB 4544	Relating to possession of any controlled substance on the premises of or within 200 feet of a public library	187
HB 4715	Authorizing municipalities to take action to grant certain fire department employees limited power of arrest.....	200
HB 4797	Authorizing municipalities to enact ordinances that allow the municipal court to place a structure, dwelling or building into receivership	201
HB 4958	Relating to eliminating the ability of a person’s driver license to be suspended for failure to pay court fines and costs	205

NATURAL RESOURCES

SB 554	Relating to termination, expiration, or cancellation of oil or natural gas leases	67
HB 4513	Increasing the replacement costs required of a person causing injury or death of game or protected species.....	182

PROFESSIONS AND OCCUPATIONS

HB 4123	Clarifying that 911 telecommunication workers are included in the definition of those individuals who perform "emergency services" during a disaster	119
HB 4179	Recognition of Emergency Medical Services Personnel Licensure Interstate Compact.....	123

PUBLIC SAFETY

SB 130	Relating to procedure for driver's license suspension and revocation for DUI.....	11
SB 240	Requiring hotels and restaurants secure manhole covers of certain grease traps.....	22
SB 838	Directing state police establish referral program for substance abuse treatment.....	88
HB 4004	Creating the West Virginia Sentencing Commission	105
HB 4123	Clarifying that 911 telecommunication workers are included in the definition of those individuals who perform "emergency services" during a disaster	119
HB 4179	Recognition of Emergency Medical Services Personnel Licensure Interstate Compact.....	123
HB 4476	Providing for the timely and efficient collection, submission, testing, retention, and disposition of forensic evidence in sexual assault cases....	175
HB 4501	Relating to the ability to refuse offenders for commitment to a jail	179
HB 4618	Relating to deadly weapons for sale or hire.....	197

REAL AND PERSONAL PROPERTY

HB 4088	Disposition of funds from certain oil and natural gas wells due to unknown or unlocatable interest owners.....	115
HB 4576	Establishing a procedure for correcting errors in deeds, deeds of trust and mortgages	191

RECORDS AND PAPERS

HB 4576	Establishing a procedure for correcting errors in deeds, deeds of trust and mortgages	191
---------	---	-----

ROADS AND TRANSPORTATION

SB 6	Allowing DOH issue permits for certain tractors with certain trailers not exceeding specified maximum axle weights	1
HB 4474	Relating to peer-to-peer car sharing programs	174
HB 4530	Authorizing daily passenger rental car companies to charge reasonable administrative fees	186

RETIREMENT

SB 597	Relating to judicial branch members' salaries and pensions	70
--------	--	----

RULE MAKING AUTHORITY

HB 4217	Authorizing the Department of Environmental Protection to promulgate legislative rules	125
HB 4252	Authorizing miscellaneous agencies and boards to promulgate legislative rules	131
HB 4275	Authorizing Department of Military Affairs and Public Safety promulgate legislative rules relating to the Fire Commission	160

SALARIES

SB 597	Relating to judicial branch members' salaries and pensions	70
--------	--	----

SENIOR CITIZENS

HB 4377	The Protection of Vulnerable Adults from Financial Exploitation Act	167
---------	---	-----

STATE PERSONNEL

HB 2497	Relating to the whistle-blower law	98
---------	--	----

UNEMPLOYMENT COMPENSATION

SB 534	Allowing temporary legislative employees be eligible for unemployment benefits coverage.....	65
SB 547	Relating to employer testing, notice, termination, and forfeiture of unemployment compensation	66

UNIFORM LAWS

HB 2086	Uniform Real Property Electronic Recording Act	92
---------	--	----

Senate Bill 6

COMMITTEE SUBSTITUTE

SHORT TITLE: Allowing DOH issue permits for certain tractors with certain trailers not exceeding specified maximum axle weights.

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

SUMMARY:

This bill authorizes the Commissioner of Highways to issue permits for four-axle tractors with one steering axle and three axles in tridem in combination with dual axle pup trailers. The maximum weight of each axle for pup-combination vehicles beginning with the steering axle commencing rearward respectively may not exceed 14,500 pounds, 16,613 pounds, 16,614 pounds, 16,613 pounds, 14,830 pounds, and 14,830 66 pounds.

DATE OF PASSAGE: March 2, 2020

EFFECTIVE DATE: May 31, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 16

COMMITTEE SUBSTITUTE

SHORT TITLE: Creating Protect Our Right to Unite Act.

CODE REFERENCE: §1-7-1, §1-7-2, §1-7-3, and §1-7-4 (New)

SUMMARY:

This bill creates a new article, entitled the Protect Our Right to Unite Act, the purpose of which is to protect an individual's right to anonymously support and associate with nonprofit organizations. The bill references the holding of *NAACP v. Alabama ex re. Patterson*, 357 US 449 (1958), which held that compelled disclosure of an advocacy group's membership is only permissible under the First Amendment if the compelled disclosure meets strict scrutiny.

The bill provides that, except as permitted in Chapter 3 of the code (election laws) and Chapter 6B of the code (Ethics Act), a public agency may not require any entity to disclose its donor or membership information. If the state or public agency nevertheless obtains donor or membership information, it may not be released.

The bill does not preclude release of records with redacted donor or membership information or release of records pursuant to a lawful court order.

The bill also allows an individual to file a private cause of action to enjoin any violation of the Act and to recover actual damages incurred as a result of the violation. If plaintiff prevails, he or she may recover costs and attorneys' fees. If the unlawful disclosure was intentional, damages may be trebled.

DATE OF PASSAGE: February 13, 2020

EFFECTIVE DATE: May 13, 2020

ACTION BY GOVERNOR: Signed March 2, 2020

Senate Bill 35

COMMITTEE SUBSTITUTE, AS AMENDED

SHORT TITLE: Limiting civil penalty for littering conviction to \$2,000.

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

SUMMARY:

This bill provides that any person guilty of littering must pay a civil penalty of not less than \$200 nor more than \$2,000 as costs for clean-up, investigation, and prosecution of the case, in addition to any other court costs required by law.

DATE OF PASSAGE: February 13, 2020

EFFECTIVE DATE: May 13, 2020

ACTION BY GOVERNOR: Signed March 2, 2020

Senate Bill 46

COMMITTEE SUBSTITUTE

SHORT TITLE: Defining “pepper spray” and exempting from definition of “deadly weapons.”

CODE REFERENCE: §61-6-19 and §61-7-2 (Amends and Reenacts)

SUMMARY:

This bill allows a person over the age of 16 to carry pepper spray in canisters containing less than one ounce, in the State Capitol Complex. It also defines the term “pepper spray” and exempts it from the definition of a deadly weapon when it is used by a person over the age of 16 solely for self-defense purposes.

DATE OF PASSAGE: February 11, 2020

EFFECTIVE DATE: May 11, 2020

ACTION BY GOVERNOR: Signed February 24, 2020

Senate Bill 51

INTRODUCED BILL

SHORT TITLE: Specifying forms of grandparent visitation.

CODE REFERENCE: §48-10-802 (Amends and Reenacts); §48-10-803 (New)

SUMMARY:

This bill amends the Grandparent Visitation Act to specifically authorize the court to issue an order granting visitation privileges to a grandparent that may include daytime visits, overnight visits, and electronic communications. The term “electronic communications” includes, but is not limited to, communications by telephone, email, Skype, FaceTime, text messaging, and instant messaging.

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 94

COMMITTEE SUBSTITUTE, AS AMENDED

SHORT TITLE: Providing persons with physical disabilities ability to vote by electronic absentee ballot.

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

SUMMARY:

This bill allows voters with physical disabilities to vote by electronic absentee ballot. Previously, the Code (§3-3-5) permitted uniformed and overseas citizens voters (UOCAVA voters) to vote by electronic absentee ballot. The Code (§3-3-1) also permits any person who is unable to enter an inaccessible polling place, or who is prevented from voting in person because of “illness, injury, other medical reason” or “physical disability or immobility due to extreme advanced age,” to vote by mail-in absentee ballot. The bill clarifies that persons with physical disabilities are eligible to vote by mail-in absentee ballot and provides that only voters with physical disabilities and UOCAVA voters are eligible to vote by electronic absentee ballot.

The bill adopts the federal Americans with Disabilities Act (ADA) definition of “disability,” which is “a physical or mental impairment that substantially limits one or more major life activities.” 42 U.S.C. §12102. The bill further defines “physical disability,” as “a physical impairment that substantially limits one or more major life activities and renders a person unable to vote in person, at the polls, without assistance.” The previous definition of physical disability in the Code (§3-3-4(j)), for the purposes of absentee and assisted voting requirements, narrowly applied to individuals with blindness and certain disabilities of the hands and did not extend to all individuals required to receive voting accommodations under the ADA. Additionally, the bill eliminates references throughout W. Va. Code §3-3-1 *et seq.* that limited certain accommodations to voters who are “permanently and totally disabled,” as the ADA requires reasonable accommodations for all voters with disabilities.

The bill requires an application for placement on the “special absentee voting list” to include an inquiry of whether a person voting absentee due to physical disability intends to vote by mail-in absentee ballot or by electronic absentee ballot. The special absentee voting list is a list maintained by the Secretary of State that provides county clerks with the names of persons, including people with physical disabilities, who are permitted to vote absentee on a continuing basis without reapplying for an absentee ballot every election. The bill also permits the Secretary of State to accept electronic applications to vote absentee from individuals with disabilities.

The bill amends the provisions in the Code concerning general requirements for delivery and submission of paper absentee ballots to include similar general requirements for delivery and submission of electronic absentee ballots.

Finally, the bill makes numerous non-substantive, technical corrections to existing language in the Code.

DATE OF PASSAGE: January 24, 2020

EFFECTIVE DATE: January 24, 2020

ACTION BY GOVERNOR: Signed February 3, 2020

Senate Bill 96

COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE, AS
AMENDED

SHORT TITLE: Prohibiting municipalities from limiting persons' rights to possess certain weapons.

CODE REFERENCE: §8-12-5a (Amends and Reenacts)

SUMMARY:

This bill prohibits municipalities from regulating or restricting deadly weapons more strictly than state law. This expands the law from the current restrictions on municipalities more strictly regulating firearms. The bill also clarifies that anyone seeking redress under this section may only be awarded reasonable attorney's fees if he or she prevails. Finally, the bill eliminates the authority of municipalities to prohibit the otherwise lawful carrying of firearms by persons without concealed carry permits at short-term outdoor events.

DATE OF PASSAGE: March 2, 2020

EFFECTIVE DATE: May 31, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 120

COMMITTEE SUBSTITUTE

SHORT TITLE: Establishing priorities for expenditures for plugging abandoned gas or oil wells.

CODE REFERENCE: §22-10-6 (Amends and Reenacts)

SUMMARY:

This bill prioritizes how forfeited bond money is to be used to plug abandoned wells.

The bill requires the bond posted for the well to be used to plug the well on the land where the well is located if:

- 1) The bond is forfeited as a result of failure to plug the abandoned well or repair the well that is causing immediate threat to the environment or hindering or impeding the development of mineral resources of the state;
- 2) The well operator was cited for, and then failed to correct, an immediate threat to the environment or hinderance or impediment to the development of mineral resources of the state; or
- 3) The operator failed to reclaim the surface disturbance causing immediate threat to the environment or hindering or impeding the development of mineral resources of the state.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 125

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Prohibiting victim from being subjected to certain physical examinations for sexual offenses.

CODE REFERENCE: §61-8B-11 (Amends and Reenacts)

SUMMARY:

This bill limits admission of certain evidence in sexual offense prosecutions and prohibits a court from requiring a victim in a sexual offense prosecution to submit to sexually invasive physical examinations.

The bill further provides that a victim's refusal to undergo a physical examination does not serve as a basis to exclude evidence from prior, relevant physical examinations, unless constitutionally required.

For the purposes of the bill, a sexual offense includes any crime of which sexual intercourse, contact, or intrusion is an element of the crime.

DATE OF PASSAGE: March 4, 2020

EFFECTIVE DATE: March 4, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 130

COMMITTEE SUBSTITUTE, AS AMENDED

SHORT TITLE: Relating to procedure for driver's license suspension and revocation for DUI.

CODE REFERENCE: §17C-5-2, §17C-5-2a, §17C-5-2b, §17C-5-4, §17C-5-7, §17C-5-12, §17C-5A-1, §17C-5A-1a, and §17C-5-3 (Amends and Reenacts); §17C-5-7a, §17C-5A-2b, and §17C-5C-1a (New)

SUMMARY:

This bill consolidates the administrative process for license suspension and revocation for crimes involving driving under the influence of alcohol or drugs (DUI) into the criminal proceedings that take place before county magistrates. Previously, the Code provided for a separate administrative agency and process to deal solely with the administrative aspect of DUI- license suspension and revocation following an arrest. The bill eliminates the Department of Transportation's Office of Administrative Hearings (OAH), which previously handled appeals of administrative license revocations and suspensions in DUI cases.

The bill amends W. Va. Code §17C-5-2, which defines the various crimes involving DUI, to include mandatory license revocation or suspension periods upon conviction of an offense. The section makes clear that a person convicted of a DUI-related offense may still have his or her license revoked for a reduced period if he or she consents to participation in the Motor Vehicle Test and Lock Program, administered by the Division of Motor Vehicles (DMV). The section tracks the current revocation and test and lock periods in current code as closely as possible, although the administrative provisions of the Code are based on descriptions of outdated criminal offenses that do not currently exist, resulting in minor variations. This section also adds new language requiring anyone whose license is revoked or suspended as a result of a DUI-related conviction to complete the comprehensive safety and treatment program, administered by the DMV, prior to license reinstatement.

The bill specifies that for all DUI-related crimes, except for DUI causing death or bodily injury, the person must have been operating the vehicle on a public or private road. This modifies a change to the Code made during the 2019 Regular Session, which limited DUI crimes to acts committed on public roads. A federal agency threatened to withdraw road maintenance funding, so this bill clarifies that DUI-related crimes can take place on private roads as well.

The bill amends W. Va. Code §17C-5-2b, in relation to the deferral program for first-time DUI offenders, to require that the license suspension and test and lock program

participation imposed as a condition of deferral be completed within one year after conviction. The bill requires individuals participating in the deferral program to pay court costs.

In W. Va. Code §17C-5-4, the bill expands on the verbal and written warnings required to be given by a law enforcement officer prior to administering a secondary chemical test. Currently, a driver must be advised that his or her refusal to submit to a secondary chemical test will result in revocation of his or her license to operate a motor vehicle for at least 45 days and up to life. Two additional warnings must now be given: 1) that the results of any test taken can be used against the driver in court; and 2) that, if a person submits to a test, he or she has the right to have a test of his or her blood performed afterward. The bill also provides that a secondary test of blood may not be performed without either the consent of the accused or a search warrant.

W. Va. Code §17C-5-7 is modified to reflect the updated warnings that must be given prior to the secondary chemical test. A second verbal warning is now also required to be given at the end of the fifteen-minute period following a first refusal to submit to a secondary chemical test and before the person's refusal is considered final. The affidavit required to be completed by an officer following a driver's refusal to submit to a secondary chemical test must now be submitted to the court with jurisdiction over the charges. Thereafter, a significant portion of this section is stricken, all of which relates to the revocation of an individual's driver's license by the Commissioner of the Division of Motor Vehicles, as well as administrative appeal rights.

A new section, §17C-5-7a, creates a new hearing process ("refusal review hearing") in the courts to review a person's alleged refusal to submit to a secondary chemical test. A person has 30 days to request a refusal review hearing in the court following his or her first appearance. If the person does not request a refusal review hearing and a police officer submitted the affidavit stating that the person refused a secondary chemical test, the person's license is revoked. If a hearing is requested, the court reviews whether: 1) the arresting officer had reasonable grounds to believe a DUI-related offense was committed; 2) the law enforcement requested that the person take the designated secondary chemical test; 3) the required verbal and written warnings were administered; and 4) the arrested person refused the chemical test. If the court determines by a preponderance of the evidence that all four requirements were met, the license is revoked. Revocation periods for refusal to submit to a secondary chemical test are the same as is currently imposed under the administrative system: for a first refusal, a revocation for one year or for 45 days with one year participation in the Test and Lock Program; for a second refusal, for ten years or for five years with successful completion of the DMV Safety and Treatment Program; or for a third refusal, for life.

The bill requires the Bureau for Public Health to report and submit recommendations to the Joint Committee on Government and Finance regarding appropriate levels of drugs or controlled substances to be used as evidence in criminal proceedings. Currently, the Code only specifies the levels of substances present in the blood for the purpose of alcohol-related DUIs.

The bill amends W. Va. Code §17C-5A-1 to eliminate language related to the current administrative license revocation process. The section now requires the Commissioner of the Division of Motor Vehicles, after receiving a report from law enforcement of a DUI-related offense, to submit a full and complete driving record of the potential offender to the court with jurisdiction over the crime.

W. Va. Code §17C-5A-1a is amended to require the DMV to revoke or suspend a license consistent with a court order imposing a conviction or conditional probation for a DUI-related offense, or upon receipt of an order finding a person did refuse to submit to a secondary chemical test. This section requires the clerk of the court with jurisdiction to submit a copy of any such order to the DMV.

The bill creates a new section, §17C-5A-2b, providing that W. Va. Code §17C-5A-2 (a long section involving the administrative hearing process) will have no force or effect after June 30, 2020.

The bill creates a new section, §17C-5C-1a, to provide for the phase-out and termination of the OAH. This section provides that the OAH will not have jurisdiction over DUI-related offenses occurring after June 30, 2020. The OAH's jurisdiction over all other DMV decisions ends on July 1, 2020 and is thereafter transferred to the circuit courts. Any DUI-related appeal still pending before the OAH on July 1, 2021 will be dismissed. Upon resolution of all matters before the OAH or on July 1, 2021, whichever occurs first, the OAH is terminated.

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 136

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Prohibiting certain misleading lawsuit advertising practices.

CODE REFERENCE: §47-28-1, §47-28-2, §47-28-3, §47-28-4, and §47-28-5 (New)

SUMMARY:

This bill defines and prohibits deceptive legal advertising. The bill provides a short title of Prevention of Deceptive Lawsuit Advertising and Solicitation Practices Act; provides definitions; lists specific deceptive legal advertising practices that are prohibited; and provides criminal penalties.

According to the bill, a person engages in an unfair or deceptive act or practice if, in a legal advertisement, the person presents a legal advertisement that does any of the following:

1. Fails to contain the statement: “This is a paid advertisement for legal services;”
2. Appears as a “consumer medical alert,” “health alert,” “consumer alert,” “public service health announcement,” or uses a substantially similar phrase suggesting to a reasonable recipient that the advertisement is offering professional, medical, or government agency advice about pharmaceuticals or medical devices rather than legal services;
3. Displays the logo of a federal or state government agency in a manner that suggests affiliation with the sponsorship of that agency;
4. Uses the word “recall” when referring to a product that has not been recalled by a government agency or through an agreement between a manufacturer and government agency;
5. Fails to identify the sponsor of the legal advertisement; or
6. Fails to indicate the identity of the attorney or law firm that will represent clients, or how potential clients or cases will be referred to attorneys or law firms that will represent clients if the sponsor of the legal advertisement may not represent persons responding to the advertisement.

The bill requires the following disclosures and warnings in legal advertisements:

1. If the legal advertisement soliciting clients for legal services is in connection with a prescription drug or medical device approved by the U.S. Food and Drug Administration, the advertisement shall include the following warning: “Do not stop taking a prescribed medication without first consulting with your doctor. Discontinuing a prescribed medication without

your doctor’s advice can result in injury or death.”

2. If the legal advertisement soliciting clients for legal services is in connection with a prescription drug or medical device approved by the U.S. Food and Drug Administration, the advertisement shall disclose that the subject of the legal advertisement remains approved by the U.S. Food and Drug Administration, unless the product has been recalled or withdrawn.

Any words or statements required to appear in an advertisement must be presented clearly and conspicuously. Written disclosures must be clearly legible and, if televised or displayed electronically, must be displayed for a sufficient time to enable the viewer to easily see and fully read the disclosure or disclaimer. Spoken disclosures must be plainly audible and clearly intelligible.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 144

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Creating misdemeanor penalty for making materially false statement in course of misdemeanor investigation.

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

SUMMARY:

This bill provides that a charge of making a false statement to a law enforcement officer in the course of investigation of a misdemeanor may not be used to seek or support a secured bond or pre-trial incarceration.

The bill also creates a misdemeanor offense for knowingly making a false complaint against a law enforcement officer.

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 195

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Updating powers of personal representatives of deceased person's estate.

CODE REFERENCE: §44-1-29 (Amends and Reenacts)

SUMMARY:

This bill updates the powers of a personal representative, trustee, administrator, or executor of an estate with respect to the disposition of conservation or preservation easements. The estate's representative now has authority to sell, donate, or amend such easements pursuant to certain limitations including written consent of all heirs, court order, direct instruction in will or trust, and completion of sale pending at time of decedent's death.

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 201

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to criminal offenses of stalking and harassment.

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

SUMMARY:

This bill eliminates “stalking” as an offense and replaces it with a new offense: engaging in a course of conduct designed to place another in fear of his or her or another’s safety or causing someone else to engage in such conduct. The new offense is a misdemeanor, punishable by a fine of up to \$1,000, confinement in jail for up to six months, or both the fine and confinement.

The bill removes the requirement that an enhanced penalty for a prior conviction must be within the last five years. The bill also clarifies that a violation of a Domestic Violence Protective Order constitutes commission of a new offense, if the violation is against the person protected by the order.

The bill creates a felony offense for violation of a Personal Safety Order where the person protected by the order is the victim of the offense. The new offense is punishable by a fine of \$3,000-\$10,000, one to five years imprisonment, or both the fine and imprisonment.

The bill also creates a new felony offense of harassing a person with the intent to cause the other person to harm himself or herself or commit suicide. This new felony is subject to a determinate sentence of two to 10 years imprisonment.

Finally, the bill authorizes the Governor’s Committee on Crime, Delinquency, and Correction to promulgate emergency rules and propose legislative rules to help law enforcement implement the bill’s requirements.

DATE OF PASSAGE: March 3, 2020

EFFECTIVE DATE: June 1, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 208

COMMITTEE SUBSTITUTE

SHORT TITLE: Protecting consumers from unfair pricing practices during state of emergency.

CODE REFERENCE: §46A-6J-2 and §46A-6J-3 (Amends and Reenacts)

SUMMARY:

This bill relates to price gouging during a state of emergency. The bill removes the language “or in which a major disaster declaration or emergency declaration has been issued by the president of the United States pursuant to the provisions of 42 U.S.C. §5122” from the definition of “state of emergency” in W. Va. Code §46A-6J-2(k).

The bill also requires that the Governor review the scope of goods with price controls every 15 days after a state of emergency is declared, so long as the state of emergency persists. The Governor may issue a proclamation maintaining, limiting, terminating, or extending the price restrictions imposed.

DATE OF PASSAGE: March 3, 2020

EFFECTIVE DATE: June 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 213

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to the administration of trusts.

CODE REFERENCE: §44D-1-103, §44D-1-105, §44D-1-108, §44D-6-603, §44D-7-703, and §44D-8-808 (Amends and Reenacts); §44D-8A-801, §44D-8A-802, §44D-8A-803, §44D-8A-804, §44D-8A-805, §44D-8A-806, §44D-8A-807, §44D-8A-808, §44D-8A-809, §44D-8A-810, §44D-8A-811, §44D-8A-812, §44D-8A-813, §44D-8A-814, §44D-8A-815, §44D-8A-816, and §44D-8A-817 (New)

SUMMARY:

This bill codifies the Uniform Directed Trust Act, proposed by the Uniform Law Commission. In a directed trust, a person other than the trustee has power over some aspect of the trust's administration. This bill defines this person as a "trust director." The bill identifies the duties and liabilities of the trust director and the trustee in a directed trust.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 232

COMMITTEE SUBSTITUTE

SHORT TITLE: Removing outdated prohibitions against electronic or mechanical ticket dispensers and readers.

CODE REFERENCE: §47-21-2, §47-21-20, and §47-21-26 (Amends and Reenacts)

SUMMARY:

This bill relates to charitable raffles. The definition for the term “raffle” is amended to remove prohibitions against electronic or mechanical raffle ticket dispensers, readers, or other electronic or mechanical devices. The bill specifically authorizes mechanical or electronic ticket dispenser systems, but limits their number based upon the capacity of the facility. Lastly, this bill removes the limitation which requires licensees who don’t have their own equipment to borrow or lease it from another licensee.

DATE OF PASSAGE: March 2, 2020

EFFECTIVE DATE: May 31, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 240

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Requiring hotels and restaurants secure manhole covers of certain grease traps.

CODE REFERENCE: §16-6-22b (New); §16-6-23 (Amends and Reenacts)

SUMMARY:

This bill applies to hotels and restaurants that use outdoor grease traps that are accessible to the public. The bill requires that grease traps with manhole covers must be designed to withstand expected loads and to prevent access by children. The bill sets forth specifications for manhole covers and requires that they be closed and secured or locked at all times.

This bill requires the Secretary of the Department of Health and Human Services to propose emergency rules for promulgation and requires compliance with requirements in this bill by August 1, 2020.

Finally, this bill increases the fine for failing to comply with the Code's public health requirements for hotels and restaurants from five dollars per day to \$50 per day of failure to comply.

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 261

COMMITTEE SUBSTITUTE, AS AMENDED

SHORT TITLE: Creating criminal penalties for introducing ransomware into computer with intent to extort.

CODE REFERENCE: §61-3C-3 and §61-3C-4 (Amends and Reenacts)

SUMMARY:

The purpose of this bill is to specifically criminalize the intentional use of ransomware to obtain money or other consideration. The bill defines “ransomware,” and criminalizes introduction or attempted introduction of ransomware into a computer, computer system, or network. The new crime is a felony, punishable by imprisonment for a determinate sentence of up to 10 years, a fine of not more than \$100,000, or both incarceration and the fine.

The bill also changes the current sentences for existing computer fraud crimes to determinate sentences.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 308

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Creating criminal penalties for violation of orders issued for protection of victims of financial exploitation.

CODE REFERENCE: §55-7J-6 and §61-2-29b (Amends and Reenacts)

SUMMARY:

This bill provides criminal penalties for persons violating orders of protection entered to protect financially exploited persons. For a first offense, a person is guilty of a misdemeanor and may be confined for up to 90 days in jail, fined in an amount of up to \$1,000, or both confined and fined. For a second and subsequent offense, a person is guilty of a misdemeanor and may be confined for up to one year in jail, fined in an amount up to \$2,500, or both confined and fined.

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 311

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to court-ordered community service.

CODE REFERENCE: §62-4-16 (Amends and Reenacts)

SUMMARY:

This bill allows municipal and magistrate courts to substitute community service for fines. The bill provides that for community service ordered by a municipal court, the chief of police will supervise the community service, and that for community service ordered by a magistrate court, the county sheriff or designee of the county commission will supervise the community service. The bill clarifies that issues of liability involved in the court-mandated community service are governed by the Governmental Tort Claims Act (W. Va. Code §29-12A-1, *et seq.*).

DATE OF PASSAGE: February 5, 2020

EFFECTIVE DATE: May 5, 2020

ACTION BY GOVERNOR: Signed February 14, 2020

Senate Bill 321

INTRODUCED BILL

SHORT TITLE: Relating to collection of tax and priority of distribution of 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, sets forth the priority of distribution of an estate, and limits the liability of a fiduciary charged with the distribution of an estate.

Currently, the Code 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.

This bill amends §11-10-11 by adding language that makes all taxes due and unpaid to the state subject to 1) the priority of liens in §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. Section 11-15-18a is rewritten 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 §38-10C-1 and 2) the priority of taxes and debts due to the United States.

Section 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: February 12, 2020

EFFECTIVE DATE: May 12, 2020

ACTION BY GOVERNOR: Signed March 2, 2020

Senate Bill 323

COMMITTEE SUBSTITUTE, AS AMENDED

SHORT TITLE: Authorizing Department of Administration promulgate legislative rules.

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

SUMMARY:

This bill is known as the Department of Administration Rules bundle, which authorizes and directs the promulgation of six rules, constituting Bundle 2.

Senate Bill No. 323 Department of Administration, General Administration of Records Management and Preservation, 148 CSR 12

The amendments to the rule update and modernize records management and storage technology definitions and clarify the duties of the State Records Administrator. The rule adds a section on electronic records to encourage electronic storage of documents where appropriate.

Senate Bill No. 324 Department of Administration, Retention and Disposal Scheduling, 148 CSR 13

The amendments add definitions to reflect the current method of submitting and approving record retention schedules and obtaining authorization to destroy records.

Section 5 has been amended to provide that an approved Records Retention Authorization becomes the agency's Records Retention and Disposal Schedule effective on the date approved by the Administrator.

Section 6 has been amended to require agency record managers to ensure that each carton sent to the records center contains a description of the records in the carton and a destruction date. They also must annually review records stored at the records center and request destruction of appropriate records.

Section 7 requires an agency to request approval to destroy records from both the Records Administrator and the State Archivist. The State Archivist may identify records that should be maintained permanently and require their transfer to the State Archives.

Section 8 is new and relates to electronic records.

Senate Bill No. 325 Department of Administration, Management of Records Maintained by the Records Center, 148 CSR 14

The amendments add definitions, clarify requirements for the state records center, require adequate descriptions of all records maintained at the state records center, and provide processes for agency records managers to annually review records inventory and seek destruction of records that have reached the end of the retention period.

Senate Bill No. 326 Department of Administration, Exemptions from Management Services Provided by Fleet Management Division, 148 CSR 23

This is a new rule. House Bill 4015, enacted during the 2019 Regular Session, required the Department to implement an inventory system to track state-owned vehicles and to provide a means to review the use of those vehicles. It allowed certain agencies to request an exemption from certain management services provided by the Fleet Management Division. It lists those agencies which have been granted full or partial exemptions.

Senate Bill No. 327 Department of Administration, Financial Services Reporting, 148 CSR 24

This rule implements the provisions of W. Va. Code §5A-2B-1, *et seq.*, enacted by Senate Bill 271 during the 2018 Regular Session, which created a new Shared Services Section (SSS) within the Finance Division of the Department of Administration. This new agency section would be the central state office that provides accounting, payroll, accounts payable, accounts receivable, budgeting, and financial reporting services to state spending units. Each spending unit of the state is required to measure its own cost of providing its own accounting and financial reporting services using a cost-performance assessment tool developed by the SSS and annually report those costs to the SSS.

The rule is new and does the following:

- 1) Requires all state spending units to provide an annual report to the SSS, using the SSS's cost performance assessment tool, to provide the spending units costs of "accounting and financial reporting services;"
- 2) Requires the SSS to develop a baseline cost for the designated accounting services if performed by the SSS and determine if the SSS can provide those services at a lower cost and in a more efficient manner;
- 3) Specifies the circumstances under which agreements to provide those services may be entered into, and the circumstances under which SSS may decline to enter into agreements;
- 4) Establishes deadlines by which state spending units that have not entered into an agreement with SSS must submit certain financial information to the Financial Accounting and Reporting Section (FARS);

- 5) Requires the heads of certain spending units that have not entered into an agreement with SSS to designate a liaison to work with SSS “to ensure timely, necessary and accurate financial information is reported;”
- 6) Requires a state spending unit that fails to meet the deadlines for reporting to FARS to be placed on probation subject to a corrective action plan;
- 7) Outlines the components of the corrective action plan; and
- 8) Allows the Finance Division to provide annual training to spending units that have not entered into an agreement about what information is necessary to compile the Comprehensive Annual Financial Report (CAFR), and how and when to provide the information.

Senate Bill No. 328 Public Defender Services, Payment of Fees and Reimbursement of Expenses of Court-Appointed Attorneys, 89 CSR 1

This new rule incorporates the requirements and changes to the law enacted by Senate Bill 103 during the 2019 Regular Session, which increased hourly compensation to “panel attorneys” appointed to represent indigent criminal defendants and made Public Defender Services (PDS) responsible for processing requests (“vouchers”) for compensation. The bill transferred the initial authority to review, approve, modify, or refuse panel attorney vouchers from circuit court judges to PDS, but provides for review by the presiding court if PDS and the panel attorney cannot reach an agreement regarding a voucher.

The rule details which tasks constitute attorney’s work, which tasks constitute paralegal work, and which tasks are administrative tasks and therefore, not reimbursable.

