

2015

*West Virginia Legislature
Senate Committee on the Judiciary*

BILL SUMMARIES

1st Session of the 82nd Legislature



Senate Judiciary Committee

*Building 1, Room 210W
1900 Kanawha Boulevard E.
Charleston, WV 25305*

Charles S. Trump IV, Chair

SENATE JUDICIARY COMMITTEE

Staff Members - 2015

<u>Name</u>	<u>Title</u>	<u>Employment Status</u>
Jennifer S. Greenlief	Counsel	Full Time
Elizabeth Lovell	Committee Secretary	Full Time
Jared Wyrick	Legislative Analyst	Full Time
<hr/>		
Brittani Brooks	Secretary to Chairman	Per Diem
Evelyn Ciccarello	Receptionist	Per Diem
Debra A. Graham	Counsel	Per Diem
Tom Kleeh	Counsel	Per Diem
Leah Macia	Counsel	Per Diem
Thomas J. O'Neill	Counsel	Per Diem
Emily Rector	Herndon Intern	Per Diem
Tom Smith	Chief Counsel	Per Diem

**WV SENATE COMMITTEE ON THE JUDICIARY
STATISTICS 2015**

**TOTAL NUMBER OF BILLS INTRODUCED
IN THE SENATE: 585**

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

RESOLUTIONS:	59
CONCURRENT:	68
JOINT:	6
TOTAL:	133

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

HOUSE BILLS:	171
RESOLUTIONS:	95
TOTAL:	266

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

SENATE BILLS:	346
HOUSE BILLS:	55
RESOLUTIONS:	11
TOTAL:	412

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

BILLS:	10
RESOLUTIONS:	2

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

HOUSE BILLS:	47
SENATE BILLS:	110
RULES BILLS:	72
RESOLUTIONS:	4
TOTAL:	233

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

SENATE BILLS:	76
HOUSE BILLS:	38
RESOLUTIONS:	1
TOTAL:	115

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

SENATE BILLS:	79
HOUSE BILLS:	34
RESOLUTIONS:	1
TOTAL:	114

2015 Regular Legislative Session Bills and Resolutions Referred to Committees

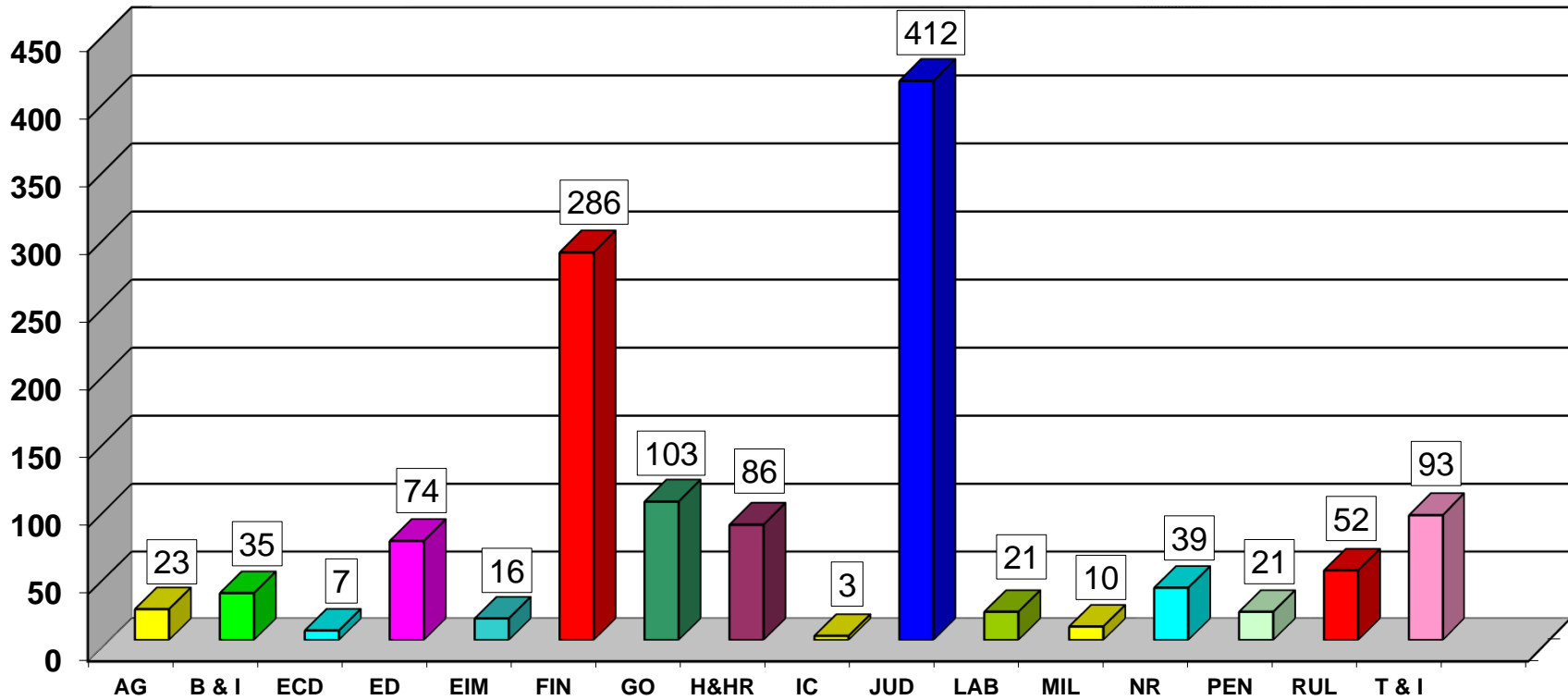


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HB 2648 Allowing authorized entities to maintain a stock of epinephrine auto-injectors to be used for emergency.

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HB 2201 Requiring the Public Service Commission to adopt certain
net metering and interconnection rules and standards.

HB 2627 Providing protection against property crimes committed
against coal mines, utilities and other industrial facilities.