The rule details the “actual and necessary” panel attorney expenses that may be reimbursed pursuant to the updated Code. The rule also provides guidance on the procedures for submitting vouchers for reimbursement through the PDS Online Voucher System and the information that must be provided and itemized in each voucher.

The rule incorporates the statutory requirements for the timing of voucher submission and PDS decisions on voucher approval. If PDS reduces the voucher and the panel attorney does not agree, the statute and rule permit the attorney to contest the decision to the presiding court.

The rule provides that persons accepting child abuse and neglect appointments will receive priority in compensation and permits those panel attorneys to submit requests for payment after each dispositional hearing.

DATE OF PASSAGE: January 30, 2020

EFFECTIVE DATE: January 30, 2020

ACTION BY GOVERNOR: Signed February 10, 2020

Senate Bill 339

COMMITTEE SUBSTITUTE, AS AMENDED

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

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

SUMMARY:

This bill is known as the Department of Health and Human Resources Rules bundle, which authorizes and directs the promulgation of 16 rules, constituting Bundle 5.

Senate Bill No. 339 Department of Health and Human Resources, Public Water Systems, 64 CSR 03

The rule amends a current legislative rule. House Bill 2612, passed by the Legislature in the 2019 Regular Session, authorized the Secretary to propose legislative rules that include a staggered schedule by hydrologic regions for the submission of source water protection plans by public water utilities.

The rule establishes a staggered schedule for public water systems to submit the source water protection plans by the defined hydrologic regions. The amendment removes the requirement that all source water protection plans be submitted by July 1, 2016 and adds specific due dates for each hydrologic region as to stagger the submission schedule. The new timeframes range from March 1, 2020 to July 1, 2022 and every three years thereafter.

Senate Bill No. 340 Department of Health and Human Resources, Fees for Permits, 64 CSR 30

The rule establishes the fees for permits issued by county, municipal, or combined boards of health. The rule is required by House Bill 2945, passed by the Legislature in the 2019 Regular Session, which required the Secretary to review and modernize this rule. Most importantly, the bill provided local health departments the ability to increase fees without approval from the Bureau of Public Health. After a local board of health approves a fee schedule, it must be published, followed by a 30-day public comment period. The adopted schedule of fees must still be submitted to the Commissioner of the Bureau of Public Health within 60 days after approval by the local board of health. After submission to the Commissioner, the local board of health must file the adopted fee schedule with the clerk of all county commissions or municipalities relating to the board. After filings have been made, the board may charge fees. Local boards of health charging the 2006

maximum allowable permit fees will be able to increase to the maximum permit fees with approval from the Commissioner. Local boards of health cannot charge above the maximum allowable permit fee.

The rule provides for the following fees.

5.1 Bed and Breakfast Permit: \$50 changed to \$60.

5.3 Care Facility Permit: \$50 changed to \$60.

5.8 Labor Camp Permit added: \$125 per permit with a fixed expiration date of June 30.

5.9 Mass Gathering Permit: \$50 changed to \$60 per event.

5.10 Mobile Food “Unit:” “Unit” changed to “Establishment” and permit fee changed from \$100 to \$125.

5.11 “Mobile Home Park” changed to “Manufactured Home Community.”

5.12 Organized Camp Permit: \$75 changed to \$90

5.13 Recreational Water Facility Permit: \$100 changed to \$125.

5.14 Retail Food Store Permit: \$50 changed to \$60

5.15 Schools: \$50 changed to \$60

5.16 Temporary Food Service Establishment Permit: \$50 changed to \$60.

5.17.1 In-State Vendor Temporary Food Service Establishment Permit: \$60 per unit, valid for one year after permit was issued.

5.18 Vending Machine Permit: \$50 changed to \$60 per machine.

5.19 Water Well Permit: \$100 changed to \$125 per well.

Table 64-30A: Campground permit fees of \$5 per site minimum of \$50 are updated to \$6 per site and \$60 minimum fee.

Table 64-30B: Child Care Centers Permit Fees: Family Day Care Facilities (7-12 children), increased from \$50 to \$60; Day Care Centers (13-25 children), increased from \$100 to \$125; Day Care Centers (26 and more children) increased from \$150 to \$185.

Table 64-30C: Food Establishment Permit Fees updated:
Increase from \$100 to \$125 for 0-20 seating capacity,
Increase from \$200 to \$250 for 21-50 seating capacity,
Increase from \$300 to \$375 for 51-80 seating capacity, and

Increase from \$400 to \$500 for 800+ seating capacity. If the facility has a liquor license, a \$125 fee will be added.

Table 64-30D: Hotel/Motel Permit Fees updated:
Increase from \$100 to \$125 for 0-20 rooms;
Increase from \$200 to \$250 for 21-50 rooms;
Increase from \$300 to \$375 for 51-80 rooms; and
Increase from \$400 to \$500 for 81+ rooms.

Table 64-30E: Individual and Innovative Alternative Type Sewage System Permit Fees are updated from \$150 to \$185 for Conventional Single-Family Dwelling, and from \$300 to \$375 for all other types of systems.

Table 64-30F: “Mobile Home Park” is changed to “Manufactured Home Community, and fees are updated from \$5 to \$6 per site, \$100 minimum fee.

Table 64-30G: Subdivision Permit Fees are updated from \$10 to \$12 per lot.

Senate Bill No. 341 Department of Health and Human Resources, Vital Statistics, 64 CSR 32

The rule amends a current legislative rule. This rule governs the installation, maintenance, and operation of the single system of vital statistics operated throughout the state pursuant to W. Va. Code §16-5-1 *et seq.* The rule provides for a missing allowance for hardship cases, provides guidance for the creation of birth certificates for safe-haven babies, and sets forth specifications for paper used to create certified documents.

The rule provides that in the creation of birth certificates for safe-haven babies, the birth to be registered shall be filed at the direction of the State Registrar; requires a hospital or institution to assist in the preparation of a death certificate; provides for the disposition of bodies in deaths that have been referred to the West Virginia Office of Chief Medical Examiner (OCME), that have been determined to be outside of the purview of the OCME, when the attending physician or other medical certifier is unavailable to allow for removal or final disposition of the body within a time period to prevent undue hardship to the family; and adds a security provision that specifies that the security paper used to create certified documents must be obtained from a company in the United States or Canada and that the paper must be printed in the United States or Canada.

Senate Bill No. 342 Department of Health and Human Resources, Emergency Medical Services, 64 CSR 48

The rule amends a current legislative rule. The purpose of this rule is to ensure the adequate provision of emergency medical services to the residents of West Virginia, to meet the purposes set forth in W. Va. Code §16-4C-1 *et seq.*, and to provide clear direction to emergency medical services (EMS) personnel and agencies in West Virginia. The rule makes changes to certification classifications and methods for obtaining certification and makes technical changes.

The Commissioner of the Bureau of Public Health has oversight of the Office of Emergency Medical Services (OEMS). The Emergency Medical Services Advisory Council is created to assist the Commissioner regarding the maintenance of adequate emergency medical services for all portions of the state. Based on Task Force recommendations and approval by the Commissioner for the Bureau for Public Health in 2018, the Advanced Care Technician (ACT) certification will become the Advanced Emergency Medical Technician (AEMT) certification. This rule is amended to reflect that change throughout.

Also, prior to 2019, EMS personnel could obtain certification by completing an approved course and testing with the National Registry or the West Virginia State Pathway. The State Pathway is now retired and the only method to obtain state certification is by taking the NREMT test and maintaining a continuous NREMT certification. The rule is amended to reflect this new method of certification and the requirements for obtaining the certification. Additionally, the rule relies upon fingerprint identification for background checks and eliminates other methods of positive identification.

Senate Bill No. 343 Department of Health and Human Resources, Primary Care Support Program, 64 CSR 70

The rule amends a current legislative rule. The purpose of the rule is to set forth the process for the administration of the primary care support program and to detail the administration of uncompensated care funds. This amendment is required as a result of the passage of Senate Bill 641, which amended W.Va. Code §16-2H-2 during the 2019 Regular Session.

The purpose of Senate Bill 641 is to convert the existing revolving loan fund to a grant program for federally qualified health centers (FQHC) and federally qualified look-alikes in order to secure federal medical assistance percentage (FMAP) funding. Senate Bill 641 provides that FQHC look-alikes already receiving funding at the time this program is created shall continue to receive funding annually. Upon approval of the Secretary of DHHR, FQHCs in need of immediate financial assistance may be granted funding annually. All funds designated to federally designated qualified health centers may be transferred to Medicaid for the purpose of securing federal funding. The statute also provides that the Secretary may use “certain portions of funds within this account for activities in support of rural and primary care.”

The rule states that upon enactment and approval of the annual state budget, the Secretary shall designate a portion of the fund for transfer to the Bureau of Medical Services (BMS) medical services fund for use in the state Medicaid program in an amount the Secretary determines would be best dedicated to provide additional funding to FQHC's. The portion of the annual appropriation remaining in the primary care support fund after the transfer to BMS shall be disbursed by the Director in accordance with the rule.

The rule provides that a look-alike, rural health clinic, or other primary care center is eligible for funding if certain specified criteria are met.

The rule sets forth eligible activities: activities relating to rural and primary care, activities to offset the costs of uncompensated care provided by primary care centers, technical support to and educational collaboration with the primary care centers, required cost sharing and matching of key federal grants, and personnel and related administrative costs.

The rule provides that the grant application process only applies to the review of uncompensated care requests.

Senate Bill No. 344 Department of Health and Human Resources, Primary Care Seed Money Grants, 64 CSR 71

This is a repeal of an existing rule that established standards and procedures for the awarding of seed money grants from legislative appropriations for technical assistance to help nonprofit, community-based organizations create new primary care services. The rule is being repealed as a result of the passage of Senate Bill 641 during the 2019 Regular Session, which drastically amended the authorizing statute. Additionally, amendments to a companion rule, 64 CSR 70, have been filed to cover Primary Care Center Uncompensated Care Grants.

Senate Bill No. 345 Department of Health and Human Resources, Medical Cannabis Program – General Provisions, 64 CSR 109

This rule is new. It establishes the general provisions of the medical cannabis program. It defines terms, sets forth those records which are public and those which are confidential, details the six applications to be submitted to the Bureau of Public Health, and sets forth the statutory fees. Applicable permit fees must be submitted with the application.

The medical cannabis program fees are as follows;

An applicant for an initial grower/processor permit or renewal permit must pay the following fees by certified check, electronic fund transfer, or money order to the bureau:

- Initial permit application fee of \$5,000, that must be submitted with the initial permit application. It is nonrefundable, except as provided in section 7 (initial permit application).
- Initial permit fee of \$50,000, that must be submitted with the initial permit application and will be refunded if the initial permit is not granted.
- Permit renewal fee of \$5,000, that must be submitted with a renewal application and will be refunded if the renewal permit is not granted.

An applicant for an initial dispensary permit or renewal permit must pay the following fees by certified check or money order to the bureau:

- Initial permit application fee of \$2,500 must be submitted with the initial permit application. It is nonrefundable, except as otherwise provided in these rules.
- Initial permit fee of \$10,000 for each dispensary location must be submitted with the initial permit application and will be refunded if the initial permit is not granted.
- Permit renewal fee of \$2,500 must be submitted with a renewal application and will be refunded if the renewal permit is not granted.

A medical cannabis organization must pay a fee of \$250 by certified check, electronic fund transfer, or money order to the bureau with the submission of the following:

- An application for approval of a change in ownership of a medical cannabis organization.
- An application for approval of a change of location of a facility authorized by a permit.
- An application for approval of alteration of a facility authorized by a permit.

The rule sets forth the requirements for the initial permit application, background checks, and permit renewal. It sets forth the reasons for which the bureau may refuse to renew a permit and the actions which the permit holder must take if the permit expires. It also lists those changes in information which require the applicant or permit holder to notify the bureau. In the event of an impending change in ownership of a medical cannabis organization from the ownership listed in the initial permit application or a permit renewal application, the medical cannabis organization must apply for approval of a change in ownership. A medical cannabis organization desiring to change the location of a site or facility authorized under a permit issued to the medical cannabis organization must apply for approval of a change in location. Finally, a medical cannabis organization must apply for approval of alteration of a facility,

A medical cannabis organization must be operational within 60 days of the issuance of a permit. A medical cannabis organization must notify the bureau in writing immediately, but in no event less than 60 days prior to the projected date of closure. The notice must be accompanied by the medical cannabis organization's written plan for closing the facility. The rule also contains insurance requirements.

The rule allows the bureau to conduct announced or unannounced inspections or investigations to determine the medical cannabis organization's compliance with its permit, the Act, or the rule. It sets forth the reports which a medical cannabis organization must submit to the bureau. The rule sets forth the circumstance under which the bureau may suspend or revoke a permit.

Under the rule, certain persons are required to complete a two-hour training course containing specified information.

The rule requires a grower/processor to meet the same municipal zoning and land use requirements as other manufacturing, processing, and production facilities that are

located in the same zoning district and a dispensary to meet the same municipal zoning and land use requirements as other commercial facilities that are located in the same zoning district.

Finally, the rule covers advertising, technical advisories, and capital requirements.

Senate Bill No. 346 Department of Health and Human Resources, Medical Cannabis Program Grower/Processors, 64 CSR 110

The rule establishes the regulations for the certification and operation of medical cannabis growers and processors. It defines terms, requires a permit to operate, requires the grower/operator to submit plans of operation, and states that a grower/processor may only grow, store, harvest, or process medical cannabis in an indoor, enclosed, secure facility.

The rule allows growers and processors to obtain seeds or immature medical cannabis plants from outside of this state within 30 days from the date that the bureau determines that the grower/processor is operational. After the first 30 days they must be purchased from another grower/processor in this state.

The rule contains provisions on visitor access to the facilities, security and surveillance, requirements for growing and processing medical cannabis, forms of medical cannabis, limits on medical cannabis processing, and label requirements.

Within the first six months after the bureau determines the grower/processor to be operational, the grower/processor must provide the bureau with a forecast of the amount of medical cannabis it projects it will produce and in what form. The grower/processor must notify the bureau in writing immediately upon becoming aware of a potential increase or decrease in the forecasted amount occurring within any subsequent six-month period.

The rule sets forth inventory data requirements for the electronic tracking system, sets standards for the operation and maintenance of equipment, sets forth storage requirements, sets forth sanitation and safety requirements, sets forth packaging and labeling requirements, and sets forth transportation requirements.

Under the rule, a grower/processor must immediately notify the bureau of any adverse loss during transport and immediately investigate the loss. A grower/processor must use an electronic tracking system. It requires specified types of medical cannabis waste be rendered unusable and unrecognizable prior to being transported from a grower/processor or an approved laboratory. Unusable and unrecognizable medical cannabis waste must be disposed of at a permitted municipal waste landfill or processed at a permitted resource recovery facility or incinerator. Wastewater may be discharged into a permitted sewage treatment system or treated and discharged into waters of the state under a National Pollutant Discharge Elimination System permit or water quality management permit or landfill if the waste is less than one gallon. Composting is permitted if W. Va. Code §33-3-1 is followed.

Lastly, the rule contains provisions regarding complaints about, or recall of, medical cannabis, use of pesticides, and treatment and quarantine orders.

The House Committee on the Judiciary amended the definition of medical cannabis and included dry leaf and plant as acceptable forms of use for medical marijuana. When the bundle came back over, the Senate made a slight modification to the definition of medical cannabis to include a reference to the state's Medical Cannabis Act, in addition to the definition within the Medical Cannabis rules. To ensure uniformity, the amended definition of medical cannabis in Series 110 was also used in Series 109, 111, 112, and 113.

Senate Bill No. 347 Department of Health and Human Resources, Medical Cannabis Program Laboratories, 64 CSR 111

The rule establishes the regulations for the certification and operation of laboratories that provide testing services to medical cannabis organizations. It sets forth the requirements for the laboratory director and states that approvals are good for two years and are nontransferable.

The rule sets forth the information which must be contained in an application for approval, including a valid certificate of accreditation, copies of standard operating procedures, a description of accredited tests capable of being conducted, and a procedure to establish chain of custody. The bureau is to determine if the lab is financially and professionally suited to conduct the testing. The rule also sets forth the circumstances under which the bureau may suspend or revoke an approval.

Several sections of the rule relate to sampling. They require stability testing and retention of samples, set forth sampling procedures for testing, provide a selection protocol for samples, provide testing requirements, and contain provisions regarding test results and reporting.

Under the rule, an approved laboratory must establish and implement a quality assurance program to ensure that measurements are accurate, errors are controlled, and devices used for testing are routinely and properly calibrated. It requires that an employee of an approved laboratory, grower/processor, or third-party contractor must follow transportation requirements when transporting a sample or test sample under this rule.

The rule states that the bureau may identify and collect a test sample from a grower/processor at any time and request an approved laboratory to conduct tests. It requires an approved laboratory to enter specified information into the electronic tracking system for each sample collected and each test conducted. An approved laboratory must keep a paper or electronic copy of the certificate of analysis performed on samples submitted by a grower/processor or test samples submitted by the bureau for four years. The laboratory must provide a copy of a certificate of analysis within two days of a request made by the bureau.

The rule prohibits an approved laboratory from advertising, marketing, or otherwise promoting its medical cannabis testing services to the general public. An approved laboratory may advertise, market, or otherwise promote its medical cannabis testing services to a grower/processor.

Finally, the rule specifies persons who may not have a management or a direct or indirect financial or other ownership interest in an approved laboratory.

Senate Bill No. 348 Department of Health and Human Resources, Medical Cannabis Program Dispensaries, 64 CSR 112

The rule establishes the regulations for the certification and operation of medical cannabis dispensaries. It defines terms and requires a dispensary to have a permit to operate.

A dispensary may only dispense medical cannabis to a patient or caregiver who presents a valid identification card, verified by a dispensary employee. The employee must enter a receipt containing specified information in the electronic tracking system and offer it to the patient or caregiver. After the receipt is given and information entered into electronic tracking system, the patient information must be removed from dispensary's computer system. Dispensing is limited to the practitioner's recommendation and no more than a 30-day supply may be dispensed to a patient at one time. A patient's supply may not be refilled until only a seven-day supply is left.

The rule sets forth requirements for dispensary facilities, allows a dispensary to offer items and services related to the use of medical cannabis with the written permission of the bureau, and prohibits advertising, marketing, and delivery.

The rule contains specific requirements for labels and safety inserts, plans of operation that must be submitted with the application, visitor access to dispensary facilities, security and surveillance, use of the electronic tracking system to maintain inventory data, storage, and facility sanitation and safety.

The sections of the rule relating to the transportation of the cannabis, the transport manifest, adverse loss during transport, and complaints about, or recall of, medical cannabis mirror those in the rule on growers/processors.

Finally, dispensaries are required to use the electronic tracking system prescribed by the bureau and the bureau may permit an additional location for the dispensary.

Senate Bill No. 349 Department of Health and Human Resources, Medical Cannabis Program –Safe Harbor Letter, 64 CSR 113

The rule establishes the requirements for obtaining a safe harbor letter for a terminally ill cancer patient to use medical cannabis purchased in another state that has entered into a reciprocity agreement with the bureau. It sets forth application

requirements which include a photo ID to prove identification and residence and a written statement from the patient's physician.

A Safe Harbor Letter is valid until August 1, 2020, except under specified circumstances. The rule sets forth circumstances for when a new application would need to be submitted, provides for revocation of the safe harbor letter, and provides for information to be exempted from the state Freedom of Information Act.

In Pennsylvania, this was meant as a transition piece to implement legislation allowing sick kids to go out of state to obtain medical marijuana. Practically, marijuana is still a Schedule I controlled substance under federal law. It is also a federal offense to transport marijuana across state lines. Many states will not accept this letter to dispense medical marijuana.

Moreover, the forms of marijuana that have been legalized in West Virginia may not be the same as those that have been legalized in other states. West Virginia law authorizes the use of medical marijuana in the form of pills, oil, tincture, liquid, topical treatment, or a form medically appropriate for vaporization. It specifically excludes dry leaf or plant form. Because medical marijuana obtained outside of West Virginia must be legal under West Virginia's Medical Cannabis Act, possession of the dry leaf or plant form would not be protected.

Therefore, even if approved, there will not be ready access to medical marijuana contemplated by this provision until the industry is established in West Virginia.

Senate Bill No. 350 Department of Health and Human Resources, Collection and Exchange of Data Related to Overdoses, 69 CSR 14

The rule establishes the requirements to facilitate the exchange of overdose data and information among the Office of Drug Control Policy, Department of Health and Human Resources and its bureaus, the Department of Military Affairs and Public Safety, the Department of Administration, the administrator of the court, the Poison Control Center, the Board of Pharmacy, law enforcement, local health departments, and emergency medical services in each county.

The rule reduces the number of entities required to report overdose information and the number of data elements each mandatory report must contain. Information must be reported within 72 hours of the event, instead of quarterly. An information technology reporting platform is required, which eliminates email reporting. This information, once aggregated, is available to multiple entities.

Senate Bill No. 351 Department of Health and Human Resources, Minimum Licensing Requirement for Residential Child Care, 78 CSR 03

The rule establishes standards and procedures for the licensure of residential childcare and treatment facilities under the provisions of W. Va. Code §49-2-101. This rule is updated to implement the Family First Prevention Services Act. It applies to

congregate living facilities that serve children and transitioning adults. These now include, but are not limited to, residential crisis support or emergency shelter care for vulnerable children; high quality group residential childcare settings for vulnerable children; and quality residential treatment programs.

The rule requires an organization to submit a request for a criminal history background check and a protective services records check to the WV Clearance for Access: Registry & Employment Screening (WV CARES) unit of the Department. The organization must also obtain a WV CARES self-disclosure application and consent form signed by the potential employee or contractor indicating any past criminal convictions or pending charges.

The rule allows a facility, following written approval by the Secretary, to use delayed-egress electrically locking systems. The facility must submit a written request that includes: the areas where the locking systems will be used; documentation from the State Fire Marshal that the locking systems comply with state building codes; and the reason the locking system is necessary to serve the children in the facility. The Secretary shall determine if the needs of the children require this level of restriction and he or she shall revoke approval at his or her discretion.

Under the rule, the supervision of each child is determined by normalcy and a reasonable and prudent parent standard and must be documented in the child's detailed treatment plan. The shelter is required to provide sex trafficking prevention programming. It must provide a nationally recognized behavioral health program for known victims of sex trafficking.

Section 78-3-19, relating to High-quality Group Residential Child Care Programs for Vulnerable Children is new. It requires:

- All employees to be trained on prudent parenting standards;
- One employee who is authorized to apply the reasonable and prudent parent standards to decisions involving participation of the child in appropriate activities to be present on-site at all times;
- The shelter to provide a nationally recognized behavioral health program for known victims of sex trafficking, including opportunities for normalizing experience;
- An employee to child ratio of one to six during waking hours and a minimum of two employees present at all times when more than one child is present in the living unit;
- Additional backup care employees to be available for emergency situations; and
- An employee to child ratio of one to twelve during sleeping hours and a minimum of one employee per residential unit to be awake at all times when children are present in the unit.

Sex trafficking prevention must be provided by the organization and must include:

- Education about sex trafficking;
- Education about a person’s vulnerabilities to sex trafficking and how to protect oneself;
- Education about enhancement of support systems;
- Education about services for housing and homelessness prevention; and
- Education to prevent running away.

Section 78-3-20, relating to Qualified Residential Treatment Program, is new. It requires a qualified residential treatment facility to be appropriately accredited as required by federal standards.

The minimum employee to child ratio for the treatment program shall be one to four during waking hours and one to eight during sleeping hours. During all hours, there must be capability to increase employee ratio in response to acuity.

The organization must have registered or licensed nursing staff and other licensed clinical staff who are onsite according to their treatment model, and available 24 hours a day, seven days a week.

The organization shall ensure that the staff participate as a member of the family and permanency team and in multidisciplinary treatment team processes. They must also participate with the family and permanency team in the development of a 30-day assessment. Clinical staff must conduct any assessments indicated by the child’s medical needs, psychiatric needs, or both, during development of the plans of care, including the ability to self-medicate with supervision.

The following treatment services shall be provided by the organization, in addition to those described in this rule:

- Individualized medically necessary services for the population served;
- Family engagement activities with the child’s family during the treatment process; and
- At least six months of family-based after-care services after a child’s discharge.

The family and permanency team are to begin planning for discharge during the development of the long and short-term goals.

At least 30 days prior to discharge, the family and permanency team shall meet to develop the plan for after-care services.

The rule contains program-specific rules for maternity and parenting facilities. New language has been added requiring that children be cared for and supervised at the following levels:

- A minimum employee ratio of one to six shall be maintained during waking hours when children are on the grounds with a minimum of two employees present per

residential living unit at all times when more than one child is present in the living unit;

- Additional or back-up care employees shall be available for emergency situations or to meet special needs presented by the persons in care; and
- A minimum employee to child ratio of one to twelve is required during sleeping hours and a minimum of one employee per residential unit must be awake at all times when children are present in the unit.

Senate Bill No. 352 Department of Health and Human Resources, Qualifications for a Provisional License to Practice License to Practice as a Social Worker, 78 CSR 24

The amendments clarify who may participate in the Department of Health and Human Resources social work license training program by including individuals with a bachelor's degree not related to social work. They also allow individuals who are actively in the process of completing a degree in social work to apply completed social work courses toward the requirements of the Training Plan.

Senate Bill No. 353 Department of Health and Human Resources, Pilot Program for Drug Screening of Applicants for Cash Assistance, 78 CSR 26

The authorizing statute for this rule was enacted in 2016. The Department had to get approval from the federal Administration for Children and Families. The rule was delayed one year and became operational in October of 2018. The pilot project was authorized for three years, so there is a need to extend the sunset date in the rule to 2021.

Senate Bill No. 354 Health Care Authority, Critical Access Hospitals, 65 CSR 09

This new rule, required by Senate Bill 593 which passed during the 2019 Regular Session, establishes specific standards and procedures to provide for the designation of a critical access hospital as a community outpatient medical center.

It defines terms and sets forth eligibility requirements for a critical access hospital to apply for a designation change to become a community outpatient medical center. This includes licensure requirements, hours of operation, treatment options, required attempts to secure all written agreements with hospitals for patient referral, and operational policies from physicians.

This rule also requires the community outpatient medical center to comply with Hospital Licensure Rule 64 CSR 12. The center's organization, scope of services, and availability of treatment services will be designed and approved by the governing body.

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: March 5, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 357

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing Department of Revenue promulgate legislative rules.

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

SUMMARY:

This bill is known as the Department of Revenue Rules bundle, which authorizes and directs the promulgation of seven rules, constituting Bundle 7.

Senate Bill No. 357 Insurance Commissioner, Medicare Supplement Insurance, 114 CSR 24

This is an amendment to an existing rule. The purpose of the rule is to provide standardized coverage and benefits of Medicare Supplement policies. The changes to the rule are necessitated by two factors: the enactment of the Medicare Access and CHIP Reauthorization Act of 2015; and changes made to the National Association of Insurance Commissioners (NAIC) model language.

Changes made in the federal law effect deductibles applicable to Plan B for any newly eligible person. This would be effective January 1, 2020. The current deductible is \$100, and federal law increased this to \$185. Additionally, there was the elimination of first dollar coverage – which means covering the Medicare Plan B deductible - for Medicare supplement policies. This resulted in the discontinued sale of Plans C and F. Persons who currently have a Plan C or F policy will remain eligible. Persons who become eligible after January 1, 2020 will not be permitted to purchase these plans. These changes are implemented in the proposed rule to ensure the state’s regulatory authority over all Medicare Supplement insurance products sold in West Virginia.

This bill also adds language to indicate that specified standard benefit plans issued following January 1, 2020 may be offered to persons eligible prior to that date. This relates primarily to Plan G, which is a high deductible plan. It prohibits states that had alternative simplification programs in place that had been approved by the federal government from covering the Part B deductible for any supplement policy sold or issued after January 1, 2020.

New language has been added that prohibits a rate structure for policies based upon groupings of attained ages greater than one year. These are known as “age bands,” which are defined as the range of ages that determines the premium amount for each policyholder or individual. Rates are required to increase “smoothly” from year to year.

There is a grandfathering provision that allows those plans which currently provide for multiple-year age banding at the time the rule becomes effective to transition to one-year age bands over a five-year period. There is also a provision that provides that an insurer may apply a maximum rate based upon reaching a certain age.

Senate Bill No. 358 Insurance Commissioner, Credit for Reinsurance, 114 CSR 40

This is an amendment to an existing rule. The purpose for the changes is twofold. First, during the 2018 Regular Session, House Bill 4230 passed, which amended W. Va. Code §33-4-15a effective January 1, 2019. Secondly, on July 21, 2010 Congress passed the Non-admitted and Reinsurance Reform Act which had an impact on the National Association of Insurance Commissioner (NAIC) accreditation standards. This Act was intended to update and modernize reinsurance regulations throughout the country.

The proposed changes to the language in the rule come from model language of the NAIC and are necessary for NAIC accreditation. This situates West Virginia similarly with other states and allows the financial exams from West Virginia to be accepted by other states.

The purpose of the rule is to regulate reinsurance. This is a complicated concept described by the NAIC as insurance of insurance companies. It is an indemnity between a reinsurer and an insurer. It operates as a transfer of risk from an insurer to the reinsurance company, which contractually assumes all or part of the risk of one or more insurance policies issued by the insurance company. This is an essential part of the insurance industry to manage risks.

A great many of the changes to this rule pertain to updating code referencing based upon changes made in House Bill 4230 in 2018. Additionally, terms are updated to reflect current practice and changes made by the NAIC.

Senate Bill No. 359 Insurance Commissioner, Pharmacy Auditing Entities and Pharmacy Benefit Managers, 114 CSR 99

The purpose of this rule is to implement the Pharmacy Audit Integrity Act and to provide licensing, reporting, and activity standards for pharmacy benefit managers which provide claims processing services or other prescription drug or device services, or both, for health benefit plans. This rule was filed pursuant to Senate Bill 489, which was adopted during the 2019 Regular Session.

This rule provides for the registration of auditing entities, the licensure and renewal licensure of pharmacy benefit managers, and the denial of applications; sets forth prohibited acts; requires a pharmacy benefit manager to maintain an adequate network for the provision of prescription drugs for a health benefit plan; provides for the Commissioner to examine the affairs of a pharmacy benefit manager for compliance; and authorizes the Commissioner to suspend or revoke a license and order the pharmacy benefit manager to pay a penalty fee for violation of the statute or rule.

Senate Bill No. 360 Racing Commission, Thoroughbred Racing, 178 CSR 01

This rule regulates all aspects of Thoroughbred Racing in West Virginia. The rule amends the existing rule to incorporate recent changes made to schedules, guidelines, and the Model Rule adopted by the Association of Racing Commissioners International (RCI). These amendments do the following:

1. Adopt the RCI Model Rule provisions to add an opportunity for a person who claims a horse before a Claiming Race begins, to void the claim in two additional circumstances: 1) the claimed horse is vanned off the track at the direction of a Racing Commission veterinarian, or 2) the claimed horse is observed by a Racing Commission veterinarian to be lame or unsound while on the racetrack for that race.
2. Adopt the RCI Model Rule provisions governing Veterinary Practices, including new language outlining limitations that apply to drug treatment of horses.
3. Adopt the RCI Model Rule provisions governing prohibited practices, including new language banning possession of a drug, substance, or medication on the premises of a facility under the Racing Commission's jurisdiction for which no generally accepted use in equine care exists.
4. Adopt the RCI Model Rule provisions by adding new language further governing prohibited substances and governing prohibited methods of treatment of horses
5. Adopt the RCI Model Rule provisions by adding new language further governing the testing of medication and substances detected in horses, specifically, furosemide (lasix®).
6. Adopt the RCI Model Rule provisions by rewriting most of existing language governing the testing of medication and substances detected in horses who are not competing in horse racing in West Virginia but who have been engaging in activities related to competing in horse racing in West Virginia (Out of Competition Training).
7. Adopt the RCI Model Rule provisions by adding a new condition for a horse to be removed from the veterinarians' list: submission to a post-work biologic sample collection for laboratory confirmation for compliance with the provisions of the rule governing medications and prohibited substances.
8. Adopt the RCI update of the Uniform Classification Guidelines for Foreign Substances (See Table 178-1D; see also pp. 27, 86-87, 90-91).
9. Adopt the RCI update of the recommended penalties due to the presence of drugs carrying Category "A," "B," and "C" penalties. (See Table 178-1E).

10. Adopt the RCI update of the Endogenous, Dietary, or Environmental Substances Schedule (See Table 178-1G; see also pp. 27, 99).

Senate Bill No. 361 State Tax Division, Payment of Taxes by Electronic Funds Transfer, 110 CSR 10F

The rule implements the provisions of W. Va. Code §11-10-5t (electronic payment of taxes), which was amended by Senate Bill 656, which passed in the 2019 Regular Session. Section 11-10-5t was amended to increase the threshold at which state taxpayers may be required by the Tax Commissioner to pay their taxes by electronic funds transfer from \$25,000 to \$50,000. The amendments to the rule would update its provisions to conform it to the amendments to the statute.

Senate Bill No. 362 State Tax Division, Consumer Sales and Service Tax and Use Tax – Drugs, Durable Medical Goods, Mobility Enhancing Equipment and Prosthetic Devices Per Se Exemption; Motor Vehicles Per Se Exemption, 110 CSR 15C

This is an amendment to an existing rule. It incorporates the changes made to W. Va. Code §11-15-9i during the 2019 Regular Session with the passage of House Bill 2515.

The provisions of this bill provide for an exemption from sales and use tax for the sale and installation of mobility enhancing equipment in a new or used motor vehicle for the use of a person with physical disabilities. The exemption extends to the sale and installation of repair or replacement parts.

Senate Bill No. 363 State Tax Division, Exchange of Information Pursuant to Written Agreement, 110 CSR 50C

This is an amendment to an existing rule. The changes were made necessary by the passage of Senate Bill 1 during the 2019 Regular Session. Senate Bill 1 provided a number of provisions relative to free community and technical colleges. Among those, was a provision for the West Virginia Invests Grant program. The West Virginia Invests Grant program involves certain residency requirements for recipients of educational funding. It is the responsibility of the West Virginia Council for Community and Technical College Education to verify that applicants meet these requirements. This information must be obtained from the State Tax Department, and the rule authorizes the department to share such information with the council pursuant to a written agreement. The agreement contemplated by this rule is required to be published in the State Register.

DATE OF PASSAGE: February 5, 2020

EFFECTIVE DATE: February 5, 2020

ACTION BY GOVERNOR: Signed February 14, 2020

Senate Bill 364

COMMITTEE SUBSTITUTE, AS AMENDED

SHORT TITLE: Authorizing Department of Transportation promulgate legislative rules.

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

SUMMARY:

This bill is known as the Department of Transportation Rules bundle, which authorizes and directs the promulgation of five rules, constituting Bundle 8.

Senate Bill No. 364 Department of Highways, Use of State Road Rights of Way and Adjacent Areas, 157 CSR 6

This rule modifies an existing rule by requiring the Department to promulgate an interpretive rule in accordance with W. Va. Code §29A-3-1 *et seq.* setting forth the requirements for accommodating utilities on highway right-of-way and the adjustment and relocation of utility facilities on highway projects. The interpretive rule would replace a 2007 manual currently being used. The interpretive rule may not impose any type of fee. The Department must promulgate any fees levied on a utility or telecommunications provider by legislative rule in accordance with W. Va. Code §29A-3-1 *et seq.*

Senate Bill No. 365 Department of Highways, Transportation of Hazardous Waste Upon the Roads and Highways, 157 CSR 7

This rule modifies an existing rule which sets forth general rules pertaining to the hauling of hazardous waste. The rule makes changes to be compliant with two necessary objectives: 1) to make uniform a system of allocating enforcement of these rules to the Public Service Commission and 2) to remain in compliance with federal rules contained in Chapters 40 and 49 of the Code of Federal Regulations.

An additional requirement of compliance with Public Service Commission rules is added, and commission officers are given authority to enforce the provisions of the rule relating to transportation, in conformity with current practice.

Senate Bill No. 366 Department of Highways, Small Wireless Facilities on Division of Highways Rights of Way, 157 CSR 13

This is a new rule which sets forth a plan whereby persons may obtain access to place small wireless facilities in highway rights-of-way. This was required by the Small Wireless Facilities Deployment Act, enacted March 5, 2019. It provides for a permit

process and specifies the information that must be provided in connection with a permit application.

All permits for small wireless facilities are valid for a period of 10 years and may be renewed for additional 10-year periods if the provider and the utility pole continue to meet all applicable federal and state laws, codes, regulations, rules, policies, guidelines and standards. If the provider fails to comply with the terms and conditions of its permit, the Division may revoke the permit until such time as the deficiencies are corrected. An application fee of \$250 shall accompany each application for a MM-109 permit for the installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility on a Division right-of-way. An application fee of \$1,000 shall accompany each application for the installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility that is not a permitted use in accordance with the specifications of the Small Wireless Facilities Act. The fee shall be reviewed and may be adjusted 10% every five years, rounded to the nearest \$5.00. The Division shall assess an annual recurring fee of \$65 per year per utility pole for access to a Division owned utility pole. The Division may revoke a permit at any time if the conditions of the permit are no longer being met.

The rule also requires a wireless provider who owns or operates small wireless facilities or utility poles in a Division right-of-way to hold the Division harmless against any and all claims. The Division may require the wireless provider to carry, at the wireless provider's own cost and expense, various types of insurance, including coverage for bodily injury and property damage. The wireless provider may also self-insure all or a portion of the insurance coverage.

In addition, the House amended the rule to clarify that the Division of Highways must act on any application for broadband development within the requisite number of calendar days as opposed to business days, which was previously stated in the rule as it left the Senate.

Senate Bill No. 367 Division of Motor Vehicles, Safety and Treatment Programs, 91 CSR 15

This is a new rule which establishes a comprehensive safety and treatment program for persons found in initial and subsequent violation of serious traffic offenses or driving under the influence as defined in W. Va. Code §17C-5-1 *et seq.* and §17C-5A-1 *et seq.* The Division of Motor Vehicles (DMV) will accomplish this through the Community Behavioral Health Centers.

The process begins with an Order of Revocation requiring participation in the program, followed by an initial assessment to determine which program levels are appropriate. The first level focuses on prevention and education, the second on intervention and treatment, and the third on intensive care.

The rule establishes fees for the program in the amount of \$400 for the initial fee of enrollment. One hundred and twenty-five dollars shall be remitted to the DMV (\$75 of

which is deposited into the Driver Rehab Fund and the remaining \$50 remains with the Division for administration costs). In addition, a participant may request an indigent determination for a full waiver of enrollment fees. The rule also provides for qualifications for staff that would provide services of the program. Section 6 of the rule lays out that those working in the substance abuse treatment area must have at least one year of experience treating substance abuse, treatment, or prevention. Persons providing safe driving curriculum shall be a certified driving instructor. Also, each provider shall hire a program coordinator, who shall meet or exceed all the requirements set forth in Section 6. Finally, the rule sets out a procedure for reinstatement of the participant's license. The participant must complete the program, pay all applicable fees, and apply for reinstatement of license with the Commissioner of Motor Vehicles.

Senate Bill No. 368 Division of Motor Vehicles, State Vehicle Title, Registration and Relicensing Project of 2018, 91 CSR 24

This new rule contains the naming convention for state agencies for the purpose of titling and registering state vehicles. This rule is required by the passage of House Bill 4015 during the 2018 Regular Session, which set standard naming conventions for titling of state vehicles.

DATE OF PASSAGE: February 12, 2020

EFFECTIVE DATE: February 12, 2020

ACTION BY GOVERNOR: Signed February 24, 2020

Senate Bill 449

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing Department of Commerce promulgate legislative rules.

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

SUMMARY:

This bill is known as the Department of Commerce Rules bundle, which authorizes and directs the promulgation of 19 rules, constituting Bundle 10.

Senate Bill No. 449 Department of Commerce, Small Business Innovation Research and Small Business Technology Transfer Matching Funds Program, 145 CSR 15

This rule is new and is a result of House Bill 2550 that passed during the 2019 Regular Session. That bill created a matching program by the West Virginia Department of Commerce for the Small Business Innovation and Research Program which was enacted pursuant to the Small Business Innovation Development Act and the Small Business Technology Transfer Act.

The rule creates the matching program, with language very close to the language set out in code. Additionally, it sets out the eligibility requirements in a manner nearly identical to the statute. The applicant must:

- 1) Be a for-profit West Virginia based business;
- 2) Have received a Phase I or Phase II award from the appropriate federal agency, indicate that they have filed the necessary final report for Phase I, and indicate that they fully intend to apply for Phase II;
- 3) Meet all SBIR and SBTT requirements;
- 4) Not be in receipt of duplicate funding from other sources to use as a match;
- 5) Certify that at least 51% of the research for the project would be conducted in West Virginia and that the business will remain in West Virginia throughout the duration of the project; and
- 6) Demonstrate the ability to conduct the necessary research.

The rule also provides for an application process and sets out the necessary elements to be included in the application. These are:

1. The name of the small business, the form of business organization under which it is operated, and the names and addresses of the principals and management of the small business;
2. For matching awards, notice of award from the funding agency of the SBIR/STTR Phase I or Phase II award;
3. For matching awards, study section evaluation and comments; and
4. Any other information necessary for the department to evaluate the application.

The Commerce Department is required to review the application and based upon the application decide whether to award matching grants.

Finally, the rule provides for the terms of the grants. These are identical to what is set out in the code. There are three phases of grants:

1. The Department may award a WV Phase Zero grant of \$2,500 upon successful submission of an approved Phase I SBIR and SBTT proposal. A business is only eligible for one grant per federal submission, up to a maximum of five over the lifetime of the entity.
2. The Department may award grants up to a maximum of \$100,000 to match funds received through a SBIR and SBTT Phase I proposal. Seventy-five percent is granted to the business upon receipt of the SBIR and SBTT Phase I award. The additional 25% is granted upon submission of the Phase II application. A business is only eligible for one grant per federal submission, up to a maximum of five grants over the lifetime of the entity.
3. The Department may award grants up to a maximum of \$100,000 to match funds received through a SBIR and SBTT Phase II proposal. Seventy-five percent of the yearly match is granted to the business upon receipt of the SBIR and SBTT Phase II award. In year two, 75% of the yearly amount is awarded. The additional 25% is awarded upon submission of the Phase II final report. A business is only eligible for one grant per federal submission, up to a maximum of five grants over the lifetime of the entity.

Senate Bill No. 450 Division of Labor, Supervision of Plumbing Work, 42 CSR 32

This rule reflects passage of House Bill 2004 in the 2019 Regular Session, relating to career and technical education, which mandated that the Division propose legislative rules that include standards and procedures to recognize training hours obtained through career technical education, apprenticeship programs, and employer sponsored training programs, as well as application of those hours towards licensing certification. It defines the term, “employer-sponsored training program,” to mean a planned curriculum, approved by the Commissioner, that must include training in workplace and technical competencies.

The rule establishes requirements for a master plumber license. An applicant must provide acceptable documentation or a sworn affidavit of at least 12,000 hours of plumbing work experience. The requisite experience may include, but is not limited to, the successful completion of a plumbing-related training program, acquired through career technical education provided by the state's public schools, an apprenticeship program, or an employer sponsored training program.

The rule establishes requirements for a journeyman plumber license. An applicant must provide acceptable documentation or a sworn affidavit of at least 8,000 hours of plumbing work experience. The requisite experience may include, but is not limited to, the successful completion of a plumbing-related training program acquired through career technical education provided by the state's public schools, an apprenticeship program, or an employer sponsored training program.

Senate Bill No. 451 Division of Labor, Regulation of Heating, Ventilating, and Cooling Work, 42 CSR 34

The rule reflects passage of House Bill 2004 in the 2019 Regular Session, relating to career and technical education, which mandated the Division propose legislative rules that include standards and procedures to recognize training hours obtained through career technical education, apprenticeship programs, and employer sponsored training programs, as well as application of those hours towards licensing certification. The term, "employer-sponsored training program," is defined to mean a planned curriculum, approved by the Commissioner, that must include training in workplace and technical competencies.

The rule requires acceptable documentation or a sworn affidavit demonstrating at least 2,000 hours of experience and/or training in heating, ventilating, and cooling systems and at least 6,000 hours of experience and/or training in heating, ventilating, and cooling or related work, to include other sheet metal industry tasks for licensure as an HVAC technician. Training and experience may include, but is not limited to, the successful completion of an HVAC-related training program, acquired through career technical education provided by the state's public schools, an apprenticeship program, or an employer-sponsored training program.

For licensure as an HVAC residential technician, the rule requires acceptable documentation or a sworn affidavit of at least 2,000 hours of HVAC work/training experience, which may include, but is not limited to, the successful completion of: an HVAC training program acquired through career technical education provided by the state's public schools, an apprenticeship program, or an employer-sponsored training program.

Finally, the rule requires acceptable documentation or a sworn affidavit of at least 2,000 hours of HVAC-related work/training and experience, which may include, but is not limited to, the successful completion of an HVAC training program, acquired through career technical education provided by the state's public schools, an apprenticeship program, or an employer-sponsored training program.

Senate Bill No. 452 Division of Forestry, Sediment Control During Commercial Timber-Harvesting Operations Licensing, 22 CSR 02

This rule is amended to comply with Senate Bill 404 which became law after the 2019 Regular Session. It adds a 10-year sunset provision. It revises the definition of “Exempted Person.” A landowner or their agent may remove up to \$52,000 of gross sales value in timber from their own property in a calendar year and remain exempt. The prior amount was \$15,528 of the aggregate stumpage value. Definitions are added for “Gross Sales Value” and “Wood Products.” The definition of “Notification of Timbering Operations” is revised by requiring notification to the Director at least three days prior to beginning timbering operations. The current rule is “three days, before or after,” beginning operations.

The rule expands the list of violations which are cause for suspension to include 1) a failure to provide information as required by the Director and to include 2) a request from another state or federal official that the operator is in violation of state or federal law. It also expressly states that a license or exemption may be revoked for cause. Currently, only a license, but not an exemption, may be revoked. The exemption revocation is only implied in the current rule.

Senate Bill No. 453 Division of Forestry, Sediment Control During Commercial Timber-Harvesting Operations Logger Certification, 22 CSR 03

The rule is amended to comply with Senate Bill 404, which passed during the 2019 Regular Session. It also adds a 10-year sunset provision.

The rule amends the continuing education training requirements of certified loggers from attending a training program every four years to attending six hours of training every two years. The rule expressly allows for the Director to enter into reciprocity agreements with other states. The previous rule only implies this authority.

Senate Bill No. 454 Office of Miners’ Health, Safety and Training, Substance Abuse Screening, Standards and Procedures, 56 CRS 19

This rule is in response to Senate Bill 635, which passed during the 2019 Regular Session. The change requires the Board of Appeals to suspend a miner’s certification for a minimum of six months, if the miner tests positive on a drug or alcohol test. The previous rule for alcohol and THC was a minimum of three months of suspension.

The rule is also amended to include the requirement that an employee involved in an accident that results in physical injuries or damage to equipment or property may be subject to a drug test by his or her employer. Additionally, the rule removes the types of drug and alcohol test failures that an employer reports to the Director, and now simply requires the employer to report all positive drug and alcohol tests to the Director.

The rule is amended to increase the suspension period from nine months to 18 months for those miners who refuse a drug test or possess or submit an adulterated or substituted urine sample.

Senate Bill No. 455 Office of Miners' Health, Safety and Training, Rules Governing the Certification, Recertification and Training of EMT Miners and the Certification of EMT-Instructors, 56 CSR 22

This rule closes loopholes that allow EMT-Ms to miss the required annual training modules but still maintain their certification. The amendments to this rule also change who may become an EMT-M-Instructor. The applicants must possess a current certification that is equal to or greater than an EMT-M in order to become an Instructor. The current EMT-M-Instructors are grandfathered and allowed to continue to teach even though they may not possess a certification equal to or greater than an EMT-M.

The rule also adds a definition of the term "recertified or recertification" which requires the taking of either an eight-hour module of continuing education each year or a 32-hour module every three years. However, the terms do not include recertification for a person who lost the original certification by not completing two continuing education modules.

Senate Bill No. 456 Division of Natural Resources, Commercial Whitewater Outfitters, 58 CSR 12

This is an amendment of an existing rule. The Whitewater Commission is charged with regulating commercial whitewater rafting, outfitting, and related activities to both ensure safe operations and protect the environment. This rule reflects the Whitewater Commission's decision to approve two new whitewater rental sections, one on the Gauley River and the other on the New River, near Gauley Bridge.

The addition of the Gauley River section allows commercial whitewater outfitters to rent various watercraft for use in the section of the Gauley River from the bridge at Jodie to the confluence at Gauley Bridge. Trip guides are not required to accompany those rental trips. Rentals are not permitted when the river flow exceeds 8,000 cubic feet per second, as determined by the United States Army Corps of Engineers' Belva gauge.

The addition of the New River section allows rental on the same terms as on the Gauley River section on a portion of the New River from the railroad bridge at Gauley Bridge to its confluence with the Gauley River. Rentals are not permitted, however, at river flows above 10,000 cubic feet per second, as determined by the United States Army Corps of Engineers' Thurmond gauge.

Senate Bill No. 457 Division of Natural Resources, Transporting and Selling Wildlife Pelts and Parts, 58 CSR 16

The rule revisions are in response to House Bill 2521, which passed during the 2019 Regular Session, expanding the permitted parameters of fur bearer parts that may be sold,

traded, or bartered. It expands the scope of covered wildlife pelts and parts to include “carcasses for the making of lures and baits, carcass parts, including skulls, claws and bones, and urine of furbearing animals.” It defines “carcass” to include the skinned or unskinned body of an animal, adds coyote to the list of fur bearing animals, adds certain classes of hunting and trapping licenses for the taking of fur-bearing animals, and adds carcasses for the making of lures and baits, carcass parts, including skulls, claws and bones, and urine to the provisions relating to shipping tags, fur dealer licensing, reporting, and record keeping.

Senate Bill No. 458 Division of Natural Resources, Boating Rule, 58 CSR 25

This rule implements the provisions of House Bill 2716, which passed during the 2019 Regular Session, and relates to vessel lighting, equipment requirements, and pilot and navigation rules. House Bill 2716 struck statutory provisions related to boat classification, equipment, and lighting specifications, and mandated that pertinent state boating rules follow established regulations of the United States Coast Guard. Similar provisions are removed from the rule in deference to the United States Coast Guard regulations. The rule incorporates the U.S. Coast Guard standards for a personal flotation device. It also increases the monetary trigger limit mandating a formal accident report for collision, accident, casualty resulting in death or personal injury or property damage from \$500 to \$2000 and increases the time limit to file an accident report for personal or property damage with the Division from five to 10 days.

Senate Bill No. 459 Division of Natural Resources, Special Boating Rules, 58 CSR 26

§58-26-3. Special Rules for Government-owned Lakes.

This section identifies changes in restrictions to current locations, removes locations from the list, and adds locations with restrictions to the list as follows:

Burches Run (Marshall County) Electric motors only [removed];

Cacapon Upper Reservoir (Morgan County) No motorboats permitted;

Cameron (Marshall County) No vessels permitted;

Cedar Creek (Gilmer County) Rental boats only (currently no boating);

Coonskin (Kanawha County) No vessels permitted;

Deegan (Harrison) Motorboats restricted to electric motors;

Dents Run (Marion) Motorboats restricted to electric motors;

Fairfax Pond (Monongalia County) Motorboats restricted to electric motors;

Fort Ashby (Mineral County) Motorboats restricted to electric motors;

Hawks Nest (Fayette County) Wake zone restrictions added;

Hinkle (Harrison). Motorboats electric motors only;

Jonathan Larck (Putnam County) [removed];

Little Beaver (Raleigh County) Electric motors only (was rental boats only);

Lumberport (Harrison County) [removed];

Millers Fork (Wayne County) No vessels permitted;

Newburg Lake (Preston County) No vessels permitted;

New Creek (Dam Number 14) (Grant County) Motorboats restricted to electric motors (currently no boating);

Pendleton (Tucker County) No motorboats permitted;

Pettigrew (Kanawha County) No motorboats permitted;

Pipestem (Summers County): Electric motors only (was rental boats only);

Poorhouse Pond (Berkeley County) No vessels permitted (was rental boats only);

Stonecoal (Lewis and Upshur Counties) Removed waterskiing prohibition;

Upper Mud River (Lincoln County). [removed]; and

Upper Deckers (Preston County) Motorboats restricted to electric motors.

Senate Bill No. 460 Division of Natural Resources, Special Requirements Concerning Boating, 58 CSR 28

This rule is no longer necessary and is being repealed.

Senate Bill No. 461 Division of Natural Resources, Public Use of Campgrounds in West Virginia State Parks and State Forests and Campsites in State Rail Trails under the Division of Natural Resources, 58 CSR 32

This rule removes language referencing state wildlife management areas, as such areas are no longer under the Parks and Recreation Section of the Division. The rule extends campsite requirements to rail trail campgrounds that the Division now oversees. It permits reservations through the online reservation system now offered by the agency, and updates occupancy rules for campsites, specifically making exceptions for specially

designated group campsites. The rule also provides that persons may be evicted from campsites for violating campsite rules.

Senate Bill No. 462 Division of Natural Resources, Special Projects and Grants for West Virginia State Parks, State Forests, and State Rail Trails Under the Division of Natural Resources, 58 CSR 34

This rule raises the cap on 50% matching grants that the agency may award to state parks, state forests, state rail trails, or other public land areas from \$7,500 to \$25,000 per project as part of the “Adopt a State Park, Forest, or Rail Trail Program.” The agency has statutory grant-making authority to match grants awarded as part of the program (W. Va. Code §20-1A-7).

The amendment also adds state rail trails to the list of areas eligible for the grant-matching program and eliminates state wildlife management areas from the rule, as those areas are now governed under a different rule series.

Senate Bill No. 463 Division of Natural Resources, Defining the Terms Used In All Hunting and Trapping, 58 CSR 46

This rule deletes the definition of the term “Individual Permanently Disabled in the Lower Extremities,” as passage of House Bill 2715 during the 2019 Regular Session relating to Class Q permits rendered regulatory inclusion of the definition no longer necessary and adds a definition for the term “Crossbow.”

Senate Bill No. 464 Division of Natural Resources, Prohibitions When Hunting and Trapping, 58 CSR 47

This rule lifts the blanket prohibition of hunting in State Parks and wildlife refuges and allows State Park controlled deer hunts conducted in accordance with W. Va. Code §20-2-5(15). It also prohibits the baiting or feeding of any wildlife on public lands illegal at any time.

Senate Bill No. 465 Division of Natural Resources, Special Fishing Rule, 58 CSR 61

This rule establishes fishing areas and prohibitions with respect to the taking of fish and other aquatic species within the state. The rule makes the definition of “daylight” consistent with other Division of Natural Resources hunting and trapping rules, prohibits fish taken by bowfishing from being left in the water or on the bank to be consistent with spearfishing regulations, prohibits jug fishing, updates permissible throw net size, clarifies an adult must accompany a minor in special fishing areas, increases the maximum age of a minor permitted to use special fishing areas to 14 years old, updates prohibitions for public access areas to be consistent with other DNR rules updating use of live minnow areas, and adds a penalty provision to clarify the already existing statutory authority for existing penalties.

Senate Bill No. 466 Division of Natural Resources, Catching and Selling Baitfish, 58 CSR 62

This rule is amended to add a five-year sunset date in the rule and to change the permissible size of cast nets from three feet to 12 feet and extends seines length from six feet to eight feet. In addition, the rule mandates that square mesh of cast nets may not exceed one inch

Senate Bill No. 467 Division of Natural Resources, Falconry, 58 CSR 65

This rule establishes the requirements for obtaining a Falconry permit including sponsorship, examination, and inspections of facilities and equipment. It provides that an application for additional classes of permit are subject only to the \$100 renewal fee. The rule also sets forth sponsor requirements, clarifies the species of raptors that may be possessed, revises leg band requirements for raptors, sets forth importation permit requirements, adding special permit for taking of peregrine falcon, and revises the requirements for radio transmitters for hybrid and non-indigenous raptors.

DATE OF PASSAGE: February 12, 2020

EFFECTIVE DATE: February 12, 2020

ACTION BY GOVERNOR: Signed March 5, 2020

Senate Bill 472

COMMITTEE SUBSTITUTE

SHORT TITLE: Providing alternative sentencing program for work release.

CODE REFERENCE: §62-11A-1a (Amends and Reenacts)

SUMMARY:

This bill authorizes inmates in jails and correctional facilities approved for work release to perform requested work for municipal and county government and state agencies. The Commissioner of Corrections must approve the tasks performed. The bill also allows municipal courts to place persons incarcerated for violation of ordinances in the alternative work program authorized by the section.

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: March 6, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 490

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to criminal offenses against agricultural facilities.

CODE REFERENCE: §61-3B-7 (New)

SUMMARY:

This bill criminalizes willful trespass upon an animal or crop facility, which means to trespass upon on the property of the facility with the intent to commit larceny, destroy property, or disrupt the operation of the facility. The bill also criminalizes conspiring to commit willful trespass upon an animal or crop facility.

A person convicted of a first offense of the new crime is guilty of a misdemeanor and is subject to a fine of \$500-\$1,000, confinement in jail for up to 30 days, or both the fine and confinement. A person convicted of a second or subsequent offense is guilty of a felony and is subject to a fine of \$5,000-\$10,000, imprisonment for one to five years, or both the fine and imprisonment. The bill also allows for injunctive relief against the offender and double damages for injury caused.

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 522

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to compensation awards to crime victims.

CODE REFERENCE: §14-2A-3 and §14-2A-14 (Amends and Reenacts)

SUMMARY:

This bill amends the provisions of the Code relating to the Crime Victims Compensation Fund. Current law provides that the term “allowable expense” includes mental health counseling. The bill changes the definition by including “products, services, and accommodations related to psychological care.”

This bill also requires an agency that files a civil abuse and neglect petition in circuit court to file an application for crime victim compensation benefits on behalf of a minor child. This bill provides that the filing of the abuse and neglect petition satisfies the current reporting requirements.

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 529

COMMITTEE SUBSTITUTE, AS AMENDED

SHORT TITLE: Establishing limitations on claims and benefits against state.

CODE REFERENCE: §14-2-13a (Amends and Reenacts) and §14-2A-14a (New)

SUMMARY:

This bill limits claims for unjust arrest or conviction and imprisonment to those that are filed within two years after exoneration, pardon, or dismissal of accusations; removes the requirement that another person be subsequently charged, arrested, and convicted of the same crimes; clarifies the impact when a claimant's conduct contributed to the conviction or incarceration; and establishes a 10-year limitation on certain benefits.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 534

COMMITTEE SUBSTITUTE

SHORT TITLE: Allowing temporary legislative employees be eligible for unemployment benefits coverage.

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

SUMMARY:

This bill removes the unemployment benefit exclusion for persons employed by the Legislature on a temporary basis, in support of the annual legislative session. This bill aims to bring the state's unemployment law into compliance with federal law.

DATE OF PASSAGE: February 28, 2020

EFFECTIVE DATE: May 28, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 547

COMMITTEE SUBSTITUTE, AS AMENDED

SHORT TITLE: Relating to employer testing, notice, termination, and forfeiture of unemployment compensation.

CODE REFERENCE: §21-3E-16 and §21A-6-3 (Amends and Reenacts)

SUMMARY:

This bill rectifies a conflict with Federal Unemployment Compensation and Social Security Administration laws regarding claims determinations and an individual's "opportunity for a fair hearing" for unemployment compensation claims that are denied. The bill clarifies that a violation of an employer's drug-free workplace program, or violation of an employer's alcohol-free workplace program, can still be grounds for a finding of gross misconduct. The bill also eliminates forfeiture of eligibility for unemployment compensation benefits if an employee is terminated because alcohol or a drug is present in the employee's system at a level proscribed by the employer's policy.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 554

COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE, AS AMENDED

SHORT TITLE: Relating to termination, expiration, or cancellation of oil or natural gas leases.

CODE REFERENCE: §36-4-9b (New)

SUMMARY:

This bill requires lessees to provide lessors with a recordable release for oil or natural gas leases, when the leases are expired, terminated, or cancelled under their terms. Unless a different time is required by the lease, within 60 days after an oil and gas lease is terminated, expired, or cancelled, the lessee shall deliver, without cost to the lessor, a properly executed and notarized release of the lease.

If the lessee fails to provide a timely release, the lessor may serve notice of the lessee's failure to provide the release. The notice shall contain a statement providing:

1. That the lease is terminated, expired, or cancelled according to its terms and state the date;
2. That the lessee has a duty to provide a release;
3. That if the release or a written dispute from the lessee is not received by lessor within 60 days, that the lessor has the right to file an affidavit of termination, expiration, or cancellation in the office of the county clerk;
4. The name and address of the lessor or his or her successors or assigns;
5. A brief description of the land covered by the lease;
6. If there is a well, the name or API number of the well, if known;
7. If located in a unit, the name of the unit, if known;
8. The specified recording information for the lease along with other identifying information; and
9. A service sheet showing the names and addresses of all persons upon whom the notice has been served.

The notice of the lessee's failure must be sent to 1) the lessee, 2) any lessee's assignee, 3) all other lessors, and 4) all other persons who may have an interest in the leasehold estate, or the minerals leased thereunder.

The lessee has the right to dispute the contents of the notice within 60 days after receipt of the notice.

The lessor has the right to file an affidavit of termination, expiration, or cancellation in the office of the county clerk after the lessee's notice, if the lessor fails to receive a dispute from the lessee within 60 days after providing notice. The lessor must also provide notice of the affidavit to all persons to whom notice was required to be given for the notice of the lessee's failure to provide the release.

The county clerks are required to accept and record these affidavits.

DATE OF PASSAGE: March 2, 2020

EFFECTIVE DATE: May 31, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 562

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Expunging certain criminal convictions.

CODE REFERENCE: §61-11-26 and §61-11-26a (Amends and Reenacts)

SUMMARY:

This bill allows a person seeking expungement for multiple misdemeanors in multiple counties to file the petition for expungement in his or her home county if he or she is not a resident of one or more of the counties of conviction. The bill clarifies that the notice of the petition for expungement no longer must be sent to the “warden” and instead requires that the notice be sent to the Commissioner of Corrections and the head of the law enforcement agency that made the underlying arrest. The bill provides that a person is not precluded from receiving an expungement because he or she has been convicted of an unrelated DUI offense that is at least five years old at the time of the petition for expungement. The bill allows expungement of a burglary conviction if the burglary was of an outbuilding and not of a dwelling.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 597

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to judicial branch members' salaries and pensions.

CODE REFERENCE: §50-1-3, §51-1-10a, §51-2-13, and §51-2A-6 (Amends and Reenacts)

SUMMARY:

This bill phases in pay increases for magistrates, judges, and justices over a two-year period. Family court judges will receive the entire salary increase in one year. The current and increased salaries are as follows:

- West Virginia Supreme Court of Appeals - \$136,000 (current) - \$142,800 (2021) - \$149,600 (2022)
- Circuit Court - \$126,000 (current) - \$132,300 (2021) - \$138,600 (2022)
- Family Court - \$94,500 (current) - \$103,950 (2021)
- Magistrate Court - \$57,500 (current) - \$60,375 (2021) - \$63,250 (2022)

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 610

INTRODUCED BILL, AS AMENDED

SHORT TITLE: Removing resident manager requirement for Alcohol Beverage Control Administration.

CODE REFERENCE: §29-22B-32 (Repeals); §11-16-3, §11-16-8, §16A-6-3, §29-22B-503, §29-22B-504, §29-22B-512, §60-1-5, §60-3A-8, §60-7-4, §60-7-5, §60-18-16, and §60-8-17 (Amends and Reenacts)

SUMMARY:

This bill revises the Code in multiple areas due to the United States Supreme Court case of *Tennessee Wine and Spirits Retail Assn. v. Thomas*, 139 S.Ct. 2449 (2019), which effectively invalidates many state law residency requirements for various licensees and permittees on Commerce Clause grounds.

The bill removes residency and citizenship requirements for Alcohol Beverage Control Administration licensees, medical cannabis permittees, and limited video lottery operators and retailers. The bill also makes numerous technical corrections to existing code.

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 620

STRIKE AND INSERT AMENDMENT TO INTRODUCED BILL

SHORT TITLE: Authorizing Division of Corrections and Rehabilitation approve home plans for inmates.