SENATE BILL NO. 3

SHORT TITLE: Relating to liability of possessor of real property for harm to trespasser

CODE REFERENCE: West Virginia Code §55-7-27 (New)

This bill codifies the duty that possessors of real property owe to trespassers under the common law of the State of West Virginia. It does nothing to alter the duty owed and does not disturb any statutes that limit the liability of land possessors under various circumstances. This bill insulates the laws of West Virginia from a provision of the new Restatement (Third) of Torts §51, which departs substantially from the common law duty owed to trespassers as it currently exists and, if adopted, would extend to trespassers the same duty of reasonable care owed to invitees and licensees, and makes an exception to that duty only for what it terms “flagrant trespassers.”

To foreclose the adoption of this new standard into the common law of West Virginia, this bill codifies the existing common law of the State as it relates to duties of landowners to trespassers, which provides that landowners generally owe to trespassers only a duty to refrain from willful or wanton injury. The situations already identified at common law where a land possessor may also be subject to liability for the injury or death of a trespasser, including (1) the possessor discovers the trespasser in a position of peril and fails to exercise ordinary care not to cause injury to the trespasser, (2) he maintains a highly dangerous condition or instrumentality on the property under certain circumstances or (3) a child trespasser is injured or killed due to a dangerous instrumentality or condition on the property under certain circumstances, are preserved.

EFFECTIVE DATE: April 29, 2015

DATE OF PASSAGE: January 29, 2015

ACTION BY GOVERNOR: Signed February 9, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 6**

SHORT TITLE: Relating to medical professional liability

CODE REFERENCE: West Virginia Code §55-7B-1 (Repeals); §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c, §55-7B-10 and §55-7B-11 (Amends); §55-7B-7a and §55-7B-9d (New)

This bill amends and updates the Medical Professional Liability Act. A new legislative finding is added in §55-7B-1 to explain the reasons for updating the Act, explaining that the “modernization and structure of the health care delivery system necessitate and update of provisions of this article” in order to allow the Act to continue to fulfill its purposes, which are “to control the increase in the cost of liability insurance and to maintain access to affordable health care service for our citizens.”

The bill also updates and clarifies a number of definitions in §55-7B-2. The definition of “collateral source” is modified to exclude from its reach the amount of any reductions, discounts or write-offs of a medical bill. “Health care” is also amended and expanded to clarify that ordinary activities that occur in the regular course of providing treatment to patients and are related to the provision of health care fall within the definition. The terms “health care facility” and “health care provider” are expanded to bring within the scope of the definition additional types of facilities and providers. “Medical professional liability” is amended to include “other claims that may be contemporaneous to or related to the alleged tort or breach of contract or otherwise provided in the context of rendering health care services.” A new definition is provided for “related entity,” which includes all business entities “under common control or ownership . . . with a health care provider or health care facility,” or any entity that owns a health care provider or health care facility.

Next, the bill addresses testimony of expert witnesses on the standard of care in §55-7B-7, providing that an proposed expert witness may only be found competent to testify if, among other qualifications, his opinion is grounded on a scientifically valid and properly applied methodology.

A new section of code is added, §55-7B-7a, which concerns the admissibility and use of certain information. The bill creates a rebuttable presumption that certain information, including (1) surveys, audits and reviews of a health care provider or facility, (2) disciplinary actions against a health care provider’s license, registration or certification, (3) accreditation reports, or (4) civil or criminal penalties, cannot be introduced unless it applies specifically to the injured person or involves substantially similar conduct and occurred within one year of the particular incident in question. An additional rebuttable presumption provides that, if a health care facility meets the minimum staffing ratio established under state law, that evidence of inadequate staffing cannot be admitted.

The bill provides, in §55-7B-8, for modifications to the Act’s liability limitations for noneconomic loss. Specifically, the bill clarifies the level of coverage necessary in order for a

defendant to have the benefit of the limitations on noneconomic damages, explicitly stating that the coverage at issue must be at least one million dollars in the aggregate. In §55-7B-9, the bill adds language to clarify that a health care authority may not be held vicariously liable for the acts of a non-employee, unless the non-employee fails to maintain professional liability insurance in the amount of \$1 million for each occurrence.

§55-7B-9c clarifies that the Act applies to emergency medical services (EMS) authorities or EMS personnel. The bill also adds language to ensure that the \$500,000 cap on civil damages recoverable against EMS authorities and personnel is for each occurrence, regardless of the number of plaintiffs, defendants, or distributees. An inflation adjuster is also added at the end of this section, which becomes effective January 1, 2016.

A new section, §55-7B-9d, is added that limits a verdict for past medical expenses to (1) the total amount of medical expenses paid by or on behalf of the plaintiff, and (2) the total amount of medical expenses incurred but not paid for which the plaintiff or another is obligated to pay.

Finally, technical changes are made throughout, including in §55-7B-9a. The bill clarifies in §55-7B-10 that the changes made in this bill apply only to claims filed on or after July 1, 2015, and updates the severability language found in §55-7B-11.

EFFECTIVE DATE: March 10, 2015

DATE OF PASSAGE: March 10, 2015

ACTION BY GOVERNOR: Signed March 18, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 12**

SHORT TITLE: Relating to payment of separated employee's outstanding wages

CODE REFERENCE: West Virginia Code §21-5-1 and §21-5-4 (Amends)

This bill requires employers to pay outstanding wages due to separated employees by the next regular payday on which the wages would otherwise be due and payable. Under current law, employers must pay discharged employees their final paychecks no later than the next regular payday or four (4) business days, whichever comes first, but must pay employees who quit or resign no later than the next regular payday, unless the employee resigns providing one pay period's written notice of the intention to quit, in which case the final wages are required to be paid at the time of quitting.

The bill makes that time frame for payment of final wages uniform regardless of form of separation from employment, requiring that final paychecks be delivered no later than the next regular payday on which the wages would otherwise be due and payable. An exception is made for fringe benefits that are provided to an employee pursuant to an employment agreement but "to be paid at a future date or upon additional conditions which are ascertainable," which wages are to be paid pursuant to the terms of the agreement between employer and employee.

Final paychecks may be delivered in person through any manner proscribed in §21-5-3, which allows for payment in lawful money, by cash order (including checks), by deposit or electronic transfer or any other manner agreed to between employer and employee, as well as through regular pay channels, direct deposit or, if requested by the employee, by mail. The bill establishes the date final paychecks would be considered paid as the date the mailed payment is postmarked if the employee requests to be paid via mail. The bill reduces the liquidated damages available for violation of this section from three (3) times the unpaid amount to two (2) times the unpaid amount.