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

SUMMARY:

This bill establishes a non-violent offender parole release program under the Commissioner of Corrections, rather than under the Parole Board. To be eligible, an inmate must: 1) have served the statutory minimum sentence; 2) be parole eligible; 3) not be serving a sentence for a crime of violence, a controlled substance offense involving actual or threatened violence, a felony involving the use of a firearm, or a felony involving a minor victim; 4) not be serving a sentence for a crime of violence against an animal; and 5) have completed his or her individualized rehabilitation treatment program. Participants in the offender parole release plan are subject to all ordinary rules for persons released on parole.

The bill also authorizes the Commissioner to approve home plans. Lastly, the bill clarifies that one must successfully complete the rehabilitation treatment plan to be eligible for release on parole but permits release whenever the rehabilitation plan is successfully completed.

DATE OF PASSAGE: February 19, 2020

EFFECTIVE DATE: May 19, 2020

ACTION BY GOVERNOR: Signed March 5, 2020

Senate Bill 642

ORIGINATING BILL

SHORT TITLE: Correcting incorrect code citation in WV Consumer Credit and Protection Act.

CODE REFERENCE: §46A-1-105 (Amends and Reenacts)

SUMMARY:

This bill corrects an incorrect code citation in the West Virginia Consumer Credit and Protection Act.

DATE OF PASSAGE: February 17, 2020

EFFECTIVE DATE: May 17, 2020

ACTION BY GOVERNOR: Signed March 5, 2020

Senate Bill 660

COMMITTEE SUBSTITUTE

SHORT TITLE: Regulating electric bicycles.

CODE REFERENCE: §17A-1-1, §17B-1-1, and §17C-1-5a (Amends and Reenacts); §17C-1-70 and §17C-11-8 (New)

SUMMARY:

This bill exempts electric bicycles from the definition of motorcycle in Chapter 17A of the Code, relating to vehicle registration and certificates of title. The bill exempts electric bicycles from the definition of motorcycle in Chapter 17B, relating to motor vehicle driver's licenses. The bill exempts electric bicycles from the definition of moped in Chapter 17C, relating to traffic regulations and laws of the road.

The bill defines "electric bicycle" to mean every two-wheel or three-wheel bicycle equipped with fully operable pedals and an electric motor of less than 750 watts.

The bill categorizes electronic bicycles in two classes. "Class 1 electric bicycle" means every electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour. "Class 3 electric bicycle" means every bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches the speed of 28 miles per hour.

The bill provides that the operator of an electric bicycle has all of the rights and privileges and is subject to all of the duties applicable to the driver of a vehicle, except as inapplicable by nature of the bicycle or otherwise provided in the Code. A person owning or operating an electric bicycle is not subject to the provisions of W. Va. Code §17A-1-1 *et seq.*, §17B-1-1 *et seq.* and §17D-1-1 *et seq.*, relating to registration, title, driver's license, and financial responsibility.

The bill provides that a person may not tamper with or modify an electric bicycle so as to change the motor-powered speed capability or motor engagement between pedal-assist and throttle-assist types of engagement. If a motor on an electric bicycle is modified so that an established limit is exceeded, that vehicle is no longer an electric bicycle. The new requirements do not apply to a modified electric bicycle operated solely and exclusively on one's own property.

The bill provides that an electric bicycle must comply with the equipment and manufacturing requirements for bicycles adopted by the United States Consumer Product

Safety Commission (16 C.F.R. Part 1512). The motor on an electric bicycle must disengage or cease to propel the electric bicycle when the operator stops pedaling or when the operator applies the brakes and stops pedaling.

The bill states that a Class 1 electric bicycle could be used in places where bicycles are permitted to travel, including, but not limited to, public roadways, public bicycle paths, public multi-use trails, and public single-use trails. A Class 3 electric bicycle may not be operated on a bicycle path, multi-use trail, or single-use trail unless it is within a highway or roadway or unless the entity that has jurisdiction over the bicycle path, multi-use trail, or single-use trail, expressly permits that operation.

The bill prohibits a person under 18 years of age from operating a Class 3 electric bicycle. It prohibits a person under 15 years of age from being a passenger on a Class 3 electric bicycle, including as a passenger within any attachment to such vehicle designed to transport an additional person. It requires a person under 15 years of age, who is an operator or passenger on an electric bicycle, to wear a properly fitted and fastened bicycle helmet.

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 662

COMMITTEE SUBSTITUTE

SHORT TITLE: Removing restrictions on fiduciary commissioners.

CODE REFERENCE: §44-3-1 (Amends and Reenacts)

SUMMARY:

This bill removes the prohibition that no more than two of the fiduciary commissioners in a county can be from the same political party.

DATE OF PASSAGE: March 4, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 668

STRIKE AND INSERT AMENDMENT 4123

SHORT TITLE: Enacting Uniform Trust Decanting Act.

CODE REFERENCE: §44D-8B-1, §44D-8B-2, §44D-8B-3, §44D-8B-4, §44D-8B-5, §44D-8B-6, §44D-8B-7, §44D-8B-8, §44D-8B-9, §44D-8B-10, §44D-8B-11, §44D-8B-12, §44D-8B-13, §44D-8B-14, §44D-8B-15, §44D-8B-16, §44D-8B-17, §44D-8B-18, §44D-8B-19, §44D-8B-20, §44D-8B-21, §44D-8B-22, §44D-8B-23, §44D-8B-24, §44D-8B-25, §44D-8B-26, §44D-8B-27, §44D-8B-28, §44D-8B-29, §44D-8B-30, and §44D-8B-31 (New)

SUMMARY:

This bill adds a new article to the Code, known as the “West Virginia Uniform Trust Decanting Act.” Trust decanting is the process of pouring the assets of one trust into a second trust. The bill applies to 1) express trusts that are irrevocable; and 2) trusts that are revocable by the grantor only with the consent of the trustee or a person holding an adverse interest.

The bill defines terms and establishes notice requirements for decanting a trust. An authorized fiduciary must give notice to certain interested parties of the intended use of the decanting power no later than 60 days before such use. The bill delineates when a court may become involved in the decanting process.

Additionally, the bill provides special requirements for trusts with disabled beneficiaries, charitable trusts, and trusts for the care of an animal. The bill limits the decanting power in certain circumstances; for example, a first trust may not be decanted if its original terms specifically prohibit decanting.

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 670

COMMITTEE SUBSTITUTE

SHORT TITLE: Amending service of process on nonresident persons or corporate entities.

CODE REFERENCE: §56-3-33 (Amends and Reenacts)

SUMMARY:

This bill amends the manner of service of process on nonresident persons or corporate entities when the originally sent certified mail was returned but not rejected.

If the certified mail was returned by the United States Postal Service as “unclaimed,” “unable to forward,” or with any other notation other than “accepted” or “refused,” notice may be served as follows:

- 1) In any manner accepted as service within the domiciled state of the nonresident, or otherwise; or
- 2) In any manner otherwise permitted by rules 4(d)(7) or (8) of the West Virginia Rules of Civil Procedure for corporations, and any way permitted by rule 4(c) of the West Virginia Rules of Civil Procedure for individuals or noncorporate entities.

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 678

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Waiving fines and fees for completing Getting Over Addicted Lifestyles Successfully Program.

CODE REFERENCE: §15A-5-10 (New)

SUMMARY:

This bill provides that an individual committed to the custody of the Commissioner of the Division of Corrections and Rehabilitation who completes the Getting Over Addicted Lifestyles Successfully (GOALS) program, shall be deemed to have also completed the Division of Motor Vehicles DUI Safety and Treatment Program for purposes of reinstating his or her driving privileges.

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 692

COMMITTEE SUBSTITUTE

SHORT TITLE: Clarifying persons indicted or charged jointly for felony offense can move to have separate trial.

CODE REFERENCE: §62-3-8 (Amends and Reenacts)

SUMMARY:

The purpose of this bill is to reestablish the principal set forth in the Code that persons charged with a felony offense or offenses with one or more co-defendants may elect to have a separate trial rather than being joined for trial purposes with the other defendant or defendants. The right to a separate trial in felony cases was in effect until the West Virginia Supreme Court of Appeals adopted Rule 8 of the West Virginia Rules of Criminal Procedure in 1996.

The bill also provides that a court may deny a motion for a separate trial if it finds that requiring the appearance at multiple trials will cause the victim of the violence or sexual assault undue mental or emotional distress.

DATE OF PASSAGE: March 7, 2020

ACTION BY GOVERNOR: Vetoed March 25, 2020

Senate Bill 711

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to juvenile jurisdiction of circuit courts.

CODE REFERENCE: §49-4-726 (Amends and Reenacts)

SUMMARY:

This bill directs the Department of Military Affairs and Public Safety and the Department of Health and Human Resources to conduct a number of studies related to juvenile justice and submit reports to the Legislature before July 31, 2020. The bill requests the Supreme Court of Appeals to do the same. The studies and reports required by the bill are to address the following topics: juvenile competence in the justice system generally; appropriate methods to deal with children found incompetent to assist in their defense, who are non-restorable to competence and not appropriate for in-home placement; and facility options for incompetent non-restorable children who may be amenable to less secure supervision.

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 717

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating generally to adult protective services.

CODE REFERENCE: §9-6-1, §9-6-2, §9-6-3, §9-6-4, §9-6-5, §9-6-6, §9-6-7, §9-6-8, §9-6-9, §9-6-10, §9-6-11, §9-6-13, and §9-6-16 (Amends and Reenacts)

SUMMARY:

This bill adds new definitions, replaces archaic language, and provides for the sharing of information for the protections of vulnerable adults when investigating allegations of abuse, neglect, and financial exploitation.

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 765

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Modifying “Habitual Offender” statute.

CODE REFERENCE: §61-11-18 and §61-11-19 (Amends and Reenacts)

SUMMARY:

The purpose of the bill is to rewrite two sections of the code which deal with enhanced sentences for persons with prior felony convictions. Currently, if a person is convicted of any felony and has a prior conviction, he or she is subject to an additional five years on his or her determinate sentence, and if he or she is subject to an indeterminate sentence (i.e. one to ten years), the minimum sentence doubles. If a person has two or more prior convictions, he or she is currently subject to life imprisonment with mercy (15 years to life).

The current mandatory sentences have triggered numerous court decisions on proportionality claims. Additionally, prosecutors do not always seek the enhancements due to plea agreements and a desire to avoid potential proportionality challenges.

The bill limits sentencing enhancements to more serious crimes, which are listed in the bill as “qualifying offenses.” The penalties remain the same as current law. The bill requires that plea agreements address whether habitual offender provisions are to be invoked.

Additionally, the bill requires that a prior conviction must be less than 20 years old to trigger a sentencing enhancement. Offenses which are part of the same transaction or series of transactions count as one prior conviction.

The bill lists the following “qualifying offenses:”

- §60A-4-401(i)(ii), manufacture, delivery, possession of controlled substances;
- §60A-4-406, distribution of controlled substances to minors;
- §60A-4-409, transportation of controlled substances;
- §60A-4-411, clandestine drug lab;
- §60A-4-414, narcotics conspiracy;
- §60A-4-415, manufacture, delivery, possession of fentanyl;
- §60A-4-416(a), drug delivery resulting in death;
- §61-2-1, 1st and 2nd degree murder;
- §61-2-4, voluntary manslaughter;

- §61-2-7, attempt to kill or injure by poison;
- §61-2-9(a), malicious and unlawful assault;
- §61-2-9a(d), 2nd offense stalking;
- §61-2-9b, malicious or unlawful assault or assault of a child near a school;
- §61-2-9d, strangulation;
- §61-2-10, assault during commission of a felony;
- §61-2-10b(b), malicious assault on governmental representatives;
- §61-2-10b(c), unlawful assault on government official;
- §61-2-10b(d), battery on government official - felony only;
- §61-2-12, burglary;
- §61-2-12(a)(1), 1st degree robbery;
- §61-2-12-(b), 2nd degree robbery;
- §61-2-12(c), robbery by force;
- §61-2-13, extortion;
- §61-2-14, abduction;
- §61-2-14d, concealment/removal of minor;
- §61-2-16a(a), malicious assault;
- §61-2-16a(b), unlawful assault;
- §61-2-16a(c), battery – felony only;
- §61-2-28, domestic violence - felony only;
- §61-2-29(d), incapacitated adult bodily injury;
- §61-2-29(e), incapacitated adult serious bodily injury;
- §61-2-29a, death of incapacitated adult;
- §§61-3-1 –7, burning and arson offenses;
- §61-3-13(a), grand larceny;
- §61-3-11, burglary;
- §61-3-27, malicious killing of animals;
- §61-3C-14(b), soliciting minor;
- §61-3E-5, explosives causing death or injury;
- §61-5-17(b), disarming law-enforcement officer;
- §61-5-17(f), fleeing with reckless indifference;
- §61-5-27, intimidation of public official;
- §61-6-24, terroristic threats;
- §61-7-7, prohibited person with firearm;
- §61-7-15a, use of firearm during felony;
- §61-8-12, incest – minor victims only;
- §61-8-19(b), felony cruelty to animals;
- §61-8B-3, sexual assault 1st degree;
- §61-8B-4, sexual assault 2nd degree;
- §61-8B-5, sexual assault 3rd degree;
- §61-8B-7, sexual abuse 1st degree;
- §61-8C-2, filming of sexually explicit conduct of minors;
- §61-8C-3, distribution of materials depicting sexually explicit conduct of minors, felony possession;

- §61-8D-2, murder of child by parent by refusal to deliver necessities/controlled substances;
- §61-8D-2a, death of child by child abuse;
- §61-8D-3, child abuse with injury, felonies;
- §61-8D-3a, female genital mutilation;
- §61-8D-4, child neglect, felony;
- §61-8D-4a, child neglect, death;
- §61-8D-5, sexual abuse by parent;
- §61-8D-6, distribution of materials depicting sexually explicit conduct of minors by parent or guardian;
- §61-10-31, conspiracy to commit crimes against public policy;
- §61-11-8, attempt to commit certain felonies;
- §61-11-8a, solicitation to commit certain felonies;
- §61-14-2, human trafficking; and
- §17C-5-2(b), driving under the influence causing death.

The bill does not alter the penalties for subsequent murder or sexual assault offenses. If a person has two or more prior convictions, the bill raises the minimum sentence served of an indeterminate sentence by three times (i.e. one to 10 becomes three to 10) or adds 10 years to a determinable sentence.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 785

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Establishing uniform electioneering prohibition area.

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

SUMMARY:

This bill prohibits electioneering within 100 feet of the outside entrance to community early voting locations during the entire period of early voting. The bill also provides that once a community voting location is designated, it may continue to be used in subsequent elections without complying the requirement that the county commission publish notice of the intent to designate a community location 30 days prior to designation. Previously designated locations will still be subject to the current requirement that the county clerk publish notice, 30 days before the election, of all community voting location addresses and the dates and times when the locations will be open for voting.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: March 7, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 810

COMMITTEE SUBSTITUTE

SHORT TITLE: Implementing federal Affordable Clean Energy Rule.

CODE REFERENCE: §22-5-20 (Amends and Reenacts)

SUMMARY:

This bill amends the Code relating to the Obama Administrations Clean Power Plan (CPP) so that the West Virginia Department of Environmental Protection can promulgate rules to comply with the Trump Administration's Affordable Clean Energy (ACE) Rule.

DATE OF PASSAGE: March 4, 2020

EFFECTIVE DATE: June 2, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 838

ORIGINATING BILL, AS AMENDED

SHORT TITLE: Relating to directing State Police to establish a referral program for substance abuse treatment.

CODE REFERENCE: §15-2-55 (New)

SUMMARY:

This bill directs the West Virginia State Police to adopt a program, in collaboration with the Drug Control Office of the Department of Health and Human Resources and other state agencies, which allows the State Police to accept a person's surrender of drugs, without prosecution, and to refer the person to a drug treatment program. The bill is modeled after a Kentucky law which has been in effect for a number of years.

The bill precludes the following persons from participating in the program: a person with an outstanding arrest warrant; a person who places law enforcement representatives in reasonable apprehension of physical injury; or a juvenile who is not a danger to himself or herself or to others, or who does not have the consent of his or her parent or guardian to participate.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: March 7, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 848

ORIGINATING BILL

SHORT TITLE: Clarifying persons charged with DUI may not participate in Military Service Members Court.

CODE REFERENCE: §62-16-5 (Amends and Reenacts)

SUMMARY:

This originating bill is in response to communications from the National Highway Traffic Safety Administration (NHTSA) to the executive branch, indicating that the state will lose federal funding based on NHTSA's interpretation of the statute creating the Military Service Member Court in West Virginia.

NHTSA takes issue with the provision of our Code permitting military members to participate in the Military Member Service Court if the member is charged with driving under the influence of alcohol or drugs but is participating in the Motor Vehicle Test and Lock program. Normally, persons who are charged with driving under the influence are precluded from participating in the Military Member Court. This bill simply eliminates the exception for persons participating in the test and lock program.

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: March 25, 2020

Senate Bill 849

STRIKE AND INSERT AMENDMENT TO ORIGINATING BILL

SHORT TITLE: Relating to military service as factor in certain insurance coverage rates.

CODE REFERENCE: §33-6-40 (Amends and Reenacts)

SUMMARY:

This bill prohibits insurers from charging an increased premium to active duty service persons and National Guard personnel for a break in coverage due to active duty service.

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: March 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 851

ORIGINATING BILL, AS AMENDED

SHORT TITLE: Requiring Governor's Committee on Crime, Delinquency, and Correction propose rule in coordination with law enforcement and certain medical boards.

CODE REFERENCE: §15-9-7 (New)

SUMMARY:

This bill directs the Governor's Committee on Crime, Delinquency, and Correction to coordinate with state, county, and local law enforcement, the Board of Medicine, the Board of Osteopathic Medicine, and the Board of Pharmacy to develop policies and protocols for law enforcement and medical professionals to establish substance abuse treatment referral programs.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 2086

SECOND ENROLLMENT OF COMMITTEE SUBSTITUTE

SHORT TITLE: Uniform Real Property Electronic Recording Act.

CODE REFERENCE: §39A-4-1, §39A-4-2, §39A-4-3, §39A-4-4, §39A-4-5, §39A-4-6, and §39A-4-7 (New)

SUMMARY:

The bill allows county clerks to accept documents for electronic recordation. It allows electronic documents to be considered “original,” allows electronic signatures, and has a mechanism for notary authentication of electronic documents.

Implementation of the Act by a county clerk is not required, and any county clerk who accepts electronic documents for recording is required to continue to accept paper documents and place entries for both types of documents in the same index.

DATE OF PASSAGE: February 28, 2020

EFFECTIVE DATE: May 28, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

NOTE: Originally passed on February 18, 2020 but was vetoed by Governor February 24, 2020 for technical issues. The bill was corrected and passed a second time.

House Bill 2419

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to the authorization to release a defendant or a person arrested upon his or her own recognizance.

CODE REFERENCE: §62-1C-1a (Amends and Reenacts)

SUMMARY:

This bill rewrites and modifies misdemeanor bail requirements. The bill requires a judicial officer, when an individual charged with a misdemeanor criminal offense first appears before the judicial officer, to release the person unless the person is charged with:

- A misdemeanor offense of actual or threatened violence;
- A misdemeanor offense where the victim was a minor;
- A misdemeanor offense involving W. Va. Code Chapter 60A – controlled substances;
- A serious misdemeanor traffic offense set forth in W. Va. Code §17C-5-1 or §17C-5-2;
- A misdemeanor sex abuse offense;
- A misdemeanor offense of auto tampering; or
- A larceny offense where value of the stolen item exceeds \$250.

A person who cannot be released because he or she is charged with one of the crimes listed above or any other offense carrying a penalty of incarceration must be released under the least restrictive condition(s) reasonably necessary to ensure appearance and protect the safety of the defendant, victims, witnesses, other persons in the community, and any evidence to be used in the case. Least restrictive further conditions may include:

- Remaining in the custody of a person designated by the judicial officer, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is reasonably able to assure the judicial officer that the person will appear as required and will not pose a danger to himself or herself or to the safety of any other person or the community;
- Home incarceration;
- Electronic monitoring;
- A requirement to maintain or seek employment;
- A requirement to avoid all contact with the alleged victim and potential witnesses;

- A requirement to refrain from excessive use of alcohol or use of any narcotic drug or controlled substance;
- An agreement to forfeit pledged bail property for failing to appear. The agreement must provide proof of ownership, value, information related to encumbrances, and any other information required in the discretion of the judicial officer;
- A cash bond or a bail bond with solvent sureties and unencumbered net worth sufficient to pay the bail bond; or
- Any other condition that is reasonably necessary to ensure the appearance of the person and to ensure the safety of the arrested person, victim(s), witness(es), other persons in the community, or the safety and maintenance of evidence.

Proper considerations when determining release without bail, fixing a reasonable bail, or imposing reasonable conditions of release include:

- The ability of the arrested person to give bail;
- The nature, number, and gravity of the offenses;
- The potential penalty the arrested person faces;
- Whether the alleged acts were violent in nature;
- The arrested person's prior record of criminal convictions and delinquency adjudications, if any;
- The character, health, residence, and reputation of the arrested person;
- The character and strength of the evidence which has been presented to the judicial officer;
- Whether the arrested person is currently on probation, extended supervision, or parole;
- Whether the arrested person is already on bail or subject to other release conditions in other pending cases;
- Whether the arrested person has been bound over for trial after a preliminary examination;
- Whether the arrested person has in the past forfeited bail or violated a condition of release or was a fugitive from justice at the time of arrest; and
- The policy against unnecessary detention of arrested persons pending trial.

In all misdemeanor cases, cash bail cannot exceed the maximum fine for the offense. Conditions of release may be modified at any time by imposing additional or different conditions. The bill requires a hearing to consider alternative possibilities if a defendant remains in jail after 72 hours due to inability to make bail. The bill also requires prosecutors and defense attorneys, unless the requirement is waived by the defendant, to be present at a hearing in which bail is at issue. A judicial officer recommending sureties may not be a relative of the defendant.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 2478

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Modifying the Fair Trade Practices Act.

CODE REFERENCE: §47-11A-2, §47-11A-6, and §47-11A-9 (Amends & Reenacts)

SUMMARY:

Section 2 of the West Virginia Unfair Trade Practices Act provides that, “except as otherwise provided herein, it is unlawful for any person, partnership, firm, corporation or other entity engaged in business as a retailer or wholesaler within this state to sell, offer for sale, or advertise for sale any product or item of merchandise at a price less than the cost thereof with the intent to destroy or the effect of destroying competition.”

This bill clarifies the exception by providing “except as otherwise provided in this article . . .” (instead of “herein”)

Section 6 defines “cost” as applied to the business of a retailer versus a wholesaler. For both the retailer and the wholesaler, the term “shall mean bona fide cost,” but is calculated differently:

Retailer:

“The invoice cost of **the product or item of merchandise** to the retailer,”
or replacement cost

– Trade discounts

+ Freight charges

+ Markup of **7%** of aggregate of
invoice/replacement cost

– Trade discounts

+ Freight charges

Wholesaler:

“The invoice cost of **the merchandise** to the wholesaler
to include applicable taxes,”
or replacement cost

– Trade discounts

+ Freight charges

+ Markup of **4%** of aggregate of
invoice/replacement cost

– Trade discounts

+ Freight charges

For both the retailer and the wholesaler, the markup is exclusive of federal and state motor fuel taxes.

In *Alan Enterprizes LLC v. Mac's Convenience Stores LLC*, 240 W.Va. 250, 810 S.E.2d 61 (2018), the Supreme Court of Appeals of West Virginia held that calculation of cost to the retailer did not include taxes because the statute specifically mentions applicable taxes are included with respect to wholesalers, but does not mention applicable taxes with respect to retailers.

This bill:

- 1) Clarifies the invoice cost of the product or item of merchandise in the calculation of cost to the retailer by adding the words “each separate or distinct;”
- 2) Makes the language regarding invoice cost in the calculation of cost to the retailer match the corresponding wholesaler language by adding the words “to include applicable taxes;”
- 3) Removes the markup for the retailer by deleting (a)(2); and
- 4) Makes technical changes relating to #3 above.

Section 9 provides remedies for violation of the article. The statute currently allows an action to enjoin the violation and provides for recovery of actual damages if the violation is established and if damages are alleged and proven. The statute also allows an action for damages alone if no injunctive relief is sought or required and provides for recovery of actual damages if the violation is established and proven.

This bill:

- 1) Clarifies to which provisions of the article these remedies apply by adding cross references to §2 (prohibiting selling below cost) and §3 (prohibiting rebates and special privileges);
- 2) Allows a court to award a plaintiff treble damages, court costs, litigation costs, and attorneys’ fees upon finding a violation of §2 or §3 (in addition to the remedies currently provided under the statute).

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 2497

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to the whistle-blower law.

CODE REFERENCE: §6C-1-3, §6C-1-4, and §6C-1-7 (Amends and Reenacts)

SUMMARY:

This bill mandates that employers may not deny a whistle-blower a promotion or pay increase because of his or her status as a whistle-blower. A civil service employee who alleges a violation of this article may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both, within two years after the occurrence of the alleged violation.

The bill codifies civil service employees' right to pursue grievances under the West Virginia Public Employees Grievance Procedure. It also allows civil service employees to participate in political activity except when acting in an official capacity.

DATE OF PASSAGE: February 18, 2020

EFFECTIVE DATE: May 18, 2020

ACTION BY GOVERNOR: Signed February 28, 2020

House Bill 2602

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Including possession of known stolen property in the offense of receiving or transferring stolen property.

CODE REFERENCE: §61-3-18 (Amends and Reenacts)

SUMMARY:

This bill criminalizes knowingly possessing stolen goods for the purpose of transferring and receiving such goods, with an exception for when a person possesses stolen goods at the request of, or in cooperation with, law enforcement. A person knowingly possessing stolen goods is considered to be guilty of larceny, which is a misdemeanor if the goods have a value of less than \$1,000 and a felony if the goods have a value of more than \$1,000.

DATE OF PASSAGE: February 13, 2020

EFFECTIVE DATE: May 13, 2020

ACTION BY GOVERNOR: Signed February 24, 2020

House Bill 2646

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Providing a safe harbor for employers to correct underpayment or nonpayment of wages and benefits due to separated employees.

CODE REFERENCE: §21-5-4a (New)

SUMMARY:

This bill provides a safe harbor for employers to correct underpayment or nonpayment of wages and fringe benefits due to employee separation prior to the filing of a lawsuit. The bill prohibits an employee from seeking liquidated damages or attorney's fees when bringing an action for the underpayment or nonpayment of wages and fringe benefits due upon the employee's separation from employment without first making a written demand to the employer. "Written demand" is defined as a writing from the employee to the employer, including an email, stating that the employer has not paid all of the wages or fringe benefits which the employee is owed.

Upon separation or with issuance of the final paycheck, the employer must inform the employee who the employer's authorized representative is and where to send a written demand through both email and regular mail. If the employer fails to comply with this requirement, the employee is not subject to the requirements of the bill.

After a written demand is received, the bill provides the employer seven calendar days to correct the alleged underpayment or nonpayment of wages and fringe benefits prior to the filing of a lawsuit. The bill prohibits an employee from seeking liquidated damages or attorney's fees without first making this written demand.

This bill also states that if a class action is brought by multiple employees for the underpayment or nonpayment of wages and fringe benefits, the written demand should state that it is a demand for all similarly situated employees. However, if the employer corrects underpayment or nonpayment of wages and fringe benefits for only the named employee in a class action, then the rest of the members of the class may continue with their suit.

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 2892

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Including digital and virtual information in the definition of property that can be searched and seized by a warrant.

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

SUMMARY:

This bill provides that electronic and digital information is property that can be searched and seized by a warrant. The bill defines electronic and digital information for purposes of search warrant issuance. The bill requires that the description of the digital and electronic information to be seized be stated with particularity in the warrant. The bill also clarifies that the warrant may be executed in any county of the state or out of state where the information is stored, or in which the possessor of the information resides or does business.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: March 7, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

House Bill 2922

STRIKE AND INSERT AMENDMENT TO INTRODUCED BILL

SHORT TITLE: Relating to requirements to obtain a final order of discharge and dismissal for possession of opiates or opioids.

CODE REFERENCE: §60A-4-407a (New)

SUMMARY:

This bill authorizes courts to require persons convicted of possession of any schedule II, III, or IV controlled substance to be evaluated for drug court or participation in another treatment program. In such cases, successful completion of the drug court or treatment program will be a condition for obtaining a final order of discharge or dismissal.

DATE OF PASSAGE: February 18, 2020

EFFECTIVE DATE: May 18, 2020

ACTION BY GOVERNOR: Signed March 5, 2020

House Bill 3039

STRIKE AND INSERT AMENDMENT TO INTRODUCED BILLS

SHORT TITLE: Relating to a court's consideration of the expression of a preference by a child in certain custody matters.

CODE REFERENCE: §44-10-4, §48-9-206, and §48-9-402 (Amends and Reenacts)

SUMMARY:

This bill relates to the court's consideration of the right of a minor to nominate his or her guardian and to the court's consideration of the expression of a preference by a child in certain child custody matters. The bill gives the court discretion to consider the preferences of a child under the age of 14 years who is sufficiently matured that he or she can intelligently express a voluntary preference.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 3098

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Allowing the same business owner to brew and sell beer to also distill and sell liquor.

CODE REFERENCE: §11-16-6 and §60-4-2 (Amends and Reenacts)

SUMMARY:

This bill allows persons who “manufacture” alcoholic liquors and non-intoxicating beer to hold multiple types of licenses. A brewer or resident brewer may hold a distiller’s license, and a distiller may hold a brewer’s or resident brewer’s license. An applicant must meet all requirements for each license and pay all applicable fees and costs for each license.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4004

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Creating the West Virginia Sentencing Commission.

CODE REFERENCE: §15-9-4 (Amends and Reenacts); §15-9C-1, 15-9C-2, 15-9C-3, 15-9C-4, 15-9C-5, and 15-9C-6 (New)

SUMMARY:

This bill creates the West Virginia Sentencing Commission (WVSC) as a subcommittee of the Governor's Committee on Crime, Delinquency, and Correction. The commission is created to promote a fuller understanding of West Virginia's criminal justice sentencing system, including: the review and research of imposed sentence length; actual sentence length served; parole eligibility; parole revocation; determinate and indeterminate sentences; incarceration alternatives; and the respective roles these issues play in demand for prison space. The expertise of several public organizations will be utilized.

The bill establishes the uncompensated membership of the commission, the selection process for members, term lengths, and quorum requirements. The Director of Division of Administrative Services will serve as executive director of the commission and the Division will provide administrative services.

The bill establishes the powers and duties of the commission, which include to: request data and information; issue invitations for witnesses and evidence; establish a research program; serve as a clearinghouse for information; consult with courts and related entities for sound sentencing practices; collect and publish relevant data; make recommendations to the Legislature, establish a timetable and plan to collect and disseminate information regarding incapacitation, recidivism, deterrence, and sentencing effectiveness; and conduct a study of national and local trends to overcome addiction and criminal behavior.

The bill provides the objectives of the commission, which are to: promote sentencing that more accurately reflects actual incarceration; reduce unwarranted disparity in sentences; preserve meaningful judicial discretion and flexibility for individualized sentences; ensure judges are able to impose appropriate criminal penalties including options for appropriate nonviolent offenders; and determine the need to set out criminal offenses in terms of severity and harm to provide incarceration alternatives for certain offenses.

The commission must also provide recommendations to the Legislature on adoption of guided discretion sentencing guidelines, issues related to good time credit, the need for a coordinated system of correctional options, and any other relevant matters for sentencing options and programs.

The commission will sunset on June 30, 2023, absent legislation continuing the commission.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4007

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Born-Alive Abortion Survivors Protection Act.

CODE REFERENCE: §16-2P-1 (New)

SUMMARY:

This bill creates the Born-Alive Abortion Survivors Protection Act. The bill requires medical personnel performing an abortion to provide an aborted fetus the same degree of medical assistance that a non-aborted fetus would receive at the same gestational point if the fetus meets the definition of “born alive,” including transporting the born alive fetus to a hospital. The bill makes the failure to provide the required care a violation of the standard of care for licensed medical practitioners. The bill also provides that any person, not a physician or licensed medical professional, who violates the new requirements is guilty of unauthorized practice of medicine, a felony punishable by one to five years of incarceration, a fine of up to \$10,000, or both incarceration and the fine. The bill adopts definitions from the Pain Capable Unborn Child Protection Act.

DATE OF PASSAGE: February 19, 2020

EFFECTIVE DATE: May 19, 2020

ACTION BY GOVERNOR: Signed March 2, 2020

House Bill 4009

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to the process for involuntary hospitalization.

CODE REFERENCE: §27-1-11, §27-5-1, §27-5-2, §27-5-3, §27-5-4, and 27-5-10 (Amends and Reenacts); §27-5-2a and §27-6A-12 (New)

SUMMARY:

This bill updates provisions of the mental hygiene law by: 1) requiring training in mental health law for all magistrates; 2) making all magistrates available to hold certain mental health hearings; 3) replacing the term “addiction” with “substance use disorder;” and 4) requiring inquiry of hospitals prior to transporting patients.

Section 27-6A-12, which is new, requires the Secretary of the Department of Health and Human Resources to collaborate with the West Virginia Supreme Court of Appeals, prosecutors, providers, and advocates to propose legislation to deal with shortcomings in current law and to provide the legislation to the President and Speaker by July 31, 2020.

This bill also creates a process for involuntary hospitalization when: 1) a person is present at, or presented, at a hospital; 2) if a mental hygiene commissioner, a county magistrate, or a circuit court judge are unavailable or are unable to be contacted; and 3) if the staff physician believes that the individual is addicted or is mentally ill and because of his or her mental illness is likely to cause serious harm to himself, herself, or others if allowed to remain at liberty.

The bill provides that immediately or as soon as practicable thereafter, but in no event later than 24 hours after the involuntary hospitalization, the authorized staff physician or designated staff shall file a mental hygiene petition in which the staff member certifies the individual is likely to cause serious harm to himself, herself, or others if allowed to remain at liberty.

The bill provides that an individual who is involuntarily hospitalized must be released within 72 hours, unless further detention proceedings occur.

Under this bill, treatment may be rendered to the individual upon consent of the individual or in the event of a medical or psychiatric emergency. Additionally, the medical provider must exercise due diligence in determining the individual’s existing medical needs and provide treatment the individual requires, including previously prescribed medication.

The bill provides for payment of the provider at the negotiated rate and if the individual is uninsured, allows a claim to be filed with the Legislative Claims Commission.

The bill provides for immunity from liability if all actions are performed in conformity with the standard of care.

The bill requests that the West Virginia Supreme Court of Appeals provide each hospital with a list of names and contact information for the mental hygiene commissioners. It also provides that if a mental hygiene commissioner, county magistrate, or circuit judge does not respond to the request within 24 hours, a report shall be filed with the West Virginia Supreme Court of Appeals.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4020

COMMITTEE SUBSTITUTE, AS AMENDED

SHORT TITLE: Removing authority of municipalities to require occupational licensure if licensure for the occupation is required by the state.

CODE REFERENCE: §7-1-3tt, §8-12-20, and §30-1-25 (New)

SUMMARY:

This bill prohibits municipalities and counties from requiring a license for the practice of a profession or an occupation if the state requires a license.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4061

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Health Benefit Plan Network Access and Adequacy Act.

CODE REFERENCE: §33-15-4u, §33-15-22, §33-16-3ff, §33-16-18, §33-24-7u, §33-24-45, §33-25-8r, §33-25-22, §33-25A-8u, §33-25A-36, §33-53-1, §33-53-2, §33-53-3, §33-53-4, §33-53-5, §33-53-6, §33-53-7, §33-53-8, §33-53-9, §33-53-10, §33-53-11, §33-53-12, §33-53-13 (New)

SUMMARY:

This bill creates the Health Benefit Plan Network Access and Adequacy Act. It requires a health carrier providing a network plan to maintain a network that is sufficient in numbers and appropriate types of providers, including those that service predominately low-income, medically underserved individuals. It requires that covered persons have 24/7 access to emergency services. It is applicable to accident and sickness insurance, group accident and sickness insurance, hospital service corporations, medical service corporations, dental service corporations, health service corporations, health care corporations, and health maintenance organizations. It is not applicable to limited scope dental plans or limited scope vision plans.

Beginning January 1, 2021, a health carrier is required to file a newly offered network and access plan with the Commissioner for review. This access plan may be considered proprietary information. The bill specifies the contents of the access plan.

The bill requires a health carrier to post a current provider directory for each of its network plans electronically and to update the directory on a monthly basis. The directory is to describe in plain language how it tiers providers and note that authorization is required to access some providers. It must provide certain specified information and be accessible to persons with disabilities.

For insurers and lines of insurance that provide dental care coverage, this bill provides that if an insured provides dental care coverage to a covered person, it must honor an assignment of payment, made in writing by the covered person, of payments due under the policy to a dentist or a dental corporation for services provided to the covered person that are covered under the insurance policy. Upon notice of the assignment, the insurer must make payments directly to the provider of the covered services. In other words, the bill would entitle an out-of-network provider to receive benefits directly from an insurer if the insurer's covered person has provided a written assignment of benefits to the out-of-network provider.

The bill provides that a provider with a valid assignment may bill the insurer and notify the insurer of the assignment. Upon request of the insurer, the provider would have to provide a copy of the assignment to the insurer. The bill also provides that if, under an assignment, a provider collects payment from a covered person and subsequently receives payment from the insurer, the provider must reimburse the covered person, less any applicable copayments, deductibles, or coinsurance amounts, within 45 days.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4069

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: West Virginia Student Religious Liberties Act.

CODE REFERENCE: §18-33-1, §18-33-2, §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, and §18-33-8 (New)

SUMMARY:

This bill creates the Student Religious Liberties Act, effective beginning with the 2020-2021 school year. Under the Act, a public school district may not discriminate against students or parents on the basis of a religious viewpoint or religious expression. The bill establishes certain religious rights for students, including that:

- Students can express their beliefs in homework, artwork, and other written and oral assignments free from discrimination and cannot be penalized or rewarded on account of the religious content of their work.
- Students in public schools can pray or engage in religious activities or religious expression before, during, and after the school day in the same manner and to the same extent that students may engage in nonreligious activities or expression.
- A school district is required to treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject.
- Students are allowed to express their beliefs about religion in homework, artwork, and other assignments free from discrimination based on the religious content of the student's submission.
- Students are allowed to organize prayer groups, religious clubs, and religious gatherings to the same extent that students are permitted to organize other noncurricular student activities and groups.
- Students are allowed to wear clothing, accessories, and jewelry that display religious messages or symbols in the same manner and to the same extent that other types of clothing, accessories, and jewelry that display messages or symbols are permitted.

The bill provides that the Act cannot be construed to require any person to participate in any religious activity or to violate a person's constitutional rights. The bill also provides that the Act cannot be construed to limit a school's authority to maintain order and discipline in a neutral manner; protect the safety of students, employees, and visitors; or adopt policies and procedures consistent with law.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4088

COMMITTEE SUBSTITUTE

SHORT TITLE: Disposition of funds from certain oil and natural gas wells due to unlocatable interest owners.

CODE REFERENCE: §37-4-9 (New); §55-12A-7 (Amends and Reenacts)

SUMMARY:

This bill requires deposit of all unclaimed funds and proceeds due to an owner of real property interests to the Oil and Gas Reclamation Fund, if the owner's name or location is unknown and the owner does not make a claim for those funds for seven years after the date of the court order authorizing the distribution of the funds. The Oil and Gas Reclamation Fund is used to plug abandoned oil and gas wells and address associated environmental concerns throughout the state.

Similarly, the bill requires deposit of all unclaimed funds and proceeds due to owners of mineral interests to the Oil and Gas Reclamation Fund, if the owner's name or location is unknown and the owner does not make a claim for those funds for seven years after the date of the of the special commissioner's lease. The mineral interest of the unknown or missing owner is transferred to the surface owner by deed and gives the surface owner all future proceeds under the lease after the date of the deed.

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4092

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to foster care.

CODE REFERENCE: §49-2-102 and §49-2-104 (Repeal); §49-1-206, §49-2-108, §49-2-110, §49-2-111, §49-2-111a, §49-2-112, §49-2-118, §49-2-121, §49-2-124, §49-2-126, and §49-4-604 (Amends and Reenacts); §49-2-111c, §49-2-127, §49-2-127a, §49-2-128, §49-2-129, §49-4-601a and §49-4-601b (New)

SUMMARY:

This bill sets forth a number of objectives to improve the foster and kinship care system in this state. The bill revises definitions and creates new ones. The bill repeals outdated requirements for staffing complement and education of the public. It updates language for several provisions of existing code.

With respect to the performance-based contracting with child placing agencies, the bill provides a \$1,000 payment to child placing agencies for each completed adoption. The rate of payment to foster parents and child placing agencies must be evaluated every three years.

The bill establishes funding priorities that, subject to appropriations of the Legislature, authorize and directs the department to: 1) Enhance and increase efforts to provide services to prevent removal; 2) Identify relatives and fictive kin of a child in need of placement outside of his or her home; 3) Train persons providing kinship placements to become certified foster parents; 4) Expand a tiered foster care system no later than December 1, 2020; and 5) Develop a pilot program to increase payment to uncertified kinship placements for the purpose of further helping families who have accepted kinship placements. During fiscal year 2021, the department must expend at least \$16,900,000 for the purposes of implementing this section.

The bill states that Certificate of Need requirements do not apply.

The bill sets forth a Foster Child Bill of Rights and a Foster Parent and Kinship Parent Bill of Rights, and has a section related to foster parent and kinship parent agreements.

The rights for the foster child include certain basic rights relating to a child's living conditions and well-being, such as the right to food, shelter, clothing, and education. Other examples include: the right to live in a safe healthy environment; the right to receive medical, dental, and vision care; and the right to maintain contact with previous caregivers and other important adults, subject to the reasonable and prudent foster

parent standard and approval by the court. There are 21 rights provided to foster children in the bill.

The bill sets forth a Foster Parent Bill of Rights. These rights include being notified in advance of hearings; being provided with information regarding investigations; the right to receive information prior to placement regarding the child's behavior or special needs; the rights to submit a letter or report to the court regarding a violation of the rights or any concerns over the conduct or performance of the guardian ad litem, a representative of the department, or representative of the child placing agency, which the court may act upon; and the right to receive a copy of the agreement between the child placing agency and the department. The clerk is required to circulate this letter to the parties of record. There are 16 rights provided to foster and kinship parents in this bill.

The bill provides that the rights set forth in the bill do not create an independent cause of action and violations may be investigated by the foster care ombudsman. The ombudsman is required to submit a report on the number of complaints received and investigations completed, on December 15th of 2021 and every year thereafter, to the Joint Standing Committee, the Supreme Court, and the Governor.

The bill sets forth requirements for the agreement between the foster or kinship parent, the department, and the child placing agency. The purpose of these requirements is to provide notice to the foster parents regarding their duties and rights. These provisions detail the relationship between the department, the foster parent, the kinship parent, and/or the child placing agency. Some of the rights in the House version of the bill were moved to this section of the bill, including provisions addressing out of state travel, child-care, payment, informing the foster parent of applicable laws, and termination of the placement. New provisions were added, including provisions related to medical care and how to obtain consent, provisions for addressing how complaints against the foster parent will be handled and appealed, and a provision related to other terms that may be negotiated.

The bill provides that the duties and requirements in the agreement do not create a cause of action or action in breach of contract. The bill provides that violations of these rights may be reported and investigated by the foster care ombudsman.

The bill sets forth the reasonable prudent foster parent standard. This is the standard the caregiver must use to determine whether to allow a child in foster care to participate in extracurricular, enrichment, and social activities. This section permits a foster parent to use persons to care for or baby sit the child or to permit overnight stays outside of the home using the reasonable prudent foster parent standard.

The bill creates a section providing that when a child is removed from his or her home placement, preference must be given to relatives of the child and fictive kin. The department must diligently search for relatives within the first days of removal. It requires that, no later than seven calendar days after the petition for removal has been filed, the department shall file a list of all known relatives and fictive kin of the child with the court.

The bill revises language related to substantiation of child abuse and neglect. The bill sets forth an appeals process and provides for the development of legislative rules.

The bill states that a guardian ad litem shall, in the performance of his or her duties, adhere to the requirements of the Rules of Procedure for Child Abuse and Neglect Proceedings, the Rules of Professional Conduct, and such other rules as the West Virginia Supreme Court of Appeals may promulgate and any appendices thereto. A guardian ad litem must meet all certification and education requirements as a condition for receiving payment.

Finally, the West Virginia Supreme Court of Appeals is requested to provide guidance to the judges of the circuit courts regarding supervision of guardians ad litem. The bill also requests the Supreme Court of Appeals to review the Rules of Procedure for Child Abuse and Neglect Proceedings and the Rules of Professional Conduct specific to guardians ad litem.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4123

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Clarifying that 911 telecommunication workers are included in the definition of those individuals who perform “emergency services” during a disaster.

CODE REFERENCE: §15-5-2, §24-6-2, and §24-6-5 (Amends and Reenacts)

SUMMARY:

This bill includes emergency telecommunications within the Division of Homeland Security and Emergency Management’s definition of “emergency services.” It also adds a new term, “emergency telecommunicator,” to the Public Service Commission’s Local Emergency Telephone System definitions. “Emergency telecommunicator” means a professional telecommunicator meeting the training requirements set forth in §24-6-5 and who is a first responder tasked with the gathering of information related to medical emergencies, the provision of assistance and instructions by voice, prior to the arrival of emergency medical services (EMS), and the dispatching and support of EMS resources responding to an emergency call. This definition gives emergency telecommunicators the status of a first responder and the other rights and privileges afforded to first responders under state law.

The bill also permits the directors of county or municipal emergency phone systems to negotiate contracts that would establish mobile-phone emergency lines for the county or municipality.

The director must solicit bids for contracts from mobile phone service providers in the state. The director and provider should collaborate to ensure the following:

- The emergency mobile phone number should be the county prefix and end in 0911 (as feasible);
- The emergency mobile phone provider should permit roll over service to allow multiple callers to dial into the number of lines purchased; and
- The emergency mobile phone service provider should provide the lowest possible cost.

Such contracts may be paid from funds received by the Public Service Commission relating to 911 fees remitted to the county (or by other county funds). A report of funds spent for emergency mobile phone contracts must be presented to the Interim Joint Committee on Government Organizations no later than November 30, 2020 to ensure fiscal responsibility and efficacy.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4159

STRIKE AND INSERT AMENDMENT TO INTRODUCED BILL

SHORT TITLE: Relating to the manufacture and sale of hard cider.

CODE REFERENCE: §60-1-5A, §60-8-2, §60-8-3, §6-8-4, §60-8-18; and §60-8-29 (Amends and Reenacts); §19-2-12, §19-2-13, §60-8A-1, §60-8A-2, §60-8A-3, §60-8A-4, §60-8A-5, §60-8A-6, and §60-8A-7 (New)

SUMMARY:

This bill establishes an Agriculture Development Fund and a Cider Development Fund, to be funded by legislative appropriation. Additionally, the bill redefines hard cider as a subcategory of wine made from fruit or fruit juice that contains carbonation and measures between one-half of one percent to 12.5% alcohol by volume. Certain cider-makers are categorized as farm wineries. The bill transfers some of the tax revenue from the sale of hard cider to Department of Agriculture to help grow the industry. The bill also lowers the current tax rate for cider that is currently the same as wine (98.6 cents per gallon) to a rate of 22.6 cents per gallon, which is closer to the tax rate of beer (17.74 cents per gallon). The bill sets health and safety standards, operational guidelines, and packaging standards for cider manufacturers. Finally, the bill gives the West Virginia Alcohol Beverage Control Administration rulemaking authority to implement the bill's provisions.

DATE OF PASSAGE: March 7, 2020

ACTION BY GOVERNOR: Vetoed March 25, 2020

House Bill 4166

INTRODUCED BILL

SHORT TITLE: Prohibiting certain sex offenders from being in a supervisory position over children.

CODE REFERENCE: §62-12-26 (Amends and Reenacts)

SUMMARY:

This bill prohibits any person found guilty of first-degree sexual assault or first-degree sexual abuse from being in a supervisory position, playing a supervisory role, or being responsible for groups of children. Although the law previously provided some restrictions on certain sex offenders, sex offenders were not prohibited from working or volunteering in supervisory roles over children. Roles subject to the new restrictions include, but are not limited to, supervisory roles for the Boy Scouts, the Girl Scouts, 4-H organizations, sporting and scholastic teams, music groups, sporting and theatre groups and camps, and summer day camps.

DATE OF PASSAGE: February 17, 2020

EFFECTIVE DATE: May 17, 2020

ACTION BY GOVERNOR: Signed March 5, 2020

House Bill 4179

INTRODUCED BILL

SHORT TITLE: Enacting Recognition of Emergency Medical Services Personnel Licensure Interstate Compact.

CODE REFERENCE: §16-56-1, §16-56-2, §16-56-3, §16-56-4, §16-56-5, §16-56-6, §16-56-7, §16-56-8, §16-56-9, §16-56-10, §16-56-11, §16-56-12, §16-56-13, §16-56-14, and §16-56-15 (New)

SUMMARY:

This bill enacts the Recognition of Emergency Medical Services Personnel Licensure Interstate Compact, entering West Virginia into the compact with all jurisdictions that have also enacted the compact. It states the purpose of the compact and defines terms, such as “member states,” “home states,” and “remote states.”

The bill permits member states to require a license under circumstances not covered by the compact, sets conditions for a home state’s license to authorize practice in a remote state under the compact, and requires member states to recognize licenses issued by another member state under certain circumstances. Among other things, the bill lists the requirements for individuals to exercise the privilege to practice, sets the scope of practice, and makes individuals practicing in remote states subject to the remote state’s laws.

The bill authorizes remote states to act against an individual’s privilege to practice within that state under certain circumstances; provides for the effect of license restrictions on compact privileges; and sets the conditions of practicing in a remote state under compact terms. It defines the relationship of the compact to the Emergency Management Assistance Compact and sets terms and requirements for certification of veterans, certain service members, and their spouses. It codifies and recognizes the exclusive power of home states to take adverse action against a license issued by the home state and provides consequences for compact participation if an individual’s license is subject to adverse action by his or her home state.

The bill requires member states to report adverse actions against licenses, authorizes home states to take action against an individual’s privilege to practice within that state, requires a home state EMS authority to investigate and take appropriate action based on reported conduct in a remote state, authorizes alternative programs in lieu of adverse action, and authorizes a member state’s EMS authority to issue subpoenas and certain cease and desist orders. It further establishes the Interstate Commission for EMS Personnel Practice and maintains state sovereign immunity. It provides for Commission

membership and voting; requires public annual meetings; authorizes the Commission to prescribe bylaws and rules to govern conduct; and provides for financing for the Commission, by requiring an annual assessment against the state contingent upon funds being appropriated by the Legislature or otherwise being made available.

The bill directs state governments to enforce the compact and take necessary actions to effectuate its purposes and intent. It provides for legal venue in West Virginia and an implementation date for the compact, making any state joining after implementation subject to rules as they exist when the compact is adopted.

Finally, it directs the Emergency Medical Services Advisory Council to review decisions of the Commission and authorizes the Emergency Medical Services Advisory Council to make recommendations to the Legislature regarding the compact.

DATE OF PASSAGE: February 17, 2020

EFFECTIVE DATE: May 17, 2020

ACTION BY GOVERNOR: Signed March 5, 2020

House Bill 4217

COMMITTEE SUBSTITUTE, AS AMENDED

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

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

SUMMARY:

This bill is known as the Department of Environmental Protection Rules bundle which authorizes and directs the promulgation of 10 rules, constituting Bundle 3.

House Bill No. 4217 Department of Environmental Protection, Division of Air Quality, Ambient Air Quality Standards, 45 CSR 08

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

The modifications adopt and incorporate, by reference, annual updates to the federal counterpart promulgated by the EPA as of June 1, 2019. These incorporate EPA modifications on the retention of standards for the various oxides of nitrogen.

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 the state.

House Bill No. 4218 Department of Environmental Protection, Division of Air Quality, Standards of Performance for New Stationary Sources, 45 CSR 16

This rule modifies a current legislative rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the 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, 2019. 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 the state.

House Bill No. 4270 Department of Environmental Protection, Division of Air Quality, Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities, 45 CSR 25

This rule modifies a current legislative rule which establishes and adopts emission standards for controlling air pollution from Hazardous Waste Treatment, Storage, and Disposal Facilities, as promulgated by the EPA in accordance with the federal Resource Conservation and Recovery Act (RCRA).

The modifications incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2019. 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, 2019 and establish the general procedures and criteria necessary to implement air emissions standards.

House Bill No. 4219 Department of Environmental Protection, Division of Air Quality, Emission Standards for Hazardous Air Pollutants, 45 CSR 34

This rule modifies a current legislative rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the EPA pursuant to the Clean Air Act (CAA).

The modifications incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2019.

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 the state for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA.

House Bill No. 4220 Department of Environmental Protection, Division of Air Quality, Control of Ozone Season Nitrogen Oxides Emissions, 45 CSR 40

This rule modifies a current legislative rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the EPA pursuant to the Clean Air Act (CAA).

The modifications incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2019.

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 the state for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA.

The rule updates definitions and adds extensive provisions for monitoring, recordkeeping, and reporting requirements.

House Bill No. 4348 Division of Mining and Reclamation, West Virginia Surface Mining Reclamation Rule, 38 CSR 02

This rule modifies a current legislative rule. This rule governs surface mining reclamation, including permit applications; property access; water drainage and erosion; land use; wildlife and revegetation; insurance and bonding; performance standards; subsidence control; and inspection and enforcement.

The rule changes are being made in response to Senate Bill 635 which passed during the 2019 Regular Session. Senate Bill 635 amended W. Va. Code §22-3-14, which is a part of the Surface Coal Mining Reclamation Act regulating surface effects of underground mining. Senate Bill 635 added a new subsection (e) requiring the Secretary to promulgate a rule before the 2020 Regular Session pertaining to surface owner protection from material damage due to subsidence. Under the bill, the Secretary is instructed to consider the adoption of certain specified federal standards.

The objective of the rule change is to clarify the agency's limitations in adjudicating property rights disputes brought on by subsidence damage.

The House amended two sections in the rule. The first amendment clarifies language in paragraph 11.3.a.3, providing that companies electing to execute bonds must diligently pursue listing on the United States Treasury Department's list of approved sureties. Paragraph 16.2.c.2 currently allows an operator to correct material damage caused by subsidence to any structures or facilities or compensate the owner in the full amount of the diminution in value of the structures or facilities resulting from the subsidence. The House adopted an amendment to allow the owner to make the election, with a limitation on compensation to repair the damage, not to exceed 120% of the pre-mining value of the structure or facility. A statement is added that the paragraph does not create any additional property rights, nor may it be construed to vest the Secretary with the jurisdiction to adjudicate property rights disputes.

House Bill No. 4221 Division of Mining and Reclamation, Groundwater Protection Rules for Coal Mining Operation, 38 CSR 02F

This rule modifies a current legislative rule. It establishes practices for groundwater protection which are to be followed by any person who conducts coal mining operations. The rule is established under the Groundwater Protection Act, the Water Pollution Control Act, and the Surface Coal Mining and Reclamation Act.

The changes are being made in response to Senate Bill 635 which passed during the 2019 Regular Session. The statutory change added a subsection (g) to W. Va. Code §22-30-24, the Aboveground Storage Tank Act. The added subsection (g) states that the Secretary of Department of Environmental Protection (DEP) shall promulgate legislative rules for consideration by the Legislature in its 2020 Regular Session to incorporate the relevant portions of the Aboveground Storage Tank Act into the Groundwater Protection Rules for Coal Mining for tanks located at coal mining operations.

The purpose of the changes is to vest all enforcement authority in one division of the DEP with respect to coal mines, rather than having two divisions responsible for enforcement. The Division of Mining and Reclamation will take over, from the Division of Water and Waste Management, enforcement of rules pertaining to storage tanks at coal mining sites.

The changes incorporate the entirety of the Above Ground Storage Tank Act into the rule by reference.

House Bill No. 4222 Department of Environmental Protection, Division of Water & Waste Management, Hazardous Waste Management System, 33 CSR 20

This rule amends a current legislative rule regulating the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of public health, safety, and the environment. The rule adopts and incorporates, by reference, the federal regulations set forth in 40 CFR Parts 260 through 279 that are in effect as of August 21, 2019. The new rule adopts the most recent hazardous waste regulations and is necessary to maintain the West Virginia program's approval, primacy, and consistency with the federal program.

House Bill No. 4223 Department of Environmental Protection, Voluntary Remediation and Redevelopment Rule, 60 CSR 03

This rule amends a current legislative rule. It is the result of the Voluntary Remediation and Redevelopment Act, located in W.Va. Code §22-22-1 *et seq.*

The changes will update and modernize the existing rule based on current science and current practice. Many of the changes are the result of comments and feedback from years of implementation of the rule.

Most of the changes are to the Risk Protocol and Remediation Standards section, which clarify the requirements related to performing risk assessments. Additionally, language will be added to clarify that presumptive remedies can be considered in the exposure assessment to eliminate the need to perform a more costly site-specific risk assessment.

Several changes are to the Licensed Remediation Specialist Program. The Voluntary Remediation and Redevelopment Act requires the use of a Licensed Remediation Specialist for supervision of all remediations completed through the program. This is to ensure that the safety, health, and welfare of the public are protected.

The changes to this section strengthen the program by requiring 1) evidence of accredited educational degrees earned to meet minimum education requirements; 2) a passing score set by the rule at 70% for the Licensed Remediation Specialist examination; and 3) appropriate continuing education, including mandatory training specific to the program.

The changes to the Risk Protocol were made to update the requirements related to performing risk assessments to better reflect the current standard of practice.

The changes also increase fees associated with the program which have not been increased since the original filing in 1997. The current fees do not adequately cover program costs.

House Bill No. 4311 Oil and Gas Conservation Commission, Rules of the Commission, 39 CSR 01

This rule amends a current legislative rule. Generally, it defines the operations of the Oil and Gas Conservation Commission (OGCC). The rules are promulgated primarily to prevent waste, protect correlative rights of owners, and to conserve oil and gas fields throughout the state.

The rule change was prompted by the needs of oil and gas operators who are developing deep wells into shale formations. A deep well is a well which penetrates below the top of the Onondaga Limestone formation.

Current deep well spacing requirements are 3,000 feet minimum between wells and 400 feet minimum between wells and lease or unit boundaries. It has been widely acknowledged by both industry and government officials that these deep well minimum spacing requirements are unworkable for deep wells drilled into tight formations, such as the Utica and Rogersville shales. Currently, operators are being granted exceptions for these types of wells, almost as a matter of routine.

For horizontal deep wells the minimum distances between new wells and older wells and new wells and unit and lease boundaries are defined. These are default minimums. If needed, the OGCC has the authority to create exceptions to these distances. The new spacing language provides that the productive interval of each new horizontal deep well shall be:

- 1) Unless otherwise agreed to, no less than 1,000 feet from the productive interval measured perpendicularly from a previously permitted deep well operated by a different operator;

- 2) No less than 800 feet from the productive interval measured perpendicularly from a previously permitted deep well operated by the same operator;
- 3) Unless otherwise agreed to, no less than 500 feet from a lease or unit boundary measured perpendicularly for wells where the adjoining lease or unit is operated by different operators;
- 4) No less than 400 feet from a lease or unit boundary measured perpendicularly for wells where the adjoining lease or unit is operated by the same operator;
- 5) No less than 150 feet from the productive interval nearest the heel or toe of a previously permitted deep well and no less than 75 feet from a lease or unit boundary; and
- 6) For a horizontal well, no spacing limitations for non-productive intervals before or after the productive interval.

The vertical deep well spacing is updated with respect to the minimum distances between a well and the lease or unit boundaries. The distance is changed from 400 feet to 500 feet, so that vertical deep well spacing will be consistent with the spacing requirements of horizontal deep wells.

DATE OF PASSAGE: March 3, 2020

EFFECTIVE DATE: June 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4252

COMMITTEE SUBSTITUTE, AS AMENDED

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

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

SUMMARY:

This bill is known as the miscellaneous rules bundle, which authorizes and directs the promulgation of 80 rules, constituting Bundle 9.

House Bill No. 4252 Board of Accountancy, Board Rules and Rules of Professional Conduct, 1 CSR 1

The rule amends a current legislative rule. Senate Bill 396 from the 2019 Regular Session requires boards to update fee schedules to allow low-income individuals and military families to apply for a fee waiver. The Board updated language for CPA exam candidates in anticipation of updates from the American Institute.

The rule also incorporates the necessary changes required by the passage of House Bill 118 during the 2019 First Special Session. It prohibits boards from disqualifying an applicant from initial licensure because of a prior criminal conviction unless the crime bears a rational nexus to the profession, except for violent or sexual offenses, all to be determined by the board on a case by case basis.

House Bill No. 4253 Board of Acupuncture, Fees of the Board of Acupuncture, 32 CSR 4

The rule amends a current legislative rule. The rule is being modified pursuant to changes made necessary with the passage of House Bill 2324 during the 2019 Regular Session of the Legislature. The bill permitted the Acupuncture Board to issue certificates to perform auricular acudetox therapy. Additionally, the bill provided emergency rulemaking authority to the board to establish fees for certificate holders.

The rule establishes a ten-year sunset date, a fee of \$60 for the two-year certificate to perform auricular acudetox therapy, and a fee of \$50 for a two-year renewal of a certificate to perform auricular acudetox.

House Bill No. 4254 Board of Acupuncture, Auricular Detoxification Therapy Certificate, 32 CSR 14

The is a new rule which sets out the process for issuance of a certificate, renewal, qualifications and terms for auricular detoxification therapy certification holders. The rule was made necessary with the passage of House Bill 2324 during the 2019 Regular Session.

The rule provides that the certificate is valid for two years. In order to qualify for a certificate an applicant must be at least 18 years old. Additionally, an applicant must be authorized to engage in one of the following licensed professions: physician assistant, dentist, registered professional nurse, practical nurse, psychologist, occupational therapist, social worker, professional counselor, emergency medical services provider, or corrections medical provider. An applicant must provide evidence of successful completion of a board approved auricular acudetox program and submit a completed application and the appropriate fee.

The rule identifies causes for denial, probation, limitation, discipline, suspension, or revocation of the certificate; disciplinary and compliant procedures; and contested case hearing procedures.

House Bill No. 4255 Board of Acupuncture, Application for Waiver of Initial Licensing Fees for Certain Individuals, 32 CSR 15

This is a new rule. Senate Bill 396 from the 2019 Regular Session requires boards to update fee schedules to allow low-income individuals and military families to apply for a fee waiver. The rule establishes the process and procedure for a first-time licensure applicant that qualifies as a low-income individual or military family to seek a waiver of the initial licensing fee. The rule defines terms, establishes the process for applying for the initial licensing fee waiver, sets forth the eligibility requirements, and describes the necessary information and documents that must be submitted to the Board to process the waiver request and determine eligibility.

House Bill No. 4256 Board of Acupuncture, Consideration of Prior Criminal Convictions in Initial Licensure Determinations, 32 CSR 16

This is a new rule which incorporates the necessary changes required by the passage of House Bill 118 during the 2019 First Special Session. It prohibits boards from disqualifying an applicant from initial licensure because of a prior criminal conviction unless the crime bears a rational nexus to the profession, except for violent or sexual offenses, all to be determined by the board on a case by case basis.

House Bill No. 4208 Commissioner of Agriculture, Animal Disease Control, 61 CSR 01

This rule amends an existing rule. It adds a definition of “poultry” and adds a requirement for testing of birds and poultry that are going to be imported into the state, with certain exceptions.

House Bill No. 4209 Commissioner of Agriculture, Fresh Food Act, 61 CSR 10

This is a new rule, promulgated to implement the requirements of House Bill 2396, passed in the 2019 Regular Session, referred to generally as the Fresh Food Act. The Act requires state-funded institutions to purchase a minimum of five percent of their food from in-state producers annually. The rule provides for each institution to appoint a liaison to the Department of Agriculture to monitor and ensure compliance with the Act.

By January 1, 2020, each institution is required to submit copies of their food contracts for the preceding three years and an analysis of those contracts relating to the purchase of West Virginia food products. By August 31 of each year, institutions are required to report, on a form provided by the Department of Agriculture, specific information regarding the purchase of food and the percentage of those purchases that were meat, poultry, and produce from West Virginia.

The rule gives the Commissioner of the Department of Agriculture authority to grant waivers from the Act’s requirements and prescribes the terms under which waivers will be granted and the procedure for applying for one. The Commissioner is also granted authority to enforce the Act, both as to state-funded institutions and as to West Virginia producers and sellers. Finally, the rule provides that it is to be enforced and construed to further the public policy of the Act.