Lastly, the bill clarifies that §21-5-4 only regulates the timing of wage payments upon separation from employment and does not regulate whether overtime pay is due. It also clarifies that liquidated damages are not available for employees claiming they were misclassified as exempt from overtime under any state or federal wage and hour laws.

EFFECTIVE DATE: June 11, 2015

DATE OF PASSAGE: March 13, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 13**

SHORT TITLE: Relating to liability of a possessor of real property for injuries caused by open and obvious hazards

CODE REFERENCE: West Virginia Code §55-7-27 (New)

This bill reinstates and codifies the open and obvious doctrine of landowner liability as it existed in the State of West Virginia prior to the decision of the West Virginia Supreme Court of Appeals in the case of *Hersh v. E-T Enterprises, Limited Partnership*, 752 S.E.2d 336 (Nov. 12, 2013). The open and obvious doctrine is a common law rule of liability which imposes upon landowners, lessees or other lawful occupants a duty to either warn of, or mitigate, hazards upon their property which are not “open and obvious” to any entrant upon a property; that is, those dangers which may be concealed, hidden, or otherwise not obvious to a reasonable person or not within open view. The Court’s decision explicitly abolished the open and obvious doctrine in West Virginia; this bill restores it through codification.

To that end, the bill states that a possessor of real property owes no duty of care to protect others against dangers that are “open, obvious, reasonably apparent or as well known to the person injured as they are to the owner or occupant.” The new section of code also clarifies that no new causes of action are created by this section, and states the legislative intent of the section to reinstate the law on open and obvious as it existed prior to the Supreme Court of Appeals’ *Hersh* decision. Lastly, the bill directs the court, as a matter of law, to take into consideration the “nature and severity, or lack thereof, of violations of any statute relating to a cause of action.”

EFFECTIVE DATE: February 18, 2015

DATE OF PASSAGE: February 18, 2015

ACTION BY GOVERNOR: Signed March 3, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 37**

SHORT TITLE: Creating Revised Uniform Arbitration Act

CODE REFERENCE: West Virginia Code §55-10-1, §55-10-2, §55-10-3, §55-10-4, §55-10-5, §55-10-6, §55-10-7 and §55-10-8 (Amends); §55-10-9, §55-10-10, §55-10-11, §55-10-12, §55-10-13, §55-10-14, §55-10-15, §55-10-16, §55-10-17, §55-10-18, §55-10-19, §55-10-20, §55-10-21, §55-10-22, §55-10-23, §55-10-24, §55-10-25, §55-10-26, §55-10-27, §55-10-28, §55-10-29, §55-10-30, §55-10-31, §55-10-32 and §55-10-33 (New)

This bill amends, reenacts and expands the current law in West Virginia concerning arbitration by adopting a modified version of the Revised Uniform Arbitration Act into article 10 of Chapter 55. As background for the act, the bill sets forth certain legislative findings concerning arbitration, namely that arbitration frequently offers a more efficient and cost-effective alternative to court litigation, acknowledges the federal policy favoring arbitration and defines a number of terms.

§55-10-4 sets forth the requirements for giving notice to a party to an arbitration proceeding.

§55-10-5 limits the applicability of this article to arbitration agreements made on or after July 1, 2015, and allows arbitration agreements entered into prior to that date to become subject to the new provisions of Article 10 if they are subsequently ratified or continued, or if the parties mutually agree to make the arbitration agreement subject to this article.

§55-10-6 sets forth the provisions of the article that serve as default may not be waived by agreement of the parties. These include (1) the involvement of the court in determining whether an agreement to arbitrate is valid, (2) the authority of the arbitrator to award provisional remedies, (3) the use of witnesses, subpoenas, depositions and other discovery during the arbitration, (4) venue of the state courts, (5) appeals of adverse court determinations concerning arbitration agreement, (6) unreasonable restrictions on notice requirements, (7) unreasonable restriction of right to disclosure of certain facts by an arbitrator, and (8) right to representation by an attorney in arbitration proceedings. This section also sets out the sections that cannot be waived after the arbitration proceeding has commenced.

§55-10-7 provides the parties to an arbitration agreement with a right to seek judicial relief from the circuit courts of this State under certain circumstances as spelled out in the article.

§55-10-8 allows a court to determine the validity and enforceability of an arbitration agreement and whether a particular controversy is covered by an agreement to arbitrate, but reserves to the arbitrator the determination as to whether a condition precedent to arbitration has been

fulfilled and whether a contract containing a valid arbitration agreement is enforceable. This section allows an arbitration to continue pending a court's determination unless the court issues a stay.

§55-10-9 describes the procedures to be used by the courts to evaluate motions to compel or stay arbitration, and requires that a court "proceed summarily to decide the issue" and that a decision on arbitrability be made before the judicial proceeding goes forward.

§55-10-10 grants a court the authority to award provisional remedies before the arbitration proceedings commence and allows the arbitrator to do so after the arbitrator has been appointed.

§55-10-11 describes the steps required to initiate an arbitration proceeding, including a requirement that service be accomplished in an agreed manner, service authorized for the commencement of the action or, by certified or registered mail, return receipt requested and obtained.

§55-10-12 allows for separate arbitration proceedings to be consolidated by a court.

§55-10-13 provides that, in the event the parties are unable to select an arbitrator, or an arbitrator becomes unable to fulfill his duties, the court can appoint an arbitrator. An arbitrator so appointed has all the powers of an arbitrator appointed pursuant to the parties' arbitration agreement. This section also provides that, if an arbitration agreement calls for arbitrator neutrality, then no one with a "known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party" may serve as an arbitrator.

§55-10-14 requires disclosure by an arbitrator of any facts that "a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding," and lays out the steps to be taken if the arbitrator does disclose a conflict that merits disqualification or fails to do so.

§55-10-15 provides that, when panels of arbitrators sit, their powers must be exercised by a majority.

§55-10-16 grants arbitrators the same civil immunity as that afforded to judges of the State of West Virginia, and provides that arbitrators are not competent to testify in a judicial proceeding, unless certain conditions exist, such as when the arbitrator's testimony is necessary to determine the claim of an arbitrator against a party to a proceeding or on a party's motion to vacate. If a party commences an action against an arbitrator that seeks to compel actions that are prohibited by the arbitrator or arbitration organization is entitled to attorney's fees and reasonable expenses of litigation.

§55-10-17 lays out the arbitration process generally, granting the arbitrator broad discretion to conduct the arbitration in a manner appropriate "for a fair and expeditious disposition of the proceeding." This section permits summary disposition under certain circumstances, sets the manner in which an evidentiary hearing is to be convened and lays out certain necessary elements of that hearing.

§55-10-18 guarantees a right to representation by a West Virginia licensed attorney.

§55-10-19 addresses procedural matters concerning witnesses, subpoenas, depositions and discovery. Specifically, this section permits an arbitrator to issue subpoenas for the attendance of witnesses and provision of records and evidence for an arbitration hearing, grants the arbitrator discretion to permit appropriate discovery, to compel a party to comply with a discovery order, and to issue a protective order if appropriate. Any order issued by an arbitrator under this section may be enforced by a court if necessary.

§55-10-20 allows a party to submit an arbitration award to a circuit judge for enforcement and to incorporate any pre-award ruling therein. This section also requires the court to confirm the award “unless the court vacates, modifies or corrects the award” as provided under later sections of the article.

§55-10-21 requires an arbitrator to make a record of the award. Such award must set forth findings of fact and conclusions of law that support the award, and must be done within the time specified within the agreement, or within the time ordered by the court.

§55-10-22 identifies certain limited circumstances in which an arbitrator, on motion by a party, may modify or correct an award. A party making such a motion must provide notice to all parties, and any objections by other parties must be given within ten days. This section also allows a court to resubmit a claim to an arbitrator under certain circumstances if the award is before the court for confirmation, vacatur or modification under later provisions of the article.

§55-10-23 permits an arbitrator to award punitive damages and/or reasonable attorney’s fees if those are permitted in a civil action concerning the same cause of action, and further permits the arbitrator to award “such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding.” This section requires a statement by the arbitrator justifying in both fact and law the award of any attorney’s fees or punitive damages. An additional provision requires that any expenses and fees that are ordered paid as part of the arbitrator’s award must be awarded pursuant to the terms of the parties’ arbitration agreement.

§55-10-24 permits a party to apply to the court to confirm an award ordered by an arbitrator.

§55-10-25 addresses vacating an arbitration award, and sets forth limited circumstances in which a court may vacate an award made in an arbitration proceeding, including (1) corruption, fraud or other undue means, (2) evident partiality, misconduct or corruption by an arbitrator, and (3) exceeding an arbitrator’s powers, among others. Procedures for challenging an award and steps to be taken after an award is vacated are also laid out and include a provision that allows the court to order a rehearing.

§55-10-26 identifies limited circumstances in which a court may modify or correct an award made by an arbitrator. A motion seeking this relief must be made within ninety days after the movant receives notice of the award or notice of a modified or corrected award.

§55-10-27 directs the court to enter judgment in conformity with the arbitration award, which allows for the judgment to be recorded, docketed and enforced. Lists certain costs that may be allowed for judicial proceedings subsequent to the arbitration, including attorney's fees in certain cases.

§55-10-28 grants jurisdiction to enforce arbitration agreements and enter conforming judgments to courts with jurisdiction over the controversy.

§55-10-29 specifies the appropriate venue for making application to courts.

§55-10-30 permits appeals to be taken of certain circuit court actions, including (1) denying a motion to compel arbitration, (2) granting or denying a motion to compel arbitration issued in an action filed pursuant to the provisions of the West Virginia Consumer Credit Protection Act; (3) granting a motion to stay arbitration, (4) confirming or denying confirmation of an award, (5) modifying or correcting an award, (6) vacating an award without directing a rehearing, or (7) final judgment.

§55-10-31 provides that the Act will be interpreted in such a way as to “promote uniformity of the law with respect to its subject matter among states that enact it.”

§55-10-32 confirms that the provisions in this article comply with Section 102 of the Electronic Signatures in Global and National Commerce Act, which ensures the validity of contracts entered into electronically.

§55-10-33 clarifies that the article does not retroactively affect actions already in process at the time of its adoption, nor does not affect rights that have already accrued to the parties.

EFFECTIVE DATE: July 1, 2015
DATE OF PASSAGE: March 14, 2015
ACTION BY GOVERNOR: Signed March 31, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 140**

SHORT TITLE: Amending State Administrative Procedures Act

CODE REFERENCE: West Virginia Code §29A-1-2, §29A-3-1a, §29A-3-4, §29A-3-8, §29A-3-13 and §29A-3-15 (Amends); §29A-1-3a and §29A-1-3b (New); §29A-2-8 (Repeals)

This bill was recommended for passage by the Legislative Rule-Making Review Committee. The bill makes a number of changes to Chapter 29A, the State Administrative Procedures Act, in order to better align the Code with current practice and to add additional code sections to facilitate the rule-making process.

Two new sections are added to state code. The first, §29A-1-3a, clarifies that technical amendments to a current rule (including typos, punctuation, internal code citations, addresses and phone numbers) do not require the rule to go through the legislative rule-making review committee. Instead, agencies can file the corrected rule with the Secretary of State's office. The second new section, §29A-1-3b, concerns void rules and clarifies that when an agency ceases to exist, the agency rules are automatically void.

One section of code, §29A-2-8, is repealed. This code section placed limitations on an agency's ability to duplicate its own rules, or to obtain copies of those rules other than from the Secretary of State, except under certain circumstances.

Additional amendments to the Code made by this bill include:

A new definition added in §29A-1-2 defining "legislative exempt rule," as a rule that is "promulgated by an agency or relating to a subject matter that is exempt from the rule-making provisions" of chapter 29A. Additional changes are made throughout the chapter to identify the manner in which legislative exempt rules are to be handled.

Amendments to §29A-3-1a clarifying that an agency seeking to amend an existing rule must re-file the entirety of the rule rather than simply those parts of the bill that are being changed, and further clarifying that new language be underlined and removed language must be stricken through in the rule submitted to rule-making.