House Bill No. 4260 Commissioner of Agriculture, Auctioneers, 61 CSR 11B

This rule amends an existing legislative rule. The amendments are being made to reflect passage of House Bill 2982 during the 2019 Regular Session and to incorporate provisions requested by auctioneers. The amendments add a requirement for a criminal background check as part of the licensure process and extend the time for the Commissioner of the Department of Agriculture to act on the application until 30 days after receipt of all information, including the results of the background check.

The amended rule also changes the license year from a calendar basis to one based on the state’s fiscal year, July 1 to June 30. The rule allows auctioneers and apprentice auctioneers a grace period to operate under their respective licenses after submission of all the information necessary for renewal of their licenses. Requirements for elective courses to meet the continuing education element of license renewal are eliminated.

The rule now provides a procedure for auctioneers to place their license on inactive status and for reactivating the license. An individual who has practiced in a state without a licensing law for auctioneers shall be granted a license upon showing that he or she has practiced as an auctioneer for a period of two years preceding application for a West Virginia license.

The amended rule also modifies advertising requirements, particularly with regard to absolute and estate auctions: an auction may not be advertised as “absolute” if minimum bids or other conditions are placed on the sale and an estate auction may not include items other than those from the advertised estate unless noted on the advertisement. The rule modifies the requirements for contracts between auctioneers and sellers and adds a requirement for written contracts between auctioneers and auction houses. All contracts must be retained for a period of three years after the sale was completed and are subject to the Commissioner’s inspection, upon request.

The amended rule provides exemptions for auctions conducted for charitable organizations, with some restriction, and also makes online auctions subject to licensure requirements. Auction houses will be required to register with the Commissioner under the revised rule.

House Bill No. 4210 Commissioner of Agriculture, Poultry Rules for Poultry Disease Control, 61 CSR 13A

This is the repeal of an existing rule. It is being repealed because the provisions of this rule are now included in 61 CSR 1 §15. That rule became effective June 1, 2019.

House Bill No. 4211 Commissioner of Agriculture, Grade A Pasteurized Milk, 61 CSR 15

The rule, originally filed as an emergency rule, establishes the standards for production, transportation, processing, handling, sampling, examination, labeling, and sale of Grade A milk and milk products.

The emergency rule became necessary as a result of the passage of Senate Bill 496 during the 2019 Regular Session, which transferred the responsibility and authority for milk regulation to the Department of Agriculture (WVDA) from the Department of Health and Human Resources (DHHR), effective January 1, 2020. During the transition from DHHR to WVDA, several issues have been discovered. The most significant of these is that without the authority to use industry inspectors from other states (Ohio and Virginia are the states contemplated) provided for in this rule, the WVDA will not be able to regulate Grade A milk fully, and state dairies will not be able to ship their product in interstate commerce on and after January 1, 2020. Second, the rule updates the version of the Pasteurized Milk Ordinance (PMO) West Virginia follows, which, again, affects the ability of in-state dairies to ship Grade A milk interstate.

The 2017 edition of the Grade A PMO is adopted and incorporated by reference with several additions, deletions, and changes necessary to make the PMO specific to West Virginia. Adoption of the 2017 edition of the PMO addresses one of the concerns identified during the transition to WVDA regulation of milk and milk products.

Section 3 of the rule grants the WVDA Commissioner the authority to enter into written agreements with neighboring states regarding regulatory responsibilities for dairies operating in both states concurrently.

Section 4 implements the industry inspection program, which is referred to in the rule by the acronym CIDFI. It allows individuals from the industry to be certified as inspectors and sets out the requirements for eligibility and certification. The program requires unannounced inspections of dairy farms at least every six months. The WVDA may also perform inspections though the inspections are not intended as a substitute for the CIDFI inspections.

The rule also addresses seasonal milk producers and the procedures for milk sampling.

Finally, the rule establishes the Milk Advisory Board, which was mandated by Senate Bill 496. The board consists of at least seven voting members and may also include non-voting members. All members are appointed by the Commissioner. The board must meet at least annually, but may meet more often, as needed.

House Bill No. 4212 Commissioner of Agriculture, WV Manufacture-Grade Milk, 61 CSR 19

This is a new rule which establishes operating rules and procedures for West Virginia dairy farms and milk facilities that produce, process, transport, sort, or distribute manufacture-grade milk or manufacture-grade milk products for human consumption that are not subject to Grade A milk requirements.

The rule became necessary as a result of the passage of Senate Bill 496 during the 2019 Regular Session, which transferred the responsibility and authority for milk regulation to the Department of Agriculture (WVDA) from the Department of Health and Human Resources (DHHR), effective January 1, 2020. It concerns “manufacture-grade” milk, which is milk that is pasteurized, packaged, or prepared for sale for human consumption, but is not subject to Grade A rules and is not used for fluid milk sales. Most such milk is used to make milk products, such as butter, cheese, condensed skim or whole milk, and nonfat dry milk.

The rule sets out minimum quality standards and minimum testing standards. Milk that exceeds the bacterial count standards, contains an inhibitory substance, is abnormal by sight or odor, or is considered adulterated may not be used.

The rule also contains requirements for testing milk for drug residue, particularly beta lactam drug residue. Testing responsibilities are placed primarily on the producer, but the WVDA has monitoring and surveillance authority, and the Commissioner has the power to deny, suspend, or revoke a producer’s permit for violations of the drug testing program or the rule generally. The rule prescribes standards for milking facilities, both as to cleanliness and as to construction. It regulates milking utensils and equipment, milking procedure, and the protection of milk from contamination.

The rule requires pasteurization of milk and milk products and provides the procedures for doing so. It sets out provisions for animal health, insect and rodent control, and human cleanliness.

The rule states that a permit is required to operate a dairy or manufactured-milk operation, and that permits must be renewed annually.

House Bill No. 4261 Commissioner of Agriculture, Employment Reference and Inquiries and Background Checks, 61 CSR 20

This is a new rule, required by House Bill 3007, which passed during the 2019 Regular Session. The rule allows the Department of Agriculture to verify any information provided by an applicant or an employee and to require an applicant or employee to provide information necessary for the Department to access records relevant to the position for which the applicant or employee is seeking. The rule allows individuals who receive an adverse suitability determination to dispute it and provides a procedure for doing so. The rule makes clear that an applicant has no property right in a position or offer of employment. Any records or information received as part of the background investigation, whether physical or electronic, are to be maintained separately and securely. Applicants and employees are required to report any disqualifying or potentially disqualifying event, i.e., conviction, within five days of its final disposition. An employee's failure to do so is grounds for disciplinary action.

Applicants who are disqualified may reapply after the expiration of five years after conviction or date of release from the imposed penalty, whichever is later. Disqualification for violent offenses, however, is for a period of 10 years, and for sexual offenses, 20 years. The rule states that individuals with a criminal record may petition the Commissioner before applying for a position for a determination whether the criminal record will disqualify him or her from employment and provides the requirements for the petition. The rule requires a decision to be provided within 60 days of receipt of the petition.

House Bill No. 4214 Commissioner of Agriculture, West Virginia Spay Neuter Assistance Program, 61 CSR 24

This rule amends a current legislative rule. The rule establishes the requirements for the Spay Neuter Assistance Program. The amendments modify certain definitions and eliminate the definition of the "voucher-based program" because that program is being eliminated. The amendments prohibit a grantee from charging a fee incident to adoption to cover spay neuter services covered under the program. If a fee is charged, the grantee may not be reimbursed for the services. The amendments eliminate the voucher based and low-income programs. Instead, the amendments provide that grantees are to be reimbursed the costs of providing spay neuter services by submitting invoices and documents substantiating the costs to be reimbursed. Grantees must have the services performed by a veterinarian to be eligible for reimbursement. Grantees must enter into a contract with the Commissioner setting out the terms and conditions for the grant and instructions for requesting reimbursement.

House Bill No. 4262 Commissioner of Agriculture, Industrial Hemp, 61 CSR 29

This rule amends a current legislative rule. The amendment makes changes to reflect the licensing portions of House Bill 2694 from the 2019 Regular Session, the Industrial Hemp Development Act.

The rule provides for two types of licenses: a license to grow hemp and a license to process it. The license to grow hemp must be renewed annually. The rule has been modified to add that background checks must be completed every three years as a part of the renewal process. A new section has been added to the rule to create a license to process hemp. Although the section is new, the requirements for the license substantially track those for the license to grow hemp.

The rule modifies the existing standards for sampling and testing a hemp crop. The modifications make clear that testing will occur before harvest and specify that the testing laboratory must be accredited to conduct quantitative THC analysis. The rule now allows for a second sampling and testing if a test result comes back above the permissible THC concentration, at the Commissioner's discretion. Further, the amendments to the rule now allow licensees to use the Department of Agriculture's testing facilities for voluntary pre-harvest testing, subject to availability of Department equipment and personnel.

The amendments add provisions in Section 7 for inspection of hemp processing facilities. The inspection provisions allow each licensee to develop policies and procedures for the specific processing facility and requires that the licensee maintain records demonstrating compliance with the policies and procedures. The Department is required to inspect both the facilities and the records at least once a year and may do so more frequently.

The enforcement and penalty provisions of the rule allow the Commissioner to take a variety of disciplinary actions against applicants and licensees, including suspending or revoking a license, and embargoing or destroying a licensee's crop. When a test result comes back above the allowable THC concentration level, the rule permits the Commissioner to allow the licensee to submit a Corrective Action Plan and request a second sampling and test.

House Bill No. 4263 Commissioner of Agriculture, Hemp Products, 61 CSR 30

This is a new rule. It implements and reflects the passage of House Bill 2694 during the 2019 Regular Session. It provides for the registration and regulation of hemp products sold within the state of West Virginia. Following an extensive definition section, the rule establishes the authority of the Department of Agriculture to regulate hemp products but also states that the federal Food and Drug Administration and other federal agencies have authority to enforce federal standards regarding those products.

The rule requires the manufacturer of all hemp products distributed in West Virginia to register annually with the Department of Agriculture. The distributors and sellers of hemp products and extracts must also register annually. As part of the product registration process, a manufacturer must include a certificate of analysis (COA), the details of which are set out in the rule. Hemp fiber products are exempt from the COA requirement, and from registration fees, but still must be registered. The rule contains extensive labeling requirements, generally mandating truthful claims, cannabinoid content disclosure, and information regarding the product's provenance. Additionally, labels cannot be attractive to children or contain false or misleading information.

The Department is given broad inspection duties under the rule and the authority to conduct random inspections, sampling, and analysis. The rule contains a graduated enforcement action system for unregistered manufacturers and sellers and for product violations. The Commissioner may embargo products that violate the provisions of the rule. The products may also be confiscated upon order of the circuit court with jurisdiction where the product violation is occurring. The circuit court may also issue injunctive relief restraining violative conduct. The rule also sets up procedures for informal administrative hearings, with an appeal from the hearings to the circuit court where the aggrieved party has its principal place of business.

House Bill No. 4215 Commissioner of Agriculture, Captive Cervid Farming, 61 CSR 34

This is an amendment of an existing rule. The primary purpose of the amendment is to add administrative penalties for violation of the rule or the corresponding statute, up to and including revocation of an individual's captured cervid facility license. The Commissioner may also order disposition of the captive cervid inventory of properties unlicensed, not able to be licensed, or that experience repeated containment failures. The rule also provides for an appeal of an adverse decision or order of the Commissioner.

The rule requires submission of samples from animals that die or are slaughtered within one week of sample collection. It also makes the veterinarian who makes the annual visual examination of each animal responsible for submitting a report to the Department of Agriculture; the owner was previously responsible.

House Bill No. 4264 Commissioner of Agriculture, Farmers Markets, 61 CSR 38

Generally, this rule establishes a framework for regulation of farmers markets and farmers market vendors, including registration, permitting, inspection, and product labeling. It also establishes requirements for sampling at farmers markets and sets forth procedures for enforcement and hearings.

Some changes to this existing rule are in response to feedback after the first year of the program. Other changes are being made to comply with Senate Bill 285, passed in the 2019 Regular Session, which related to the sale of homemade food items.

1. The changes to the rule add definitions for “homemade food item” and “mobile farmers market.”
2. The changes revise language within non-potentially hazardous foods concerning what are commercially harvested mushrooms. An “approved certificate of sale from an authorized spore dealer” is replaced with mushrooms which are “on the approved species list found in the West Virginia Farmers Market Vendor Guide.”
3. The new language clarifies that “wild-harvested mushrooms” may not be sold at farmers markets. The previous rule stated only “wild mushrooms.”
4. “Eggs” are removed from the list of permit-required foods.
5. The changes add specific labeling requirements for products sold at farmers markets.
6. The new rule differentiates labelling requirements for “potentially hazardous farm and food products” and “non-potentially hazardous farm and food products.” The labels require different information.
7. The changes remove language which previously allowed local health departments to regulate product labelling. The local health department retains authority to investigate and enforce cases of food born illness.

House Bill No. 4213 Commissioner of Agriculture, WV Exempted Dairy Farms and Milk and Milk Products Processing Rules, 61 CSR 40

This is a new rule. It establishes operating rules and procedures for West Virginia dairy farms that produce pasteurized milk that does not meet Grade A milk or manufacture-milk standards, and which milk and milk products may only be sold within the state of West Virginia.

The rule became necessary as a result of the passage of Senate Bill 496 during the 2019 Regular Session, which transferred the responsibility and authority for milk regulation to the Department of Agriculture (WVDA) from the Department of Health and Human Resources (DHHR), effective January 1, 2020. The rule concerns milk that is acceptable for human consumption, but which does not meet Grade A or manufacture milk standards and can be sold only within West Virginia.

The rule sets out definitions, then establishes minimum quality standards and testing requirements. It prohibits use of milk containing inhibitory substances, which are antibiotics and pesticides not registered for use on lactating dairy animals. The rule also prohibits use of adulterated or abnormal milk.

The rule contains standards for milking bars or milk parlor construction and maintenance and cleanliness. It also establishes standards for milk house and milk barn construction and cleanliness, and for milking utensils and equipment. Standards for

animal health, insect and rodent control, and milking procedures are contained in the rule as well. The rule requires pasteurization of all milk and milk products and provides standards and procedures for that process.

The rule requires a permit to operate a dairy farm or milk processing facility. Permits must be renewed annually.

House Bill No. 4258 Board of Architects, Registration of Architects, 2 CSR 1

This rule amends a current legislative rule. The rule sets out the process to register architects in West Virginia, including continuing education requirements and rules for professional conduct. The rule was last modified in 2017. The changes make West Virginia's process consistent with national standards. The Architect Registration Exam and the Architectural Experience Program (AXP) have both been updated by the National Council of Architect Registration Boards. West Virginia is a member of this board.

Substantively, the changes are as follows:

1. A new definition of Architectural Experience Program has been added. This would replace the now-obsolete definition of the Intern Development Program.
2. The section pertaining to Health, Safety, and Welfare Subjects has been modernized to reflect current standards and practice.
3. The period permitted for late registration renewal is decreased from 12 months to 6 months.
4. New language has been added stating that the Board, when reviewing an initial application of an applicant with a prior criminal conviction, will evaluate the application in accordance with House Bill No. 118 which passed during the 2019 First Extraordinary Session. That bill prohibited certain boards 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 profession or occupation requiring licensure. The bill also prohibits boards from disqualifying an applicant for licensure based on a prior conviction of a crime generally described as one of "moral turpitude."

House Bill No. 4259 Board of Architects, Fees for Registration of Architects, 02 CSR 03

This is an amendment to an existing rule. The modifications to this rule are primarily aimed at incorporating the provisions of Senate Bill 396, which passed during the 2019 Regular Session. That bill provided for a waiver of initial licensing fees for low-income and military individuals by all professional licensing boards.

There are two substantial changes in addition to changes that make the rule compliant with that statute. These include: 1) decreasing the renewal period of a late

renewal from 12 months to 6 months; and 2) adding a fee of \$25.00 to register for verification of certification for other jurisdictions.

House Bill No. 4249 Auditor, Local Government Purchasing Card Program, 155 CSR 6

The rule is substantially similar to the requirements for state purchasing card usage but applies to local governments. The rule gives the Auditor's Office responsibility for the Director of Local P-Card Operations and Director of Chief Inspector Division. It also provides remedies by the administrators of the program when cardholders or agencies are non-compliant with certain conditions.

House Bill No. 4265 West Virginia Board of Chiropractic, Application For Waiver Of Initial Licensing Fees For Certain Individuals, 4 CSR 7

During the 2019 Regular Session, the Legislature passed Senate Bill 396, which requires each board or licensing authority referred to in Chapter 30 of the West Virginia Code to "waive all initial occupational licensing fees" for military personnel and their spouses, and for low-income individuals in the local labor market.

This new legislative rule establishes procedures for waiving the initial licensing fee for: 1) low income individuals in the local labor market (*i.e.*, in West Virginia or any county outside of West Virginia if any portion of that county is within fifty miles of the border of West Virginia), and 2) military personnel and their spouses, who apply to the West Virginia Board of Chiropractic for a license to practice chiropractic in this state.

House Bill No. 4266 West Virginia Board of Chiropractic, Consideration of Prior Criminal Convictions in Initial Licensure Determinations, 4 CSR 8

During the 2019 First Extraordinary Session, the Legislature enacted House Bill 118. The bill specifies the conditions upon which most of the Chapter 30 boards may disqualify an applicant for initial licensure based on a prior criminal conviction.

The bill requires these Chapter 30 boards to permit a person disqualified from initial licensure to again apply for initial licensure five years after the latter of the date of conviction or release from incarceration, if certain other conditions are met. The bill also allows a prospective applicant who has not applied for licensure to ask the appropriate board, by petition, for an advanced determination by the board of whether his or her conviction would disqualify the petitioner from licensure. The board may charge a fee to cover its costs of making the determination.

House Bill No. 4268 Board of Counseling, Application for Waiver of Initial Licensing Fees for Certain Individuals, 27 CSR 13

This new rule is in response to Senate Bill 396 from the 2019 Regular Session, which requires boards to update fee schedules to allow low-income individuals and military families to apply for a fee waiver for an initial license.

House Bill No. 4216 West Virginia Board of Dentistry, Rule for The West Virginia Board of Dentistry, 5 CSR 1

This rule amends a current legislative rule to comply with three bills that passed in 2019. Senate Bill 400 and Senate Bill 396 passed during the Regular Session, and House Bill 118 passed during the First Extraordinary Session. The rule specifies the clinical examinations which must be passed to qualify for licensure as a dentist or dental hygienist and specifies the specialties in dentistry which may be recognized by the Board.

The rule defines low-income individuals and military families and requires those qualified who seek the waiver of an initial licensure fee to practice dentistry or dental hygiene to apply for the waiver in a format prescribed by the Board of Dentistry.

The rule specifies the conditions upon which the board may disqualify an applicant for initial licensure based on a prior criminal conviction. It permits a person disqualified from initial licensure to again apply for initial licensure five years after the latter of the date of conviction or release from incarceration, if certain other conditions are met. It also allows a prospective applicant who has not applied for licensure to ask the appropriate board, by petition, for an advanced determination of whether his or her conviction would disqualify the petitioner from licensure. The board may charge a \$100 fee to cover its costs of making the determination.

House Bill No. 4269 West Virginia Board of Dentistry, Dental Advertising, 5 CSR 8

This rule amends an existing legislative rule. It removes extensive detailed prescriptions for and proscriptions against advertising by dentists. The Board's stated reason is that the provisions in the Dental Practice Act (W. Va. Code §30-4-1, *et seq.*) are sufficient to regulate advertising.

House Bill No. 4271 Board of Dieticians, Licensure and Renewal Requirements, 31 CSR 1

This rule amends a current legislative rule to incorporate the provisions of House Bill 118, which passed during the 2019 First Extraordinary Session, prohibiting many licensing boards 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 profession or occupation requiring licensure.

House Bill No. 4272 Board of Dieticians, Application for Waiver of Initial Licensing Fees for Certain Individuals, 31 CSR 6

This new rule implements Senate Bill 396, which passed during the 2019 Regular Session, requiring boards to update fee schedules to allow low-income individuals and military families to apply for a fee waiver. The rule establishes the process and procedure

for first time licensure applicants that qualify as a low-income individual or military family to seek a waiver of the initial licensing fee.

House Bill No. 4273 State Elections Commission, Corporate and Membership Organization Political Activity, 146 CSR 1

The amendment to this rule incorporates the requirements and changes to the law enacted by Senate Bill 622 in the 2019 Regular Session that relate to political activity by corporations and membership organizations.

The amendment updates numerous definitions and makes certain clarifications.

- The most notable change to the definitions is the addition of a definition of a “membership organization,” which is “a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors, and the ability to hold office to its members and which uses a majority of its membership dues for purposes other than political purposes.” This definition matches the definition in W. Va. Code §3-8-1a.
- Another important addition to the definitions section, is the definition of a “restricted group” (the limited group from which corporations and membership organizations may accept contributions). For a corporation, the restricted group includes a stockholder, a stockholder’s spouse or children, or executive and administrative personnel of any subsidiaries, branches, divisions, and departments and such personnel member’s families and children. For a membership organization, the restricted group includes members. This definition complies with W. Va. Code §3-8-8.

Like the recent amendments to W. Va. Code §3-8-8, the rule clarifies that membership organizations (unions, etc.) are subject to the contribution restrictions that historically have applied to corporations, meaning that these organizations cannot make contributions but must set up “separate, segregated funds” for the solicitation and making of contributions. A separate segregated fund may only accept contributions from its restricted group. Separate segregated funds are political action committees (PACs) and must meet all financial disclosure requirements that apply to PACs.

The existing rule provides detailed examples of the permissible and prohibited political activities by corporations and the amendment clarifies, throughout the rule, that these provisions apply to membership organizations.

House Bill No. 4274 State Elections Commission, Regulation of Campaign Finance, 146 CSR 3

The amendments to the rule incorporate the requirements and changes to the law enacted by Senate Bill 622 during the 2019 Regular Session, which made extensive changes to the state’s campaign finance laws.

Definitions

The amendment updates many of the rule series' definitions and makes certain clarifications.

The amendment reflects the new limits in W. Va. Code §3-8-5c, on contributions that a person may make to a candidate, political party, or PAC. The amendment also mirrors the new provisions of that section, by providing 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 on which the candidate's nomination is declared. The rule further clarifies that if a candidate receives contributions earmarked for the general election prior to receiving a nomination to the general election ballot and does not ultimately receive the nomination, he or she must return the contributions in full to the contributors.

Restrictions on Corporations and Membership Organizations

The amendment adds language prohibiting contributions by corporations and membership organizations, pursuant to W. Va. Code §3-8-8. Membership organizations (unions, etc.) are subject to the same contribution restrictions that apply to corporations, meaning that these organizations themselves cannot make contributions and must set up a "separate segregated fund" to receive and make contributions. Separate segregated funds are PACs and must meet all financial disclosure requirements for PACs.

Foreign Nationals; Prohibitions

The amendment adds language to the rule prohibiting contributions, independent expenditures, and electioneering communications by foreign nationals, as prohibited by W. Va. Code §3-8-5g.

Permissible Use of Campaign Funds

The amendment eliminates rule language listing specific permissible uses of campaign funds, because the Code now contains more detail and enumerates many more specific examples than the existing rule. The amendment adds a definition of what constitutes "personal use" of campaign funds, which is prohibited. The amendment makes clear that campaign funds may not be used to pay fines imposed by the Secretary of State.

Filing Deadlines; Requirements

Per the amendments to W. Va. Code §3-8-5, the rule changes the schedule for the filing of all financial reports, including independent expenditure reports and PAC financial statements, to a quarterly schedule.

The amendment updates the required method of filing reports with the Secretary of State to incorporate the requirements of W. Va. §3-8-5b, which now requires that

almost all reports be filed electronically. The amendment requires persons who must file reports with the Secretary of State regarding campaign finance to maintain records for a period of two years.

Late/Inadequate Filing

The amendment reflects the mandatory \$10 per day fine per day for each day that passes after the deadline before a person files required statements or reports with the Secretary of State. The amendment provides procedures for giving persons filing grossly incomplete or inadequate statements notice of the filing's status as incomplete or inadequate and requirements for correcting such filings.

Clarification of FEC-Registered PAC Exemption

The amendment updates the rule to reflect a change to the Code clarifying that although PACs registered with the FEC are exempt from the requirement to file financial statements with the State Election Commission (SEC), they must still file independent expenditure disclosure reports and electioneering disclosure reports.

Political Disclaimers

The amendment provides detailed requirements for certain disclaimers that must appear in various political communications, such as the identity of the person(s) paying for the communication and whether the communication is coordinated with a candidate.

Joint Fundraising Activity

The amendment adds a new section to the rule series including detailed requirements for joint fundraising activities (JFAs), which are now permitted by W. Va. Code §3-8-9c.

Political committees may engage in a JFA, 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. The participants must appoint a JFA representative who must establish a separate JFA committee for receiving contributions to the JFA and who is responsible for administering and allocating proceeds, as well as advances for expenses. Any person soliciting funds for the JFA must disclose the political committees involved.

The rule makes clear that an independent expenditure-only political action committee may not participate in a joint fundraising activity with a candidate committee, a political party committee, or a campaign caucus committee. Participation would result in coordinated expenditures, which would make the independent expenditure-only political action committee lose its status as "independent expenditure-only" and subject the committee to regular contribution limitations for PACs.

Coordinated Expenditures

Per the recent amendments to the W. Va. Code §3-8-9a, the rule 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.

As provided in W. Va. Code §3-8-9b, the rule makes 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 without such expenditures being treated as contributions.

House Bill No. 4277 Funeral Service Examiners, Application for Waiver of Initial Licensing Fees for Certain Individuals, 6 CSR 5

This new rule is in response to Senate Bill 396 from the 2019 Regular Session which requires boards to update fee schedules to allow low-income individuals and military families to apply for a fee waiver for an initial license.

House Bill No. 4278 Funeral Service Examiners, Consideration of Prior Criminal Convictions in Initial Licensure Determinations, 6 CSR 6

This new rule is required due to the passage of House Bill 118 during the 2019 First Special Session. It prohibits boards from disqualifying applicants for initial licensure because of a prior criminal conviction unless the crime bears a rational nexus to the profession, except for violent or sexual offenses, all to be determined by the board on a case by case basis.

House Bill No. 4293 Hearing Aid Dealers, Application for Waiver of Initial Licensing Fees for Certain Individuals, 8 CSR 4

This new rule implements the requirements of Senate Bill 396, which passed during the 2019 Regular Session. It requires professional licensing boards regulated under Chapter 30 to waive initial licensure fees for low-income persons and military families.

House Bill No. 4294 Hearing Aid Dealers, Consideration of Prior Criminal Convictions in Initial Licensure Decisions, 8 CSR 5

This new rule is required due to the passage of House Bill 118 during the 2019 First Special Session. It prohibits boards from disqualifying applicants for initial licensure because of a prior criminal conviction unless the crime bears a rational nexus to the

profession, except for violent or sexual offenses, all to be determined by the board on a case by case basis.

House Bill No. 4298 West Virginia Board of Landscape Architects, Consideration of Prior Criminal Convictions in Initial Licensure Determinations, 9 CSR 05

This new rule brings the Board into compliance with House Bill No. 118 which passed during the 2019 First Extraordinary Session. That bill prohibited certain boards 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 profession or occupation requiring licensure. The bill also prohibits boards from disqualifying an applicant for licensure based on a prior conviction of a crime generally described as one of “moral turpitude.”

House Bill No. 4299 Massage Therapy Licensure Board, Application for Waiver of Initial Licensing Fees for Certain Individuals, 194 CSR 5

This new rule implements the requirements of Senate Bill 396, which passed during the 2019 Regular Session. It requires professional licensing boards regulated under Chapter 30 to waive initial licensing fees, for low-income persons and military families.

House Bill No. 4300 Massage Therapy Licensure Board, Consideration of Prior Criminal Convictions in Initial Licensure Determinations, 194 CSR 6

This new rule brings the Board into compliance with House Bill 118, which passed during the 2019 First Extraordinary Session. That bill prohibited certain boards 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 profession or occupation requiring licensure. The bill also prohibits boards from disqualifying an applicant for licensure based on a prior conviction of a crime generally described as one of “moral turpitude.”

House Bill No. 4301 West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners, West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners, 18 CSR 1

The rule amendment by the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners (the Board) implements the requirements of Senate Bill 118, which passed during the 2019 First Extraordinary Session; implements the requirements of Senate Bill 392, which passed during the 2019 Regular Session; and makes a number of modifications to general licensing requirements.

The amendments to general licensing requirements include:

1. The Board has clarified that an expired license is classified as “inactive” after the passage of 60 days from the expiration date. A person with an inactive license must apply for reinstatement rather than complete a simpler renewal process. An applicant for reinstatement must demonstrate compliance with continuing education requirements and national certification;
2. The Board is now requiring that payment of all fees be completed by electronic means;
3. The Board has clarified that continuing education requirements and license reinstatement fees for military families must be waived while a service member is on active duty, as required by W. Va. Code §30-1B-3;
4. The Board has clarified that a licensee or permittee must notify the Board within 30 days of a change of name or contact information;
5. The Board has changed the requirement that a license be prominently displayed in a technologist’s place of work to a requirement that the licensee produce documentation of licensure upon request. The board also permits technologists to produce photocopied and faxed documentation of licensure for employment verification purposes; and
6. The Board prohibits discrimination based on a person’s membership in a protected class according to applicable state and federal laws, rather than listing protected classes.

House Bill No. 4302 Board of Medicine, Licensure, Disciplinary and Complaint Procedures, 11 CSR 01B

This rule amends a current legislative rule. It includes an entirely new streamlined procedural system called “practice notifications” for the regulation of hospital-based physician assistance practice as required by Senate Bill 668, which passed during the 2019 Regular Session. It also includes a modification of the role of a collaborating physician across different practice settings; clarifies prescriptive authority across practice settings; and adds a prohibition against permitting an employment relationship to affect professional roles, judgement, or patient care.

House Bill No. 4303 Board of Medicine, Waiver of Initial Licensing Fees for Certain Initial Licensure Applicants, 11 CSR 13

This new rule establishes the process and procedure for a first-time licensure applicant that qualifies as a low-income individual or military family to seek a waiver of the initial licensing fee. The rule defines terms, establishes the process for applying for the initial licensing fee waiver, sets forth the eligibility requirements, and describes the necessary information and documents that must be submitted to the Board to process the waiver request and determine eligibility.

House Bill No. 4309 West Virginia Nursing Home Administrators Licensing Board, West Virginia Nursing Home Administrators Licensing Board, 21 CSR 1

This rule amends a current legislative rule to incorporate the provisions of House Bill 118, which passed during the 2019 First Extraordinary Session, prohibiting many licensing boards 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 profession or occupation requiring licensure.

Senate Bill 396, which passed during the 2019 Regular Session, requires boards to update fee schedules to allow low-income individuals and military families to apply for a fee waiver. The rule establishes the process and procedure for first time licensure applicants that qualify as a low-income individual or military family to seek a waiver of the initial licensing fee.

House Bill No. 4244 West Virginia Board of Occupational Therapy, Fees For Services Rendered By The Board, 13 CSR 3

This rule amends a current legislative rule. It reduces the annual fee for a license to practice as an occupational therapist from \$140 to \$120. It reduces the annual fee for a license to practice as an occupational therapy assistant from \$120 to \$100.

The rule eliminates “application packet” and “paper list” fee and reduces the “mailing labels” fee from \$110 to \$15.

House Bill No. 4310 West Virginia Board of Occupational Therapy, Application for Waiver Of Initial Licensing Fees For Certain Individuals, 13 CSR 7

This is a new rule. During the 2019 Regular Session, the Legislature passed Senate Bill 396, which requires each board or licensing authority referred to in Chapter 30 of the West Virginia Code to “waive all initial occupational licensing fees” for military personnel and their spouses and for low-income individuals in the local labor market.

The rule establishes procedures for waiving the initial licensing fee for 1) low income individuals in the local labor market (*i.e.*, in West Virginia or any county outside of West Virginia if any portion of that county is within fifty miles of the border of West Virginia), and 2) military personnel and their spouses, who apply to the West Virginia Board of Occupational Therapy for a license to practice as an occupational therapist or an occupational therapy assistant in this state.