§29A-3-4 sets forth the procedures for filing legislative exempt rules and notices thereof with the Secretary of State's Office, but clarifies that legislative exempt rules and other procedural and interpretive rules are not void for failure to comply with these procedures. §29A-3-8 adds language on the effective date of legislative rules to allow the effective date to be set by other sections of applicable code. Similar changes in §29A-3-13 modify the effective date of non-exempt legislative rules that are filed with the State Register to the filing date, or to another date fixed by the agency.

Finally, §29A-3-15 modifies the procedures for handling emergency legislative rules. The bill adds a requirement that an agency filing a proposed emergency rule include therewith “a listing of state agencies, professions, businesses and other identifiable interest groups affected by the proposed emergency rule.” An agency’s good faith failure to provide a comprehensive list is not a basis for disapproval of the emergency rule. The bill also clarifies that an emergency rule expires upon an agency’s failure to file a proposed rule addressing the same subject matter following the close of the public comment period.

EFFECTIVE DATE: March 14, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 142**

SHORT TITLE: Authorizing Department of Administration promulgate legislative rules

CODE REFERENCE: West Virginia Code §64-2-1 et seq. (Amends)

This bill contains the following rules relating to the Department of Administration:

Department of Administration (Purchasing Division, 148 CSR 1);

Department of Administration (state owned vehicles, 148 CSR 3);

Department of Administration (state plan for the operation of the West Virginia State Agency for Surplus Property, 148 CSR 4);

Consolidated Public Retirement Board (refund, reinstatement, retroactive service, loan and employer error interest factors, 162 CSR 7);

Consolidated Public Retirement Board (Deputy Sheriff Retirement System, 162 CSR 10);

Consolidated Public Retirement Board (service credit for accrued and unused sick and annual leave, 162 CSR 8); and

Office of Technology (procedures for sanitization, retirement and disposition of information technology equipment, 163 CSR 1)

EFFECTIVE DATE: March 14, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 170**

SHORT TITLE: Authorizing Bureau of Commerce promulgate legislative rules

CODE REFERENCE: West Virginia Code §64-10-1 et seq. (Amends)

This bill authorizes the following Department of Commerce rules:

Office of Miners' Health, Safety and Training (rules governing the safety of those employed in and around quarries in West Virginia, 56 CSR 20);

Division of Natural Resources (defining the terms used in all hunting and trapping rules, 58 CSR 46);

Division of Natural Resources (general hunting, 58 CSR 49);

Division of Natural Resources (wildlife damage control agents, 58 CSR 41);

Division of Natural Resources (special boating, 58 CSR 26);

Division of Natural Resources (commercial whitewater outfitters, 58 CSR 12);

Division of Labor (Amusement Rides and Amusement Attractions Safety Act, 42 CSR 17);

Division of Labor (child labor, 42 CSR 9);

Division of Labor (supervision of plumbing work, 42 CSR 32);

Division of Labor (Verifying the Legal Employment Status of Workers, 42 CSR 31);

Division of Labor (regulation of heating, venting and cooling work, 42 CSR 34);

Division of Labor (weights and measures calibration fees, 42 CSR 26); and

Division of Forestry (ginseng, 22 CSR 1).

It refuses authorization of the following rules:

Division of Natural Resources (hunting, trapping and fishing license and stamp fees, 58 CSR 71); and

Division of Natural Resources (lifetime hunting, trapping and fishing licenses, 58 CSR 67).

EFFECTIVE DATE: March 14, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 175**

SHORT TITLE: Authorizing DHHR promulgate legislative rules

CODE REFERENCE: West Virginia Code §16-1-9a (Amends)

This is the bundled rules bill for the Department of Health and Human Resources. It contains the following rules:

Department of Health and Human Resources (public water systems, 64 CSR 3);

Department of Health and Human Resources (chronic pain management clinic licensure, 69 CSR 8);

Department of Health and Human Resources (Fatality and Mortality Review Team, 64 CSR 29);

Department of Health and Human Resources (medication administration and performance of health maintenance tasks by approved medication assistive personnel, 64 CSR 60);

Department of Health and Human Resources (nurse aid abuse and neglect registry, 69 CSR 6);

Department of Health and Human Resources (nursing home licensure, 64 CSR 13); and

Department of Health and Human Resources (state-wide trauma/emergency care system, 64 CSR 27).

EFFECTIVE DATE: February 28, 2015

DATE OF PASSAGE: February 28, 2015

ACTION BY GOVERNOR: Signed March 12, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 182**

SHORT TITLE: Authorizing Department of Military Affairs and Public Safety promulgate legislative rules

CODE REFERENCE: West Virginia Code §64-6-1 et.seq. (Amends)

This bill bundles and authorizes the following rules relating to the Department of Military Affairs and Public Safety:

State Police (regulations and procedures pertaining to the West Virginia DNA databank, 81 CSR 9);

State Fire Commission (volunteer firefighters' training, equipment and operating standards, 87 CSR 8); and

State Fire Marshal (supervision of fire protection work, 103 CSR 3).

EFFECTIVE DATE: March 14, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed April 3, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 187**

SHORT TITLE: Authorizing Department of Revenue promulgate legislative rules

CODE REFERENCE: West Virginia Code §64-7-1 et seq.

This is the bundled rules bill for the Department of Revenue. It contains the following rules:

Racing Commission (thoroughbred racing, 178 CSR 1);

State Tax Department (appointment of special assessors by the State Tax Commissioner, 110 CSR 1Q);

Insurance Commissioner (recognizing annuity mortality tables for use in determining reserve liabilities for annuities, 114 CSR 45);

Insurance Commissioner (annuity disclosure, 114 CSR 11E);

Alcohol Beverage Commission (nonintoxicating beer licensing and operations procedures, 176 CSR 1); and

Alcohol Beverage Commission (private club licensing, 175 CSR 2).

EFFECTIVE DATE: February 28, 2015

DATE OF PASSAGE: February 28, 2015

ACTION BY GOVERNOR: Signed March 6, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 192**

SHORT TITLE: Authorizing Department of Transportation promulgate legislative rules

CODE REFERENCE: West Virginia Code §64-8-1 (Amends)

This bill authorizes the Division of Motor Vehicles to promulgate a rule (Examination and Issuance of Driver's License, 91CSR4).

EFFECTIVE DATE: March 14, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

SENATE BILL NO. 195

SHORT TITLE: Authorizing Conservation Committee promulgate legislative rule relating to financial assistance programs

CODE REFERENCE: West Virginia Code §64-9-1

This bill refuses to authorize the rule proposed by the Conservation Committee (financial assistance programs, 63 CSR 2).

EFFECTIVE DATE: March 14, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 199**

SHORT TITLE: Authorizing miscellaneous agencies and boards promulgate legislative rules

CODE REFERENCE: West Virginia Code §64-9-1 et seq. (Amends)

This bill authorizes the following rules for Miscellaneous Agencies and Boards:

Governor's Committee on Crime, Delinquency and Correction (law enforcement training and certification standards, 149 CSR 2);

Real Estate Appraiser Licensing and Certification Board (requirements for registration and renewal of appraisal management companies, 190 CSR 5);

Board of Medicine (licensure, disciplinary and complaint procedures; continuing education; and physician assistants, 11 CSR 1B);

Enterprise Resource Planning Board (enterprise resource planning system user fee, 213 CSR 1);

Board of Physical Therapy (fees for physical therapists and physical therapist assistants, 16 CSR 4);

Board of Osteopathic Medicine (fees for services rendered by the board, 24 CSR 5);

Board of Osteopathic Medicine (osteopathic physician assistants, 24 CSR 2);

Board of Pharmacy (immunizations administered by pharmacists, 15 CSR 12);

Board of Pharmacy (registration of pharmacy technicians, 15 CSR 7);

Board of Pharmacy (controlled substances monitoring, 15 CSR 8);

Board of Pharmacy (licensure and the practice of pharmacy, 15 CSR 1);

Board of Dental Examiners (formation and approval of professional limited liability companies, 5 CSR 2);

Board of Dental Examiners (rule for the West Virginia Board of Dental Examiners, 5 CSR 1);

Board of Dental Examiners (dental recovery networks, 5 CSR 15);

Board of Dental Examiners (formation and approval of dental corporations; and dental practice ownership, 5 CSR 6);

Commissioner of Agriculture (frozen desserts and imitation frozen desserts, 61 CSR 4B);

Commissioner of Agriculture (animal disease control, 61 CSR 1);

Commissioner of Agriculture (auctioneers, 61 CSR 11B);

Commissioner of Agriculture (fee structure for the Pesticide Control Act of 1990, 61 CSR 12);

Commissioner of Agriculture (West Virginia Plant Pest Act, 61 CSR 14);

Commissioner of Agriculture (inspection of meat and poultry, 61 CSR 16);

Commissioner of Agriculture (West Virginia Spay Neuter Assistance Program, 61 CSR 24);

Commissioner of Agriculture (livestock care standards, 61 CSR 31);

Commissioner of Agriculture (equine rescue facilities, 61 CSR 32);

Commissioner of Agriculture (Rural Rehabilitation Loan Program, 61 CSR 33);

Commissioner of Agriculture (aquaculture importation, 61 CSR 35);

Commissioner of Agriculture (industrial hemp, 61 CSR 29);

Commissioner of Agriculture (dangerous wild animals, 61 CSR 30);

Secretary of State (procedures for recount of election results, 153 CSR 20);

Secretary of State (standards and guidelines for electronic notarization, 153 CSR 45);

Secretary of State (notaries public, 153 CSR 46);

Secretary of State (schedule of fees for notaries public, 153 CSR 50);

Family Protection Services Board (perpetrator intervention programs licensure, 191 CSR 3);

Family Protection Services Board (domestic violence program licensure standards, 191 CSR 2);

Family Protection Services Board (Monitored Parenting and Exchange Program

Certification, 191 CSR 4);

Family Protection Services Board (Operation of the Family Protection Services Board, 191 CSR 1); and

Family Protection Services Board (perpetrator intervention programs licensure for correctional institutions, 191 CSR 5).

It refuses authorization of the following rule:

Board of Registration for Professional Engineers (Examination, Licensure and Practice of Professional Engineers, 7CSR1).

EFFECTIVE DATE: March 14, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

SENATE BILL NO. 238

SHORT TITLE: Exempting county boards of education from liability arising from unorganized recreation

CODE REFERENCE: West Virginia Code §18-5-19 and §18-5-19d (Amends)

The bill limits the liability of County boards of education for loss or injury arising from the use of school property made available for unorganized recreation. County boards remain liable for acts or omissions which constitute gross negligence or willful and wanton conduct.

EFFECTIVE DATE: May 26, 2015

DATE OF PASSAGE: February 25, 2015

ACTION BY GOVERNOR: Signed March 5, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 242**

SHORT TITLE: Creating criminal penalties for certain automated telephone calls during state of emergency or preparedness

CODE REFERENCE: West Virginia Code §15-5-19b (New)

The purpose of this bill is to create a misdemeanor offense, with penalties of up to one year confinement in jail, \$5000.00 or both, for disseminating false misleading or deceptive information regarding matters effected by or effecting the state of emergency or state of preparedness. Each call made shall constitute a separate offense.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

**COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 243**

SHORT TITLE: Relating to school nutrition standards during state of emergency or preparedness

CODE REFERENCE: West Virginia Code §15-5-6a (New)

The purpose of this bill is to allow deviation from legislative rules relating to nutrition standards during states of emergency or preparedness in those areas under the declaration.

There are provisions to ensure the substituted foods are safe and nutritional and substitutions are reported to the Joint Committee on Government and Finance.

EFFECTIVE DATE: June 11, 2015

DATE OF PASSAGE: March 13, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 248**

SHORT TITLE: Requiring certain insurance and owner information be provided following car accident

CODE REFERENCE: West Virginia Code §17C-4-3 (Amends)

This bill requires the driver of any vehicle involved in an accident resulting in personal injury or destruction of property to provide, if physically able, specified insurance and vehicle owner information to the other driver. If physically able, the driver is to render aid to any person injured in the crash.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 249**

SHORT TITLE: Prohibiting straight party voting

CODE REFERENCE: West Virginia Code §3-4A-9, §3-4A-11a, §3-4A-27, §3-6-2, §3-6-3, §3-6-5 and §3-6-6 (Amends)

This bill eliminates straight party voting by use of a single mark or punch on a ballot. To accomplish this purpose, the bill amends a number of sections of code that referenced straight party voting. First, the bill includes express language prohibiting a ballot from offering a voter a straight party voting option. With respect to electronic voting, the bill eliminates the requirement that voting machines offer a straight-ticket option. Additionally, the bill deletes references to straight-ticket voting in the voting instructions and ballot arrangement and eliminates as unnecessary directives relating to how to count votes cast on ballots in which a straight ticket vote is marked.