House Bill No. 4245 West Virginia Board of Occupational Therapy, Consideration of Prior Criminal Convictions in Initial Licensure Determinations, 13 CSR 8

This is a new rule. During the 2019 First Extraordinary Session, the Legislature enacted House Bill 118. The bill specifies the conditions upon which most of the Chapter 30 boards may disqualify an applicant for initial licensure based on a prior criminal conviction. The bill requires these Chapter 30 boards to permit a person disqualified from initial licensure to again apply for initial licensure five years after the latter of the date of conviction or release from incarceration, if certain other conditions are met.

The bill also allows a prospective applicant who has not applied for licensure to ask the appropriate board, by petition, for an advanced determination by the board of whether his or her conviction would disqualify the petitioner from licensure. The board may charge a fee to cover its costs of making the determination.

House Bill No. 4312 West Virginia Board of Optometry, Rules of the West Virginia Board of Optometry, 14 CSR 01

This rule amends a current legislative rule. The modifications to this rule incorporate the provisions of Senate Bill 396 passed during the 2019 Regular Session of the Legislature. That bill provided for a waiver of initial licensing fees for low-income and military individuals by all Chapter 30 professional licensing boards.

House Bill No. 4313 West Virginia Board of Osteopathic Medicine, Osteopathic Physician Assistants, 24 CSR 02

This rule amends a current legislative rule. The changes were made necessary by the passage of Senate Bill 668 during the 2019 Regular Session.

The rule regulates the licensure, regulation, and discipline of osteopathic physician assistants (PA). It contains requirements for practice, licensing requirements, practice agreements and the requirements of the Board, physicians, and physician assistants pursuant to these agreements. The rule also contains the procedure for disciplinary actions against a physician assistant. The rule establishes that a physician assistant may not practice independently and is required to be in a collaborative relationship with a licensed physician. It contains provisions regarding a collaborating physician's practice agreement and alternate collaborating physicians.

A new section has been added regarding practice notifications. This section requires that a practice notification be filed with the Board. It is required to be on a form provided by the Board and should be accompanied by a fee of \$100. Before the physician assistant may begin practicing, he or she is required to receive a written notice from the Board. This section also sets out the required elements to be included in the practice notification.

Additionally, this section allows the hospital to place limitations on a PA with a restricted license. It also sets out the conditions which make a practice notification complete, and when a PA may start practice upon receipt of written notice from the Board. There are limitations on where a PA may practice based on the parameters set forth in the practice notification. The rule provides for conditions when a practice notification

automatically terminates, including when a license expires and when practice in the hospital is terminated with notice, due to lack of proper credentialing. The rule provides that a PA may practice under one or more practice notifications simultaneously.

The extent of the prescriptive authority of a PA is set out in the rule. There is an exception to the statutory limits if a medication is administered by a PA in a hospital setting pursuant to physician orders. Charting of medication is required. The information required on a prescription ordered by an PA, either written or electronic, is set out in the rule. Finally, prescriptions issued by a PA are limited to those identified in the practice notification.

The final new section pertains to the responsibilities of physicians collaborating with physician assistants in hospitals pursuant to practice notifications. The section requires hospital approval prior to collaboration in a hospital setting. The physician is required to oversee and direct the work of the PA and this work must be within the PA's scope of practice and suitable for the PA to perform based upon his or her training and education. It also requires that the physician and the PA be in contact with one another either electronically or in person.

House Bill No. 4314 West Virginia Board of Osteopathic Medicine, Waiver of Initial Licensing Fees for Certain Initial Licensure Applicants, 24 CSR 08

This is a new rule which incorporates the provisions of Senate Bill 396, which passed during the 2019 Regular Session. That bill provided for a waiver of initial licensing fees for low-income and military individuals by all Chapter 30 professional licensing boards.

House Bill No. 4315 Board of Pharmacy, Licensure and Practice of Pharmacy, 15 CSR 1

This rule amends a current legislative rule. It extends the time a pharmacy has to produce information regarding a transfer of prescription drugs without a prescription to another licensee from 48 hours to 72 hours. It also permits a pharmacy intern to transfer a prescription to another pharmacy for a patient, but not a scheduled drug.

The rule updates compounding standards to the United States Pharmacopeia Convention, which are incorporated by reference. The rule removes the requirement that a pharmacist wear a white coat. Finally, the rule updates emergency dispensing standards in accordance with House Bill 2524, which passed during the 2019 Regular Session, permitting the dispensing of a 72-hour supply.

House Bill No. 4316 Board of Pharmacy, Record Keeping and Automated Data Processing, 15 CSR 4

This rule amends a current legislative rule. It increases the amount of time that a pharmacy has to produce records from 48 to 72 hours, removes the specific data a pharmacist should review concerning a patient's history, adds the statement that the

pharmacist shall review any data needed to make a rational judgement about pharmacist care, removes outdated language concerning the keeping of a log book by a pharmacist instead of an electronic system, and adds a schedule V throughout as a controlled substance.

House Bill No. 4317 Board of Pharmacy, Board of Pharmacy Rules for Registration of Pharmacy Technicians, 15 CSR 7

This rule amends a current legislative rule. It implements the provisions of House Bill 2849, which passed during the 2019 Regular Session, establishing different classes of pharmacy technicians. This includes adding functions to the pharmacy technician's scope of practice and establishing a nuclear pharmacy technician endorsement and scope.

The rule clarifies that applicants cannot be disqualified from initial licensure unless the crime bears a rational nexus to the practice of pharmacy.

House Bill No. 4246 Board of Pharmacy, Immunizations Administered by Pharmacists and Pharmacy Interns, 15 CSR 12

This rule amends a current legislative rule. The rule concerns immunizations administered by pharmacists and pharmacy interns. The age limit for parental consent was incorrect, so the board adjusted it to the correct age, which is 17.

House Bill No. 4318 Board of Pharmacy, Board of Pharmacy Rules for Centralized Prescription Processing, 15 CSR 14

This rule amends a current legislative rule. The rule relates to centralized prescription processing. The rule prohibits a schedule II drug from being filled at a centralized prescription processing center.

House Bill No. 4319 Board of Pharmacy, Regulations Governing Pharmacy Permits, 15 CSR 15

This rule amends a current legislative rule which regulates pharmacies. The rule modernizes and updates the regulation of pharmacies by providing standard registration language, changing permits from annually to biennially and doubling fees accordingly, and updating the surrender of registration process.

House Bill No. 4320 Board of Pharmacy, Regulations Governing Pharmacists, 15 CSR 16

This rule amends a current legislative rule to incorporate the provisions of House Bill 118, which passed during the 2019 First Extraordinary Session. The rule prohibits 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 profession or occupation requiring licensure. The bill also prohibits boards from disqualifying an applicant for

licensure based on a prior conviction of a crime generally described as one of “moral turpitude.”

House Bill No. 4321 Board of Pharmacy, Application for Waiver of Initial Licensing Fees for Certain Individuals, 15 CSR 18

This new rule incorporates the provisions of Senate Bill 396, which passed during the 2019 Regular Session. That bill provided for a waiver of initial licensing fees for low-income and military individuals by all Chapter 30 professional licensing boards.

House Bill No. 4322 Physical Therapy, General Provisions for Physical Therapists and Physical Therapist Assistants, 16 CSR 01

This rule amends a current legislative rule to comply with the passage of Senate Bill 1006 and House Bill 118 during the 2019 First Extraordinary Session. Amendments include a criminal background check requirement; compliance with a rational nexus test for prior convictions; permissive language for physician referral to an appropriate health care provider if services are beyond the scope of the practice of physical therapy; modification to the English proficiency language; granting the Board the right to conduct random continuing education audits; licensing individuals outside the United States; and continuing education requirements.

House Bill No. 4323 Physical Therapy, Fees for Physical Therapists and Physical Therapists Assistants, 16 CSR 04

This rule amends a current legislative rule to implement the provisions of Senate Bill 633, which passed during 2019 the Regular Session. This rule creates a fee of \$50 for a physical therapy compact and a fee of \$200 for continuing education noncompliance.

House Bill No. 4324 Physical Therapy, General Provisions for Athletic Trainers, 16 CSR 05

This rule amends a current legislative rule which is required as a result of the passage of Senate Bill 60 during the 2019 Regular Session. Amendments include additional definitions and modifications to existing definitions. It also identifies new requirements for the application process, including providing educational information, previous work experience, and a completed criminal background check. Several new requirements for the practice of the athletic training have been added, including requirements for the issuance, renewal, or reinstatement of licenses; a criminal history record check; temporary permit for athletic trainers; the scope of practice for the athletic trainer; the athletic training student and/or permittee; licensing individuals outside of the United States; and continuing education.

House Bill No. 4325 Physical Therapy, Fees for Athletic Trainers, 16 CSR 06

This rule amends a current legislative rule which sets fees for athletic trainers. The rule implements changes made necessary by the passage of Senate Bill 60, which passed

during the 2019 Regular Session. The following fees were increased: Athletic Trainer License, from \$100 to \$180, and a Renewal Fee, from \$75 to \$80.

The following new fees were created: Athletic Trainer Temporary Permit, \$30; Duplicate Wall License Card, \$5; Continuing ED Course Review, \$50; and Individual Licensee Review, \$15. Language was also added to reference the Code regarding low income and military waivers for initial licenses.

House Bill No. 4326 Physical Therapy, Application for Waiver of Initial Licensing Fees for Certain Individuals, 16 CSR 09

This new rule establishes the process and procedure for first time licensure applicants that qualify as a low-income individual or military family to seek a waiver of the initial licensing fee. This rule is being added to comply with Senate Bill 396, which passed during the 2019 Regular Session, waiving initial license fees for certain individuals.

House Bill No. 4327 State Board of Registration for Professional Engineers, Examination, Licensure, and Practice of Professional Engineers, 7 CSR 01

This rule amends a current legislative rule. During the 2019 Regular Session, Senate Bill 396 passed and became law. It requires Chapter 30 boards to waive initial occupational licensing fees for low-income individuals and military families. This rule is being amended to reflect those requirements.

This rule also makes two changes to the Professional Engineering (PE) examination process. First, applicants will now apply directly to the National Council of Examiners for Engineering and Surveying (NCEES), which administers the examination. This change reflects the national trend to computer-based testing through the NCEES. It also mirrors revisions already made to the Fundamentals of Engineering testing process in this rule. Second, the rule “decouples” the PE examination testing from the experience requirement, allowing an applicant to take the PE examination at any time after graduation. The applicant can then be licensed upon meeting the experience requirement. Fourteen other states have already adopted this approach, and others are in the process of doing so.

The rule also eliminates the \$40 PE reapplication fee because those applicants will now deal directly with NCEES. The rule also proposes lowering the fees for renewal of Certificates of Authorization (COA) for firms having four or more professional engineers (from \$600 to \$500) and for reinstatement of COA’s for all firms. The rule was refiled to reflect changes made as a result of the passage of House Bill 118 during the 2019 First Extraordinary Session, relating to consideration of prior criminal convictions in making initial licensing decisions, and related issues.

House Bill No. 4328 Professional Surveyors, Examination and Licensing of Professional Surveyors in West Virginia, 23 CSR 1

This rule amends a current legislative rule in response to the passage of House Bill 118 during the 2019 First Extraordinary Session. It prohibits boards from disqualifying applicants for initial licensure because of a prior criminal conviction unless the crime bears a rational nexus to the profession, except for violent or sexual offenses, all to be determined by the board on a case by case basis. It also incorporates the changes required by Senate Bill 396, which passed during the 2019 Regular Session, requiring boards to update fee schedules to allow low-income individuals and military families to apply for a fee waiver.

House Bill No. 4329 Board of Psychologists, Consideration of Prior Criminal Convictions in Initial Licensure Determinations, 17 CSR 07

This rule amends a current legislative rule in response to the passage of House Bill 118 during the 2019 First Extraordinary Session. It prohibits boards from disqualifying applicants for initial licensure because of a prior criminal conviction unless the crime bears a rational nexus to the profession, except for violent or sexual offenses, all to be determined by the board on a case by case basis. The fee for an applicant petitioning for a licensure eligibility determination is \$75 and is offset against the application fee.

It also incorporates the changes required by Senate Bill 396, which passed during the 2019 Regular Session, requiring boards to update fee schedules to allow low-income individuals and military families to apply for a fee waiver.

House Bill No. 4332 Real Estate Appraiser Licensing and Certification Board, Requirements for Licensure and Certification, 190 CSR 02

This rule amends a current legislative rule in response to the passage of House Bill 118 during the 2019 First Extraordinary Session. It prohibits boards from disqualifying applicants for initial licensure because of a prior criminal conviction unless the crime bears a rational nexus to the profession, except for violent or sexual offenses, all to be determined by the board on a case by case basis.

It also incorporates the changes required by Senate Bill 396, which passed during the 2019 Regular Session, requiring boards to update fee schedules to allow low-income individuals and military families to apply for a fee waiver.

House Bill No. 4333 Real Estate Commission, Application for Waiver of Licensing Fees for Certain Individuals, 174 CSR 06

This new rule implements the provisions of Senate Bill 396, which passed during the 2019 Regular Session, requiring boards to update fee schedules to allow low-income individuals and military families to apply for a fee waiver.

House Bill No. 4334 Real Estate Commission, Consideration of Prior Criminal Convictions in Initial License Eligibility Determination, 174 CSR 07

This rule amends a current legislative rule in response to the passage of House Bill 118 during the 2019 First Extraordinary Session. It prohibits boards from disqualifying applicants for initial licensure because of a prior criminal conviction unless the crime bears a rational nexus to the profession, except for violent or sexual offenses, all to be determined by the board on a case by case basis.

House Bill No. 4247 West Virginia 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 in response to the passage of House Bill 118 during the 2019 First Extraordinary Session. It prohibits boards from disqualifying applicants for initial licensure because of a prior criminal conviction unless the crime bears a rational nexus to the profession, except violent or sexual offenses, all to be determined by the board on a case by case basis. It also incorporates the changes required by Senate Bill 396 from 2019 Regular Session, which requires boards to update fee schedules to allow low-income individuals and military families to apply for a fee waiver.

House Bill No. 4335 West Virginia Board of Examiners For Registered Professional Nurses, Application For Waiver Of Initial Licensing Fees For Certain Individuals, 19 CSR 15

This new rule implements the provisions of Senate Bill 396, which passed during the 2019 Regular Session, requiring boards to update fee schedules to allow low-income individuals and military families to apply for a fee waiver.

The rule establishes procedures for waiving the initial licensing fee for 1) low income individuals in the local labor market (*i.e.*, in West Virginia or any county outside of West Virginia if any portion of that county is within fifty miles of the border of West Virginia), and 2) military personnel and their spouses, who apply to the West Virginia Board of Examiners For Registered Professional Nurses for a license to practice registered professional nursing or advanced practice registered nursing in this state.

House Bill No. 4336 Respiratory Care, Establishment of Fees, 30 CSR 02

This rule amends a current legislative rule to incorporate the provisions of Senate Bill 396, which passed during the 2019 Regular Session, requiring boards to update fee schedules to allow low-income individuals and military families to apply for a fee waiver.

House Bill No. 4337 Respiratory Care, Student Temporary Permit, 30 CSR 09

This rule amends a current legislative rule decreasing the payment of the permit renewal fee from \$40 dollars to \$25 dollars. The rule also permits current student/temporary graduate permit holders to work through the expiration date of their student permit.

House Bill No. 4248 Respiratory Care, Consideration of Prior Criminal Convictions in Initial Licensure Determinations, 30 CSR 10

This new rule sets forth a procedure for the consideration of prior criminal convictions in initial licensure determinations. The rule is created as a result of the passage of House Bill 118, during the 2019 First Extraordinary Session, which set forth criteria for licensing boards to consider in making an initial licensure determination.

House Bill No. 4338 State Board of Sanitarians, Waiver of Initial Application Fees and Criteria for Initial Licensure, 20 CSR 5

This new rule is promulgated to comply with both Senate Bill 396, which passed during the 2019 Regular Session, and House Bill 118, which passed during the 2019 First Extraordinary Session. It establishes procedures for waiving the initial licensing fee as a sanitarian for low income individuals and military personnel and their spouses. The rule also allows for certain individuals to gain licensure with an unresolved or unreversed criminal record, if the crime had no rational nexus to the profession.

House Bill No. 4339 Social Work Examiners, Qualifications for the Profession of Social Work, 25 CSR 1

This rule amends a current legislative rule in response to the passage of House Bill 118 during the 2019 First Extraordinary Session. It prohibits boards from disqualifying applicants for initial licensure because of a prior criminal conviction unless the crime bears a rational nexus to the profession, except violent or sexual offenses, all to be determined by the board on a case by case basis.

House Bill No. 4340 Social Work Examiners, Fee Schedule, 25 CSR 3

This rule amends a current legislative rule implementing the provisions of Senate Bill 396, which passed during the 2019 Regular Session, providing that low-income and military family applicants may apply for a waiver of initial license fees if they meet the requirements for licensure and the statutory qualifications for “low-income individuals” or “military families.”

House Bill No. 4341 Speech Language Pathology and Audiology, Licensure of Speech-Pathology and Audiology, 29 CSR 01

This rule amends a current legislative rule implementing the provisions of Senate Bill 396, which passed during the 2019 Regular Session, providing that low-income and military family applicants may apply for a waiver of initial license fees if they meet the requirements for licensure and the statutory qualifications for “low-income individuals” or “military families.”

The rule also requires verification of continuing education credits to be submitted as part of the license reinstatement renewal process; provides a biennial renewal for retired licenses; provides that the Board may grant an exemption for continuing

education requirements in certain circumstances, such as extended illness; requires the licensee to attest to the completion of the required continuing education on the renewal form; requires the licensee to retain all continuing education documents for four years after the date of renewal; and gives the Board the ability to audit licenses for continuing education compliance.

The rule also clarifies that the waiver of renewal fees applies to active duty military families, as required by House Bill 118, which passed during the 2019 First Extraordinary Session.

House Bill No. 4342 Speech Language Pathology and Audiology, Disciplinary & Complaint Procedures for Speech-Language Pathology and Audiology, 29 CSR 04

This rule amends a current legislative rule setting forth a procedure for the investigation and resolution of complaints against speech-language pathologists, audiologists, provisional licensees, and assistants. The rule also states causes for denial, probation, limitation, discipline, suspension, or revocation of licenses.

The rule is also amended to comply with House Bill 118, which passed during the 2019 First Extraordinary Session. It prohibits boards from disqualifying applicants for initial licensure because of a prior criminal conviction unless the crime bears a rational nexus to the profession, except violent or sexual offenses, all to be determined by the board on a case by case basis. The fee for an applicant petitioning for a licensure eligibility determination is \$100 and is offset against the application fee.

House Bill No. 4250 State Conservation Committee, State Conservation Committee Grant Program, 63 CSR 3

This new rule is in response to Senate Bill 655, which passed during the 2019 Regular Session, providing the State Conservation Committee (SCC) the authority to administer a new grant program. The grant program provides financial assistance to the 14 local conservation districts in the state and others, to promote approved conservation projects. The grants will be administered by the West Virginia Conservation Agency and the rule provides for eligibility for grants, sets forth the application process, provides for review and evaluation of the applications, provides for the granting of awards, and sets forth reporting requirements.

House Bill No. 4345 Veterinary Medicine, Organization and Operation and Licensing of Veterinarians, 26 CSR 01

This rule amends a current legislative rule to establish guidelines for the organization and operation of the Board of Veterinary Medicine and for the licensing of veterinarians by the Board. This rule is being amended to comply with House Bill 118, which was passed during the 2019 First Extraordinary Session. It prohibits boards from disqualifying applicants for initial licensure because of a prior criminal conviction unless

the crime bears a rational nexus to the profession, except violent or sexual offenses, all to be determined by the board on a case by case basis.

House Bill No. 4346 Veterinary Medicine, Registration of Veterinary Technicians, 26 CSR 03

This rule amends a current legislative rule to establish the procedures by which Veterinary Technicians may be registered and regulated by the West Board of Veterinary Medicine. This rule is being amended to comply with House Bill 118, which was passed during the 2019 First Extraordinary Session. It prohibits boards from disqualifying applicants for initial licensure because of a prior criminal conviction unless the crime bears a rational nexus to the profession, except violent or sexual offenses, all to be determined by the board on a case by case basis.

House Bill No. 4347 Veterinary Medicine, Schedule of Fees, 26 CSR 06

This rule amends a current legislative rule to establish the procedures by which Veterinary Technicians may be registered and regulated by the West Virginia Board of Veterinary Medicine. This rule incorporates the provisions of Senate Bill 396, which passed during the 2019 Regular Session, requiring boards to update fee schedules to allow low-income individuals and military families to apply for a fee waiver.

The rule creates a veterinary technician inactive registration fee of \$2, a fee for veterinary technician inactive license reactivation fee of \$6, a fee for a veterinary ambulatory inspection of \$200, and a fee for a predetermination for veterinarian or veterinarian technician licensure eligibility of \$150. The rule also reduces the veterinarian technician registration fee from \$100 to \$10 and the veterinarian technician renewal fee from \$80 to \$5.

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: March 6, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4275

COMMITTEE SUBSTITUTE, AS AMENDED

SHORT TITLE: Authorizing Department of Military Affairs and Public Safety promulgate legislative rules.

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

SUMMARY:

This bill is known as the Department of Military Affairs and Public Safety Rules bundle which authorizes and directs the promulgation of two rules, constituting Bundle 6.

House Bill No. 4275 State Fire Commission, Fire Code, 87 CSR 1

The Fire Commission is proposing an amendment to the State Fire Code to update certain National Fire Protection Association (NFPA) standards from the 2015 Edition to the 2018 Edition. It adds a new provision stating that a sprinkler system is not required in lodging and rooming occupancies where there are directions for outside exits and where there is an approved electrically supervised fire alarm system. It also adds a new provision relating to fire alarm systems for hood suppression systems. It requires the placement of an audible and visual device in public areas of the building upon activation of the automatic extinguishing system when a fire alarm system is not required.

The rule amends the requirements for daycare centers in buildings, other than educational facilities, to increase the spacing of smoke detectors from 30 to 50 feet in all occupied floor corridors and require smoke detector placement at 25 feet at the end of the corridors on all occupied floors .

The rule contains an amendment to the NFPA code relating to classroom door locking to prevent unwanted entry. Provisions relating to fireworks have been deleted due to the statute being amended. Fireworks are now covered under State Fire Commission Rule, Regulation of Fireworks and Related Explosive Materials, 103 CSR 4.

House Bill No. 4276 State Fire Commission, State Building Code, 87 CSR 4

The rule deletes the subsection which currently provides a modification for enforcement of a building demolition order, updates the 2009 version of American National Standards for Accessibility & Usable Building & Facilities to the 2017 edition; updates the 2014 version of National Electric Code, NFPA 1970, to the 2017 edition; deletes the provisions related to the time and substance of an annual report by local

jurisdictions to the State Fire Commission (number of employees, job titles, certification status, verification of local adoption of State Building; and deletes requirement of this report to the State Fire Commissioner.

The rule requires arc-fault circuit interrupter (AFCI) in all new construction homes and in any remodels where additional square footage has been added and new electrical service installed. However, for any remodels that do not create additional square footage, AFCI protection is not required. In addition, if a remodel creates additional square footage but does not create any new electric service, AFCI protection is not required.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: March 7, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

House Bill 4361

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to insurance law violations.

CODE REFERENCE: §33-41-2, §33-41-5, §33-41-8, §33-41-11, and §33-41-12 (Amends and Reenacts); §33-41-4a and §33-41-11a (New)

SUMMARY:

This bill amends the Insurance Fraud Prevention Act. It defines a “fraudulent insurance act,” which includes numerous acts or omissions, when committed knowingly and with intent to defraud.

The bill allows the Insurance Commissioner to accept proceeds from court ordered forfeiture proceedings which are to be deposited in a new special revenue fund, known as the Insurance Fraud Prevention Fund, which is subject to legislative appropriation. Mandatory reporting requirements are expanded to provide that any person with knowledge of insurance fraud may provide information requested by the Commissioner. It also is amended to require a person engaged in the business of insurance to report suspected insurance law violations to the Commissioner.

Under this bill, persons designated by the Commissioner that are trained and certified as law enforcement officers may execute search and arrest warrants and make arrests upon probable cause without a warrant for criminal violations of insurance law, if those persons meet the requirements of and are certified under W. Va. Code §30-29-5. It also allows the Insurance Fraud Unit to investigate and participate in the prosecution of workers’ compensation fraud.

This bill creates the criminal offenses of committing a fraudulent insurance act and interfering with the enforcement of the Act or investigations of violations. It prohibits persons convicted of a felony involving dishonesty or breach of trust related to the business of insurance from participating in the business of insurance and prohibits persons in the business of insurance from permitting such convicted felons from participating in the business of insurance. It also now requires insurers to have antifraud initiatives calculated to detect, prosecute, and prevent fraudulent insurance acts.

Finally, this bill provides for criminal penalties for violations of W. Va. Code §33-41-11. Persons convicted of an offense where the benefit sought is \$1,000 or more are guilty of a felony and can be imprisoned for one to 10 years, fined not more than \$10,000, or both fined and imprisoned. Persons convicted of an offense where the benefit sought is less than \$1,000 are guilty of a misdemeanor and can be confined for not more than one year, fined not more than \$2,500, or both confined and fined.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4362

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to penalties for neglect, emotional abuse or death caused by a caregiver.

CODE REFERENCE: §61-8D-5a (New)

SUMMARY:

This bill creates a new offense of verbal abuse of a non-communicative minor. Any person who has supervisory responsibility over a non-communicative child is guilty of a misdemeanor for repeatedly engaging in certain abusive conduct toward the child. The bill provides a definition of the terms “repeatedly,” “non-communicative,” and “supervisory responsibility.” The penalty for the new offense is a \$500 to \$2,500 fine, confinement for up to six months, or both the fine and confinement.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4375

STRIKE AND INSERT AMENDMENT TO INTRODUCED BILL

SHORT TITLE: Speech-Language Pathologists and Audiologists Compact.

CODE REFERENCE: §30-32A-1, §30-32A-2, §30-32A-3, §30-32A-4, §30-32A-5, §30-32A-6, §30-32A-7, §30-32A-8, §30-32A-9, §30-32A-10, §30-32A-11, §30-32A-12, §30-32A-13, and §30-32A-14 (New)

SUMMARY:

This bill enters the state of West Virginia into the Audiology and Speech-Language Pathology Compact and facilitates interstate practice of audiology and speech-language pathology services.

The bill contains provisions for the following:

- 1) Definitions;
- 2) State participation in the compact;
- 3) Establishing the privilege to practice in member states;
- 4) Procedures relating to licensing for active duty military personnel and their spouses;
- 5) Procedures relating to adverse actions;
- 6) Establishing the Audiology and Speech-Language Pathology Compact Commission;
- 7) A data system available for use among the member states;
- 8) Rule-making authority of the Commission;
- 9) Oversight, dispute resolution, and enforcement provisions of the Commission among the member states;
- 10) Date of implementation among the member states;
- 11) Applicability of the existing rules at the time a new member state joins the Commission;
- 12) Withdrawal of any member states and conditions that must be met until withdrawal is effective;
- 13) A six-month period before withdrawal is effective;
- 14) Construction and severability of the provisions of the Compact; and
- 15) A binding effect of the laws and rules of the Compact among the member states.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4377

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: The Protection of Vulnerable Adults from Financial Exploitation Act.

CODE REFERENCE: §32-6-601, §32-6-602, §32-6-603, §32-6-604, §32-6-605, §32-6-606, §32-6-3 607, §32-6-608, §32-6-609 and §32-6-610 (New)

SUMMARY:

This bill protects adults over the age of 65, incapacitated adults, and adults in nursing homes from financial exploitation.

A “vulnerable adult” is defined as 1) a person 65 years of age or older, or 2) a person subject to W. Va. Code §9-6-1 *et seq.* (social services for adults).

“Financial exploitation” is defined as 1) the wrongful or unauthorized taking, withholding, appropriation or use of securities, money, assets or property of a vulnerable adult; or 2) any act or omission taken by a person, including using a power of attorney, guardianship, or conservatorship of a vulnerable adult to:

- (i) Obtain control, through deception, intimidation, or undue influence over the vulnerable adult’s money, assets, or property to deprive the vulnerable adult of the ownership, use, benefit, or possession of his or her money, assets, or property; or
- (ii) Convert money, assets, or property of the vulnerable adult to deprive such vulnerable adult of the ownership, use, benefit, or possession of his or her money, assets, or property.

The bill provides that if a broker-dealer or investment adviser reasonably believes that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted, the broker-dealer or investment adviser 1) shall promptly notify Adult Protective Services and the Securities Commission [§32-6-603], and 2) may notify any reasonably associated individuals. The bill provides immunity from administrative or civil liability for broker-dealers or investment advisers who make a good faith disclosure under the new provisions.

Subsection 32-6-607(a) provides that a broker-dealer or investment adviser may delay a transaction or disbursement from an account of a vulnerable adult or an account on which a vulnerable adult is a beneficiary if: 1) the broker-dealer or investment adviser reasonably believes, after initiating an internal review, that the requested transaction or

disbursement may result in financial exploitation of a vulnerable adult; and 2) the broker-dealer or investment adviser:

- (i) Within two business days, provides written notification of the delay (and the reason therefor) to all parties authorized to transact business on the account (unless any party is reasonably believed to have engaged in suspected or attempted financial exploitation of the vulnerable adult);
- (ii) Within two business days notifies the agencies; and
- (iii) Continues its internal review of the suspected or attempted financial exploitation as necessary and reports the results to the agencies on a reasonable and periodic basis.

Subsection 32-6-607(b) limits the period of any delay to 15 business days, unless the agencies request an extension. The bill also provides immunity from administrative or civil liability for broker-dealers or investment advisers who comply with §32-6-607 in good faith.

Section 32-6-609 provides that a broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of a vulnerable adult to agencies charged with administering state adult protective services laws and to law enforcement (either by referral or upon request). Records made available under this section are not considered a public record as defined in W. Va. Code §29B-1-1 *et seq.* (Freedom of Information Act). The bill also provides immunity from administrative or civil liability for broker-dealers or investment advisers who comply with §32-6-609 in good faith.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4388

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Limiting the Alcohol Beverage Control Commissioner's authority to restrict advertising

CODE REFERENCE: §11-16-2, §11-16-18, §11-16-22, §60-2-15, and §60-8-23 (Amends and Reenacts)

SUMMARY:

This bill establishes requirements for the relationship between beer wholesalers and beer retailers. The bill permits a wholesaler to provide, without charge, nominal gifts or signs to a retailer that are valued at \$25 or less.

The bill prohibits a brewer or distributor from sponsoring or providing prizes for professional or amateur athletic events if a majority of the athletes participating in the event are minors. The bill also prohibits a retailer from selling or dispensing nonintoxicating beer through draught lines where the draught lines have not been cleaned at least every two weeks in accordance with legislative rules, and where written records of all cleanings are not maintained and available for inspection.

The bill limits the rulemaking authority of the Commissioner of the Alcohol Beverage Control Administration (ABCA) with regard to restricting advertising. The Commissioner may only restrict the content of the advertising so as to prohibit false, misleading, or deceptive claims; depictions or descriptions of nonintoxicating beer being consumed irresponsibly or intemperately; or advertising presentations designed to appeal to persons below the legal drinking age. The Commissioner may not otherwise regulate advertising mediums, equipment, or signage.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4393

INTRODUCED BILL

SHORT TITLE: Relating to making suffocation and asphyxiation crimes.

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

SUMMARY:

This bill criminalizes “suffocation” and “asphyxiation” and defines the terms. Previously, the law only addressed strangulation. The penalty for suffocation and asphyxiation is the same as the current penalty for strangulation, which is one to five years imprisonment, a \$2,500 fine, or both the imprisonment and fine.

DATE OF PASSAGE: February 6, 2020

EFFECTIVE DATE: May 6, 2020

ACTION BY GOVERNOR: Signed February 14, 2020

House Bill 4422

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: The Patient Brokering Act.

CODE REFERENCE: §16-60-1, §16-60-2, and §16-60-3 (New)

SUMMARY:

The purpose of this bill is to create the Patient Brokering Act, which prohibits healthcare providers and facilities from offering or soliciting compensation to induce the referral of a patient. Violation of the Act is a felony, punishable by a fine of not more than \$50,000, confinement for not less than one year, or both the fine and confinement. If the offense involves 10 or more patients but fewer than 20 patients, it is punishable by a fine of not more than \$100,000, confinement for not less than two years nor more than five years, or both the fine and confinement. If the offense involves 20 or more patients, it is punishable by a fine of not more than \$500,000, confinement for not less than five years nor more than seven years, or both the fine and confinement.