EFFECTIVE DATE: June 9, 2015

DATE OF PASSAGE: March 11, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

SENATE BILL NO. 250

SHORT TITLE: Relating to Conservation Agency financial assistance applications from district supervisors

CODE REFERENCE: West Virginia Code §19-21A-4a (Amends)

The law previously required that if an elected conservation district supervisor applies or intends to apply to participate in a West Virginia Conservation Agency financial assistance program then all the applications for that program be evaluated and approved by another conservation district.

This bill transfers that authority to the State Conservation Committee. The bill also precludes supervisors from voting on contracts in which he or she or immediate family members has an interest and allows the State Conservation Committee to propose emergency rules as necessary to implement the provisions of the bill.

EFFECTIVE DATE: March 14, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 255**

SHORT TITLE: Eliminating certain boards, councils, task forces, commissions and committees

CODE REFERENCE: West Virginia Code §15-8-1, §15-8-2, §15-8-3, §15-8-4, §15-8-5, §15-8-6, §15-8-7, §15-8-8, §15-8-9, §15-8-10, §15-8-11, §15-8-12, §16-5J-5, §16-5T-1, §16-42-1, §16-42-2, §16-42-3, §16-42-4, §16-42-5, §16-42-6, §18-2J-1, §18-2J-2, §18-2J-3, §18-2J-4, §18-2J-5, §18-2J-6, §18-2J-7, §18B-1C-3, §18B-14-11, §18B-16-6, §20-2B-2a, §21-3A-10, §21-3A-18, §21-3B-3, §22C-5-1, §22C-5-2, §22C-5-3, §22C-5-4, §22C-5-5, §22C-5-6, §22C-5-7, §22C-5-8, §23-1-1a, §29-12B-4, §29-12B-5, §31-16-1, §31-16-2, §31-16-3, §31-16-4, §33-48-2, §33-48-3, §55-15-1, §55-15-2, §55-15-3, §55-15-4, §55-15-5, §55-15-6, §62-11E-1, §62-11E-2 and §62-11E-3 (Repeals)

This bill seeks to eliminate the following boards, councils, committees, panels, tasks forces and commissions that were determined by the Governor to be unnecessary, inactive or redundant:

- West Virginia Sheriffs' Bureau;
- Clinical Laboratories Quality Assurance Advisory Board;
- Care Home Advisory Board;
- Comprehensive Behavioral Health Commission;
- Public and Higher Education Unified Educational Technology Strategic Plan, including the Governor's Advisory Council for Educational Technology;
- West Virginia Consortium for Undergraduate Research and Engineering;
- Governor's Commission on Graduate Study in Science, Technology, Engineering and Mathematics;
- West Virginia Rural Health Advisory Panel;
- Ohio River Management Fund Advisory Board;
- Occupational Safety and Health Review Commission;
- Occupational Safety and Health Advisory Board;
- Environmental Assistance Resource Board;
- Commercial Hazardous Waste Management Facility Siting Board;
- Workers' Compensation Board of Managers;
- State Medical Malpractice Advisory Panel;
- West Virginia Steel Futures Program, including Steel Advisory Commission;
- West Virginia Health Insurance Plan Board;
- Alternative Dispute Resolution Commission; and
- Sexually Violent Predator Management Task Force.

EFFECTIVE DATE: May 21, 2015

DATE OF PASSAGE: February 20, 2015

ACTION BY GOVERNOR: Signed March 3, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 261**

SHORT TITLE: Clarifying definition of "owner" of dam

CODE REFERENCE: West Virginia Code §22-14-3 (Amends)

This bill refines the definition of “owner” of a dam to exclude the owner of the land upon which a dam is maintained by a sponsoring agency from responsibility for repairs, maintenance or damage arising from regular operation of the dam. The bill further protects the owner of the land on which a dam is located from liabilities for any of the deficiencies of the dam, as long as the owner of the dam does not intentionally damage or interfere with the regular operation of the same.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

SENATE BILL NO. 262

SHORT TITLE: Transferring CHIP and Children's Health Insurance Agency from Department of Administration to DHHR.

CODE REFERENCE: West Virginia Code §5-16B-1 and §5-16B-2 (Amends and Reenacts)

This bill transfers the Children's Health Insurance Program and Children's Health Insurance Agency from the Department on Administration to the Department of Health and Human Resources. The bill also provides for orderly transfer of functions, funds and accounts, and clarifies the definition of "Children's Health Insurance Agency".

EFFECTIVE DATE: May 19, 2015

DATE OF PASSAGE: February 18, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

SENATE BILL NO. 267

SHORT TITLE: Repealing code relating to Governor's Office of Health Enhancement and Lifestyle Planning

CODE REFERENCE: West Virginia Code §16-29H-1, §16-29H-2, §16-29H-3, §16-29H-4, §16-29H-5, §16-29H-6, §16-29H-7, §16-29H-8, §16-29H-9 and §16-29H-10 (Repeals)

The bill repeals the Governor's Office of Health Enhancement and Lifestyle Planning, or GOHELP. That Office was created by Code in 2009, and its stated purpose was "to coordinate all state health care system reform initiatives among executive branch agencies, departments, bureaus and offices."

EFFECTIVE DATE: June 11, 2015

DATE OF PASSAGE: March 13, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

**COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 273**

SHORT TITLE: Relating to brewer, resident brewer and brewpub licensing and operations

CODE REFERENCE: West Virginia Code §11-16-3, §11-16-6, §11-16-9 and §11-16-12 (Amends); §11-16-6a and §11-16-6b (New)

This bill clarifies, revises and adds definitions pertaining to the sale of nonintoxicating beer and nonintoxicating craft beer. The bill states the requirements for a sealed growler and also sets forth the requirement that growlers may only be thirty-two or sixty-four ounces in size. The bill also sets out legislative findings.