Several exceptions are provided that conform this bill to federal law and established industry practices.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4444

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Establishing Medals of Valor and Medals for Bravery for emergency medical services, firefighters, and law-enforcement officers.

CODE REFERENCE: §29-32-1; §29-32-2; §29-32-3; §29-32-4; and §29-32-5 (New)

SUMMARY:

This bill creates a medal of valor to be awarded to firefighters, law enforcement officers, and emergency medical services personnel for service above and beyond the call of duty. The bill creates honors boards for all three categories and establishes the criteria for membership on each board, the manner of selection for membership on each board, and the process for identifying possible recipients of medals of valor.

Individuals who “distinguish themselves conspicuously by gallantry and intrepidity at the risk of their lives above the call of duty in the performance of their duties” may be nominated for medals of valor. Once an individual is nominated by a board, the board submits the name to the Speaker of the House of Delegates and the President of the Senate for consideration by the Legislature.

Upon adoption of a concurrent resolution by the Legislature, the Governor will bestow the Medal of Valor upon the nominee. The West Virginia Department of Arts, Culture and History shall create the designs for each Medal of Valor.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4470

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to persons 18 years of age or older in the custody of the Bureau of Juvenile Services.

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

SUMMARY:

This bill clarifies that adults remaining under the juvenile jurisdiction of the circuit court who are held in Division of Corrections and Rehabilitation institutions may not be housed within sight or sound of juvenile detainees or adult inmates.

DATE OF PASSAGE: February 17, 2020

EFFECTIVE DATE: February 17, 2020

ACTION BY GOVERNOR: Signed March 5, 2020

House Bill 4474

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to peer-to-peer car sharing programs.

CODE REFERENCE: §17A-6F-1, §17A-6F-2, §17A-6F-3, §17A-6F-4, §17A-6F-5, §17A-6F-6, §17A-6F-7, §17A-6F-8, §17A-6F-9, §17A-6F-10, §17A-6F-11, §17A-6F-12, §17A-6F-13, §17A-6F-14, and §17A-6F-15 (New)

SUMMARY:

This bill governs peer-to-peer car sharing programs. The bill imposes insurance requirements on the parties and provides for certain exceptions to these requirements.

Peer to peer car sharing programs must notify a vehicle owner of the implications of a lien on a peer to peer agreement. The program must obtain an insurable interest in a shared vehicle during the car sharing period. Programs must maintain certain records and complete driver's license verification. The program is responsible for the equipment installed in or on the vehicle to facilitate a car sharing transaction. The bill also provides registration, notification, and benchmarks for safety for automobiles used in peer-to-peer car sharing programs. Programs are responsible for collecting and paying applicable state and local taxes.

Peer-to-peer car sharing programs and the shared vehicle owners are exempt from vicarious liability. The bill authorizes a motor vehicle insurer of the shared vehicle to seek contribution against the motor vehicle insurer of the peer-to-peer car sharing program in certain circumstances. The bill provides consumer protections to shared vehicle owners, in the form of minimum disclosures.

The bill gives airports the authority to regulate peer-to-peer car sharing activity at airports.

DATE OF PASSAGE: March 7, 2020.

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4476

STRIKE AND INSERT AMENDMENT TO INTRODUCED BILL

SHORT TITLE: Providing for the timely and efficient collection, submission, testing, retention, and disposition of forensic evidence in sexual assault cases.

CODE REFERENCE: §15-9B-1, 15-9B-2, and 15-9B-4 (Amends and Reenacts); §15-9B-1a and §15-9B-5 (New)

SUMMARY:

This bill establishes procedures for timely and efficient collection, submission, testing, retention, tracking, and disposition of forensic evidence collected in sexual assault cases. It transfers some duties from the Division of Justice and Community Services to the Division of Administrative Services. Additionally, it requires sexual assault forensic examination kits that are collected by health care providers to be directly submitted to the West Virginia State Police Forensic Lab. Lastly, it establishes misdemeanor penalties for willful neglect or refusal to perform duties imposed by the article and gives rule-making authority to the West Virginia State Police.

DATE OF PASSAGE: February 18, 2020

EFFECTIVE DATE: May 18, 2020

ACTION BY GOVERNOR: Signed March 5, 2020

House Bill 4477

INTRODUCED BILL

SHORT TITLE: West Virginia Mutual to Mutual Insurance Holding Company Act

CODE REFERENCE: §33-27A-1, §33-27A-2, §33-27A-3, §33-27A-4, §33-27A-5, §33-27A-6, §33-27A-7, §33-27A-8, §33-27A-9, §33-27A-10, §33-27A-11, §33-27A-12, §33-27A-13, and §33-27A-14 (New)

SUMMARY:

This bill creates the West Virginia Mutual to Mutual Insurance Holding Company Act, which prescribes a method whereby a mutual insurance company may reorganize its business and create a multi-level insurance holding company system. In a reorganization, two new entities would be created:

- 1) A mutual insurance holding company, a non-stock corporate entity, which is the holding company system parent; and
- 2) An intermediate stock holding company, which is a subsidiary of the mutual holding company.

The original mutual insurance company is then converted into a stock insurance company, which is controlled by its new shareholder, the intermediate stock holding company. At all times, at least 51% or more of the ownership rights of the stock holding company must be held by the mutual holding company.

The policy holder's rights in the original mutual insurance company are converted into membership rights in the larger and more diversified mutual insurance holding company. The policy holder's contractual rights do not change as the converted stock company remains responsible for the payment of claims.

The bill contains the following provisions:

§33-27A-3:

- A reorganization plan may only be adopted by the affirmative vote of not less than two-thirds of the mutual insurance company's Board of Directors;
- The reorganization plan shall provide for the incorporation of a mutual insurance holding company and shall also provide for the continuation of the corporate existence of the original mutual insurance company as a stock insurance company;

- The reorganization plan shall provide that the membership interests of the policy holders of the original mutual insurance company shall become membership interests in the mutual insurance holding company;
- The reorganization plan shall provide that the mutual insurance holding company shall at all times own a majority of the stock of the reorganized stock company; and
- On approval of the reorganization plan, notice must be given to the Insurance Commissioner's office within 90 days.

§33-27A-4:

- The reorganization plan adopted by the mutual insurance company's board of directors, shall be voted on by the mutual insurance company's policy holders at a policy holder's meeting;
- The reorganization plan must be approved by affirmative vote of at least a majority of the votes that are cast by policy holders; and
- The Insurance Commissioner may conduct one or more public hearings on the reorganization plan.

§33-27A-5:

- The mutual insurance company cannot proceed with the reorganization plan until it has been reviewed and approved by the Insurance Commissioner; and
- The Insurance Commission may only approve a reorganization plan if the plan complies with the provisions of this article, all documents were properly filed, and the Insurance Commissioner determines that the reorganization plan is fair and equitable to the mutual insurance company's policy holders.

§33-27A-14:

- The West Virginia Insurance Commissioner may adopt rules necessary to carry out the purposes of the new article.

DATE OF PASSAGE: February 28, 2020

EFFECTIVE DATE: February 28, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4478

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Creating a lifetime ban for commercial drivers involved in human trafficking.

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

SUMMARY:

This bill will bring the state of West Virginia into compliance with Federal Motor Carrier Safety Administration regulations, by providing that:

- 1) An individual who uses a commercial motor vehicle in committing a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance shall be disqualified from operating a commercial motor vehicle for life and is not eligible for reinstatement.

- 2) An individual who uses a commercial motor vehicle in committing a felony involving an act or practice described in paragraph (9) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102(9)) shall be disqualified from operating a commercial motor vehicle for life and is not eligible for reinstatement.

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4501

STRIKE AND INSERT AMENDMENT TO INTRODUCED BILL

SHORT TITLE: Relating to the ability to refuse offenders for commitment to a jail.

CODE REFERENCE: §62-6-6a (Repeals); §15A-5-9 and §62-1C-14 (Amends and Reenacts)

SUMMARY:

This bill extends civil and criminal immunity to the Division of Corrections and Rehabilitation and its commissioner, employees, and agents for accepting offenders into the regional jails who are deemed to need a medical examination or treatment but who refuse to undergo an examination or get treatment prior to incarceration.

DATE OF PASSAGE: February 27, 2020

EFFECTIVE DATE: February 27, 2020

ACTION BY GOVERNOR: Signed March 7, 2020

House Bill 4509

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Transferring the Parole Board to the Division of Corrections and Rehabilitation for purposes of administrative and other support.

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

SUMMARY:

This bill transfers the Parole Board to the Division of Corrections and Rehabilitation for purposes of administration and other support. The bill eliminates county residency requirements for board members. It creates a vice chair position and creates the position of “substitute board member,” who may serve in the absence of a full-time member. Substitute board members must meet the same criteria for membership as regular board members and are paid a per diem rate chosen by the Secretary.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4510

STRIKE AND INSERT AMENDMENT TO INTRODUCED BILL

SHORT TITLE: Prohibiting bodily intrusion by an inmate upon any person at any correctional facility.

CODE REFERENCE: §62-8-1 (Amends and Reenacts)

SUMMARY:

This bill criminalizes the act of an inmate conducting a body cavity search of another inmate, including when the inmate conducting the search is looking for drugs or contraband. The new crime is a felony with a penalty of one to five years imprisonment.

DATE OF PASSAGE: March 3, 2020

EFFECTIVE DATE: June 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4513

COMMITTEE SUBSTITUTE

SHORT TITLE: Increasing the replacement costs required of a person causing injury or death of game or protected species.

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

SUMMARY:

W.Va. Code §20-2-5a requires a person who is convicted of violating a criminal law in West Virginia that results in the injury or death of game or a protected species of animal to pay the state the “replacement cost” of that game or species. This is in addition to any other penalty to which the person is subject. The bill increases the replacement costs for different types of game or species as set forth below:

Game/Species:	Current Replacement Cost:	Proposed Replacement Cost:
Game fish or fish of protected species	\$10/lb and any fraction thereof for each fish taken illegally other than by pollution kill	\$20/lb and any fraction thereof for each fish taken illegally other than by pollution kill
Brook trout	\$100 for 1-5 fish over creel limit; \$20 each additional fish	\$100 for one fish exceeding creel limit; \$20 each additional fish
Bear	\$500 each	\$1,000 each
Deer	\$200 each	\$500 each
Wild turkey	\$100 each	\$250 each
Beaver	\$25 each	\$100 each
Otter	\$25 each	\$100 each
Mink	\$25 each	\$100 each
Elk	\$4,500 each	\$10,000 each

Hawk	\$100 each	\$200 each
Owl	\$100 each	\$200 each

A person subject to the penalty for the injury or death of a deer must pay an additional replacement cost for antlered deer, based on the measurement of the inside spread of the main beams of the antlers as measured at the widest point.

Measurement:	Current Replacement Cost:	Proposed Replacement Cost:
14 inches to < 16 inches	\$1,000	\$2,500
16 inches to < 18 inches	\$1,500	\$5,000
18 inches to < 20 inches	\$2,000	\$7,500
≥ 20 inches	\$2,500	\$10,000

The bill also requires the Division of Natural Resources to revoke the hunting and fishing license of any person convicted of violating a criminal law of West Virginia that results in the death or injury of an elk or antlered deer and who is subject to replacement costs for either elk or antlered deer for a period of five years and prohibits issuance of any other hunting license during that time.

DATE OF PASSAGE: February 29, 2020

EFFECTIVE DATE: May 29, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4524

STRIKE AND INSERT AMENDMENT TO INTRODUCED BILL

SHORT TITLE: Making the entire state “wet” or permitting the sale of alcoholic liquors for off-premises consumption.

CODE REFERENCE: §60-5-1, §60-5-2, §60-5-3, §60-5-4, §60-5-5, §60-5-6, §60-5-7 and §60-5-8 (Amends and Reenacts); §60-5-9 (New)

SUMMARY:

Currently all counties or municipalities in the state are legally “dry,” meaning alcohol sales are prohibited within the county or municipality, unless the county has opted to become “wet.” There are currently 13 “dry” areas in the state. This bill alters the current presumption to make the entire state “wet” or permit the sale of alcoholic liquors (liquor, wine and beer) in all places. The bill permits a county that is dry on the effective date of the bill to remain dry by local option election or by a vote of the county commission.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4529

STRIKE AND INSERT AMENDMENT TO INTRODUCED BILL

SHORT TITLE: Relating to the collection of assessments and the priority of liens on property within a resort area.

CODE REFERENCE: §7-25-22 (Amends and Reenacts)

SUMMARY:

Current law relates to liens for assessments on real property located within a resort area district and allows for a recorded lien for an assessment to have priority over all other liens except land tax liens and preexisting special assessments.

This bill adds a third exception for a lien creditor, including any lien creditor secured by a deed of trust lien which was properly recorded before the assessment lien was recorded.

DATE OF PASSAGE: March 3, 2020

EFFECTIVE DATE: June 1, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

House Bill 4530

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing daily passenger rental car companies to charge reasonable administrative fees.

CODE REFERENCE: §17A-6D-17 (New)

SUMMARY:

This bill permits daily passenger rental car companies to collect reasonable administrative fees incurred by the rental customer related to parking tickets, tolls, citations for other non-moving violations, and other costs. The bill makes clear that the rental car company may recover such fees notwithstanding provisions in W. Va. Code §46A-2-128 related to unfair debt collection restrictions that may be construed to the contrary.

The bill requires that the rental customer affirmatively agree to the provisions of the master rental agreement regarding such fees and that the fees collected be capped at \$25 or 10% of the debt owed, whichever is less.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: March 25, 2020

House Bill 4544

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to possession of any controlled substance on the premises of or within 200 feet of a public library.

CODE REFERENCE: §60A-4-406 (Amends and Reenacts)

SUMMARY:

This bill provides that an adult convicted of a violation of the felony provisions of W. Va. Code §60A-4-401 (distribution of controlled substances) who commits the crime within 200 feet of a public library is subject to a minimum period of incarceration before parole eligibility. If the offense involved schedule I or II narcotic controlled substances, the minimum period of incarceration is three years. If the offense involved schedule I or II non-narcotic controlled substances, the minimum period of incarceration is two years.

DATE OF PASSAGE: March 3, 2020

EFFECTIVE DATE: June 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4559

STRIKE AND INSERT AMENDMENT TO INTRODUCED BILL

SHORT TITLE: Modifying the limitations on civil actions against the perpetrator of sexual assault or sexual abuse upon a minor.

CODE REFERENCE: §55-2-15 (Amends and Reenacts)

SUMMARY:

This bill modifies the statute of limitations for a civil action against a perpetrator of sexual assault or sexual abuse against a minor. The general statute of limitations for personal torts is two years. The current statute of limitations for sexual assault or sexual abuse against a minor is four years after the victim reaches the age of majority or four years after discovery of the assault or abuse, whichever is later in time.

The bill extends the statute of limitations for a civil action against the perpetrator to 18 years after an alleged victim reaches the age of majority or four years after discovery of the assault or abuse, whichever is later in time. The bill also extends the statute of limitations for a cause of action against a person or organizations which aided, abetted, or concealed the sexual assault or sexual abuse to 18 years after the alleged victim meets the age of majority.

The bill applies to all causes of action for sexual assault or sexual abuse against a minor, regardless of whether those causes of action had expired under the shorter statute of limitation in place prior to the bill's effective date.

DATE OF PASSAGE: March 3, 2020

EFFECTIVE DATE: June 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4560

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to deliveries by a licensed wine specialty shop.

CODE REFERENCE: §60-8-6b (Amends and Reenacts)

SUMMARY:

This bill eliminates the requirement that orders of gift baskets containing wine, from wine specialty shops, be done by face-to-face transaction. The bill allows online, telephonic, and electronic orders of gift baskets containing wine from wine specialty shops.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4573

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to Medicaid subrogation liens of the Department of Health and Human Resources.

CODE REFERENCE: §9-5-11 (Amends and Reenacts)

SUMMARY:

The purpose of this bill is to harmonize Medicaid subrogation law with recent changes to federal laws by removing restrictions on amounts subject to recovery by the Department of Health and Human Resources (DHHR). The bill redefines terms, including amending the definition of “third-party” to include any insurer that may be liable under an uninsured or underinsured motorist policy covering injuries to the recipient.

The bill provides that the Department has a priority right to intervene and to be fully reimbursed for any payments made for past medical care before a recipient can recover any of their own costs for medical care from a third party. When determined to be cost effective, DHHR may negotiate for reduction in the lien amount to incentivize Medicaid members to pursue actions against liable third parties.

Within 30 days of receipt of the notice of a proposed settlement by a recipient, DHHR must notify the recipient of its consent or rejection of the proposed allocation. If the Department consents, the recipient or his or her legal representative must issue payment out of the settlement proceeds in a manner directed by the Secretary or his or her designee within 30 days of consent to the proposed allocation. If the Department rejects the proposed allocation, the recipient or legal representative must petition the court for a determination within 30 days regarding the appropriateness of the proposed settlement. The court must give due consideration to DHHR’s interests in being fairly reimbursed for purposes of the operation of the Medicaid program. The bill exempts a lien of less than \$1,500 from requirements of the article.

The bill provides that a recipient that fails to notify DHHR of a settlement is liable for settlement amounts to which DHHR is entitled plus interest from date of settlement.

DATE OF PASSAGE: March 7, 2020

ACTION BY GOVERNOR: Vetoed March 25, 2020

House Bill 4576

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Establishing a procedure for correcting errors in deeds, deeds of trust and mortgages.

CODE REFERENCE: §36-3-11 (New)

SUMMARY:

This bill provides that obvious description errors in a recorded deed, deed of trust, or mortgage may be corrected by recording a corrective affidavit in the office of the clerk of the county commission of the county where the property is situated or where the deed, deed of trust, or mortgage needing correction was recorded.

An obvious description error includes:

- 1) An error transcribing courses and distances, including the omission of one or more lines of courses and distances or the omission of angles and compass directions;
- 2) An error incorporating an incorrect recorded plat or a deed reference;
- 3) An error in a lot number or designation; or
- 4) An omitted exhibit supplying the legal description of the real property thereby conveyed.

Prior to recording a corrective affidavit, notice of the intent to record the affidavit, of each party's right to object, and a copy of the affidavit must be sent to specified persons.

The notice and a copy of the affidavit shall be delivered by personal service, sent by certified mail, return receipt requested, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt obtained, to the last known address of each party to the deed, deed of trust, or mortgage to be corrected.

If no written objection is received within 30 days, the corrective affidavit may be recorded by the attorney, and all parties to the deed, deed of trust, or mortgage shall be bound by the terms of the affidavit. The county clerk shall record the corrective affidavit and index the affidavit in the names of the parties to the deed, deed of trust, or mortgage. An affidavit recorded in compliance with the new code section shall be prima facie evidence of the facts stated in such affidavit.

The bill sets forth the content requirements of a corrective affidavit and provides that a corrective affidavit recorded pursuant to the new code section operates as a correction of the deed, deed of trust, or mortgage and relates back to the date of the

original recordation of the instrument as if the instrument was correct when first recorded.

The bill requires a title insurance company to issue an endorsement to reflect the corrections made by the corrective affidavit upon request.

All costs associated with the recording of a corrective affidavit are to be paid by the party that records the corrective affidavit, and any person who wrongfully or erroneously records a corrective affidavit is liable for actual damages sustained by any party due to such recordation, including reasonable attorney fees and costs.

The bill provides that the remedies under the new code section are not exclusive and do not abrogate any right or remedy under the laws of the State of West Virginia.

Lastly, the bill sets forth the form of corrective affidavit and notice.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4585

INTRODUCED BILL

SHORT TITLE: Providing immunity from civil or criminal liability for making good faith reports of suspected or known instances of child abuse or neglect.

CODE REFERENCE: §49-2-810 (Amends and Reenacts)

SUMMARY:

This bill amends the current code section relating to immunity from liability to specifically provide immunity from civil or criminal liability for individuals providing information or assistance, including medical evaluations or consultations, in connection with a report, investigation, or legal intervention pursuant to a good faith report of child abuse or neglect.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4593

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing the assignment of poll workers to serve more than one precinct under certain circumstances.

CODE REFERENCE: §3-1-5 and 3-1-30 (Amends and Reenacts)

SUMMARY:

This bill allows the clerk of the county commission to assign a member of one precinct's standard receiving board to simultaneously serve on the standard receiving board of another precinct (up to three precincts) if the polling places are located in the same physical building or facility and the county clerk is unable to nominate a sufficient number of persons to serve on each precinct's standard receiving board.

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4615

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: West Virginia Critical Infrastructure Protection Act.

CODE REFERENCE: §61-10-34 (Amends and Reenacts)

SUMMARY:

This bill provides numerous protections for critical infrastructure. The bill defines critical infrastructure and critical infrastructure facility and creates new criminal offenses.

The bill provides that any person who willfully and knowingly trespasses or enters property containing a critical infrastructure facility without permission by the owner of the property or lawful occupant thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$250 nor more than \$1,000, confined in jail not less than 30 days nor more than one year, or both fined and confined. If the intent of the trespasser is to willfully damage, destroy, vandalize, deface, or tamper with equipment, or impede or inhibit operations of the critical infrastructure facility, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000, confined in a jail for not more than one year, or both fined and confined.

If a person who willfully damages, destroys, vandalizes, defaces, or tampers with the equipment in a critical infrastructure facility causes damage in excess of \$2,500, the person is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 but not more than \$5,000, imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

Additionally, any person or organization who conspires with any person to commit the offense of trespass against a critical infrastructure facility is guilty of a misdemeanor and, upon conviction thereof shall be fined in an amount of not less than \$2,500 nor more than \$10,000. Any person or organization who conspires with any person or organization to willfully damage, destroy, vandalize, deface, or tamper with equipment in a critical infrastructure facility and who does cause damages in excess of \$2,500 is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 but not more than \$20,000. Finally, any person who is arrested for or convicted of the new offenses may be held civilly liable for any damages to personal or real property while trespassing, in addition to the penalties imposed by the bill, and any person or entity that compensates, provides consideration to, or remunerates a person for trespassing as described in this

section may also be held liable for damages to personal or real property committed by the person compensated or remunerated for trespassing.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4618

INTRODUCED BILL

SHORT TITLE: Relating to deadly weapons for sale or hire.

CODE REFERENCE: §61-7-10 (Amends and Reenacts)

SUMMARY:

This bill eliminates the prohibition against publicly displaying any deadly weapon to passersby on a public street, road, or alley and eliminates the prohibition against offering such weapons for rent or for sale on a public street, road, or alley.

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4668

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Creating the misdemeanor crime of trespass for entering a structure that has been condemned.

CODE REFERENCE: §61-3B-2 (Amends and Reenacts)

SUMMARY:

Currently, a person who trespasses upon or under a structure or conveyance is guilty of a misdemeanor and shall be fined up to \$100. Additionally, if the offender has a firearm or other dangerous weapon while in the structure or conveyance, and has an unlawful and felonious intent to do bodily injury to a human, they are guilty of a misdemeanor and shall be fined \$100-\$500, confined in jail for up to one year, or both fined and confined.

This bill adds an offense that specifically applies to trespass in a condemned structure. Any person who, without permission, knowingly and willfully enters a structure which has a clear posting that the structure has been condemned as unfit for habitation or use, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100, confined in jail for up to six months, or both fined and confined.

Additionally, the bill provides that for any first offense of trespass on a condemned property, a judge or magistrate may substitute community services or pretrial diversion alternatives, or both, before imposing the criminal penalties.

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4697

STRIKE AND INSERT AMENDMENT TO INTRODUCED BILL

SHORT TITLE: Removing the restriction that a mini-distillery use raw agricultural products originating on the same premises.

CODE REFERENCE: §60-1-5b, §60-4-3, §60-4-3a, §60-4-15; §60-6-1, and §60-6-2 (Amends and Reenacts); §60-1-5d (New)

SUMMARY:

This bill creates a new license for “micro-distilleries,” in order to facilitate urban distilleries that cannot grow at least 25% of raw materials on site, which is currently required to qualify for a mini-distillery license. A micro-distillery is defined as an establishment where, in any one year, no more than 10,000 gallons of alcoholic liquor is manufactured and no more than 25% of raw agricultural products used in production originate from outside the state. The fee for a micro-distillery license is \$750.00 per year. There is no on-site growing requirement.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4715

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing municipalities to take action to grant certain fire department employees limited power of arrest.

CODE REFERENCE: §8-14-3 and §8-15-1 (Amends and Reenacts)

SUMMARY:

This bill allows municipalities which have fire departments with municipal fire marshals to authorize the fire marshals to exercise limited arrest powers related to active fires, explosives, and arson cases. Those fire marshals may also affect a warrantless arrest if an offense occurs in their presence.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4797

STRIKE AND INSERT AMENDMENT TO INTRODUCED BILL

SHORT TITLE: Authorizing municipalities to enact ordinances that allow the municipal court to place a structure, dwelling or building into receivership.

CODE REFERENCE: §8-12-16 (Amends and Reenacts)

SUMMARY:

This bill allows a municipality which has passed an ordinance requiring the owner of a dwelling or building to pay the costs of repairing, altering, improving, vacating, closing, removing, or demolishing the dwelling or building to authorize the municipal court to place the structure, dwelling, or building under receivership if:

- 1) The owner cannot be located after reasonable inquiry by the code enforcement agency, as required by this section, or if the owner refuses entry;
- 2) The code enforcement agency obtains an administrative search warrant from either the municipal court or the magistrate court located in the jurisdiction of the municipality or county where the structure, dwelling, or building is located;
- 3) Upon entry, the code enforcement agency determines that the structure, dwelling, or building is salvageable and does not require demolition; and
- 4) The code enforcement agency proffers to the court that the structure, dwelling, or building will require demolition or presents a substantial threat to nearby structures, property, or residents due to risk of fire, structural instability, or attractive nuisance if it is not repaired, altered, or improved in the near future.

An owner may petition the municipal court at any time to end the receivership. If the owner shows he or she will make the necessary repairs, alterations, and improvements, the municipal court may end the receivership.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4852

STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to the penalties for the manufacture, delivery, possession, or possession with intent to manufacture or deliver methamphetamine.

CODE REFERENCE: §60A-4-401 (Amends and Reenacts)

SUMMARY:

This bill increases the penalty for distribution of methamphetamine or possession with intent to distribute methamphetamine. Currently the offense is punishable by a fine of up to \$15,000, one to five years imprisonment, or both the fine and imprisonment. The bill makes the offense punishable by a fine of not more than \$25,000, one to 15 years of imprisonment, or both the fine and imprisonment.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4882

INTRODUCED BILL

SHORT TITLE: Authorizing limited sampling and limited sale of wine for off-premises consumption to wineries not licensed in the state.

CODE REFERENCE: §60-8-3 (Amends and Reenacts)

SUMMARY:

This bill permits temporary licenses for unlicensed wineries, not currently licensed or located in West Virginia, to do limited sampling and limited sales of wine for off-premises consumption at certain fairs and festivals and at certain one-day special licensed nonprofit events. The bill limits the number of the temporary licenses that a winery may receive to four licenses per winery, per year. The fee for the temporary license is \$150.

DATE OF PASSAGE: March 2, 2020

EFFECTIVE DATE: March 2, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4929

INTRODUCED BILL

SHORT TITLE: Relating to the administrative closing of stale or unprogressed estates.

CODE REFERENCE: §44-3A-24 (Amends and Reenacts)

SUMMARY:

This bill concerns the procedures involved in the administrative closing of stale or unprogressed estates. The bill clarifies that the fiduciary supervisor of the county must include in his list of stale or unprogressed estates, “any estate that has not been duly closed within a period of three years from the opening of such estate and in which no progress, or in his or her opinion, unsatisfactory progress, has been made toward settlement, for any cause, within the preceding 12 months.” The list must be submitted to the county commission, and the county will begin the process of sending notice to interested parties and taking further action on the estate, as required.

DATE OF PASSAGE: March 2, 2020

EFFECTIVE DATE: May 31, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4958

STRIKE AND INSERT AMENDMENT TO ORIGINATING BILL

SHORT TITLE: Eliminating the ability of a person's driver's license to be suspended for the failure to pay court fines and costs.

CODE REFERENCE: §8-10-2a, §8-10-2b, 1§7B-3-3a, §17B-3-3c, §50-3-2a, and §62-4-17 (Amends and Reenacts)

SUMMARY:

Currently, state law allows court personnel to work with the Department of Motor Vehicles to suspend driver's licenses for unpaid court costs, fines, or fees imposed by municipal, magistrate, or circuit courts for ordinance and traffic violations, and criminal offenses. In magistrate court, a lien may also be recorded if the costs, fines, or fees remain unpaid after 180 days of the judgment. Driver's licenses may also be suspended for failure to respond or to appear in court. Current law also allows the Tax Commissioner to withhold tax refund checks if the costs and fines are not paid within 90 days of receiving a notice of suspension.

This bill eliminates the suspension of driver's licenses for failure to pay court costs, fines, or fees. The bill requires a clerk of the court to notify a person owing court costs and fines that they may enroll in a payment plan.

Payment Plans:

To enroll in a payment plan, a person must pay a \$25 administrative fee, which can either be paid up front or may be paid in five equal monthly payments, and the person must also sign an affidavit stating that they are unable to pay. A person must enroll in a payment plan within 180 days after the date on which the court enters an order assessing the fines and costs. However, if a person is incarcerated, they have until 30 days after their release to set up a payment plan.

A payment plan shall specify: 1) the number of payments to be made; 2) the dates on which such payments are due; 3) the amounts due for each payment; 4) acceptable payment methods; and 5) the circumstances under which the person may receive a late fee, have a judgement lien recorded against them, or have the debt sent to collections for nonpayment.

The monthly payment under the plan will be either 2% of the person's net income divided by 12, or \$10, whichever is greater.

The courts may review the reasonableness of a payment plan on their own or by petition of the individual in order to waive, modify, or convert the remaining payments to community service, depending on the circumstances.

No payment plan:

A person does not have to set up a payment plan if they want to pay the court costs and fines up front, but if the amount due goes unpaid, they will be subject to the same penalties as those that default on their plans, as discussed below.

If, after 90 days of a judgement, a person fails to enroll in a payment plan and fails to pay their costs, fines, forfeitures, or penalties, the clerk may assess a \$10 late fee and shall notify the person of the following:

- That he or she is 90 days past due in the payment of costs, fines, forfeitures, or penalties imposed pursuant to a judgement of the court;
- That he or she has failed to enroll in a payment plan;
- Whether a \$10 late fee has been assessed; and
- That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, or penalties is not resolved within 30 days of the date of the notice.

If after 30 days from the issuance of this notice, a payment has not been received, the clerk may do one or both of the following:

- Record a judgement lien;
- Consign the delinquent costs, fines, forfeitures, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies, an internal collection division, or both.

If a person is late on plan payments or does not enroll and does not pay:

If a person is 30 days past due, the clerk may assess a \$10 late fee each month. If a person is 90 days past due, the clerk may file a judgement lien to be recorded in the county clerk's office where the person resides or owns property, at no cost to the court or send the delinquent debt to a collection agency, a private attorney, or an internal collection division.

However, the entire amount of the delinquent payments collected must go to the court and not be reduced by a collection fee. Therefore, a collection agency or private attorney may add an additional collection fee up to 25% of the delinquent payment amount.

Uniform Payment Form and Affidavit:

The bill requires the Supreme Court of Appeals to generate a uniform payment plan form and uniform affidavit form stating inability to pay for the clerks to use.

Reinstatement of Previously Suspended Driver's Licenses:

If a person's driver's license was suspended before July 1, 2020 solely from nonpayment of court costs and fines, and they are otherwise eligible, they may apply to have their license reinstated either: 1) upon payment in full of all outstanding costs, fines, forfeitures, or penalties and a reduced \$25 reinstatement fee (normally \$50) paid to the DMV; or 2) upon enrolling in a payment plan with the clerk, as described in this section, and paying the \$25 one-time administrative fee and no reinstatement fee.

Suspending Driver's Licenses for Other Reasons:

The bill still allows for the suspension of driver's licenses for failure to respond and failure to appear in court.

Tax Commissioner's Authority

The bill removes the Tax Commissioner's authority to withhold a personal income tax refund to offset outstanding costs, fines, forfeitures, or penalties.

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020