This bill authorizes brewers and resident brewers with limited manufacturing in this state to:

- a) Sell up to four growlers per customer per day for off premise consumption and not for resale. There is no fee.
- b) Offer complimentary samples of nonintoxicating beer and nonintoxicating craft beer at its manufacturing facility. The samples can only be two ounces and no person can receive more than ten two-ounce samples in one day. The brewers must offer complimentary food with the samples as well as verify that the person is twenty-one or over.
- c) Advertise the brands of nonintoxicating beer or nonintoxicating craft beer.
- d) Sell no more than 25,000 barrels per calendar year.
- e) There is no additional fee for a licensed brewer or resident brewer to sell growlers.

The bill authorizes licensed brewpubs, Class A retail dealers, Class B retail dealers, private clubs, Class A retail licensees or Class B retail licensees to sell up to 4 growlers per customer per day for off premise consumption and not for resale. There is an annual fee of \$100.

The bill sets the requirements for filling and refilling growlers, including labeling and sanitation. It further, changes the license fees for brewers and resident brewers (was \$1,500 for all) to:

- a) less than 12,500 barrels - \$500 for each place of manufacture;
- b) 12,501 barrels up to 25,000 barrels - \$1,000 for each place of manufacture; and

c) more than 25,001 barrels - \$1500 for each place of manufacture.

Provided, that the bill would allow non-resident brewers that produces less than 25,000 barrels under this section a year could choose to either pay a \$1,500 flat annual license fee and not be subject the annual reporting requirements or file a written application with the commissioner to be subject to the variable license fees under subdivision (b)(3) and the requirements under subsections (c), (d) and (e).

The bill decreases the license fee for brew pubs from \$1,000 to \$500 for each place of manufacture.

It also requires brewers and resident brewers to estimate and report the number of barrels it will produce during the license period. At the end of the license period, the brewer or resident brewer must report its total production and pay the higher license fee if it changes.

The bill removes the bond requirement for a brewpub license.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: March 24, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 274**

SHORT TITLE: Relating to TANF program

CODE REFERENCE: West Virginia Code § 9-9-11 (Amends)

This bill relates to the sanctions to be imposed on participants in the Temporary Assistance to Needy Families (TANF) program. The bill eliminates from the current code the specific sanctions to be imposed when recipients of TANF monies fail to abide by the policies of the program, violate their personal responsibility contract or have engaged in fraud or deception to receive benefits. In place of the codified sanctions, the bill permits the Secretary of the Department of Health and Human Resources to promulgate emergency and legislative rules to set sanctions and directs the Secretary to make those sanctions “graduated and sufficiently stringent, when compared to those of contiguous states, so as to discourage persons from moving from such states to this state to take advantage of lesser sanctions being imposed for the same or similar violations.” Additionally, the bill contains a requirement that the Secretary report to the Legislative Oversight Commission on Health and Human Resources Accountability on January 1 of each year concerning the sanctions, the relative strength of West Virginia’s sanctions in comparison to neighboring states, the frequency of imposition and the overall success of the sanctions at deterring individuals from taking advantage of the sanctions.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 277**

SHORT TITLE: Requiring issuance of certificate of birth resulting in stillbirth

CODE REFERENCE: West Virginia Code §16-5-20a (New)

This bill would allow either parent of a stillborn child to request a certificate of birth resulting in stillbirth. Under specified circumstances only the mother may request a certificate. There is a provision for a fee which would be the same as a fee for a death certificate. The bill also specifies the information that would need to be included in the certificate.

EFFECTIVE DATE: June 7, 2015

DATE OF PASSAGE: March 9, 2015

ACTION BY GOVERNOR: Signed March 27, 2015

SENATE BILL NO. 283

SHORT TITLE: Relating to state banking institutions

CODE REFERENCE: West Virginia Code §31A-4-40 and 31A-8-12d (Amends)

This bill deletes the current requirement of a board resolution and legal advertisement when a banking institution wants to change the hours or days it's open for business. The bill requires the institution to provide 45 days advance written notice to the Commissioner of Financial Institutions and to post signs at the bank. The bill also amends the expedited procedure for authorization of branch banks by reducing the amount of time from 35 to 21 days the notice must be filed and the Commissioner must respond accepting or rejecting of the branch.

EFFECTIVE DATE: June 9, 2015

DATE OF PASSAGE: March 11, 2015

ACTION BY GOVERNOR: Signed March 18, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 284**

SHORT TITLE: Relating to chief law-enforcement officer's requirement to certify transfer or making of certain firearms

CODE REFERENCE: West Virginia Code §61-7-16 (New)

The purpose of this bill is to regulate the law enforcement certification process for applications to make, transfer or possess firearms regulated by the National Firearms Act. Current federal law requires that the chief law enforcement officer of the jurisdiction of residence of an applicant certify that the applicant is not prohibited from possessing firearms in order to obtain agency approval. This bill allows for a criminal background check, allows for appeal of refusal to circuit court and specifically prohibits refusal to certify on other grounds. The bill also sets forth the procedure by which an applicant may appeal the decision of the chief law enforcement officer to the circuit court of the applicant's county of residence.

The bill covers all circumstances where certification is needed, limits the basis for refusal by limiting the scope of inquiry and immunizes chief law enforcement officers for good faith decisions certifying applicant. The bill retains language which says that personal feelings are not a sufficient basis for refusing certification.

EFFECTIVE DATE: June 10, 2015

DATE OF PASSAGE: March 12, 2015

ACTION BY GOVERNOR: Signed April 3, 2015

SENATE BILL NO. 292

SHORT TITLE: Relating to licenses for business of currency exchange, transportation or transmission

CODE REFERENCE: West Virginia Code §32A-2-4 and §32A-2-13 (Amends)

This bill amends a current section of the Code involving checks and money order sales, money transmission services, transportation and currency exchange by establishing an expiration date of December 31 for all licenses issued under this article. The bill also adds a new requirement that licensees must give advance notice of at least 60 days to the Commissioner of any proposed changes in control or change in principals.

EFFECTIVE DATE: June 8, 2015

DATE OF PASSAGE: March 10, 2015

ACTION BY GOVERNOR: Signed March 18, 2015

SENATE BILL NO. 294

SHORT TITLE: Eliminating certain unnecessary, inactive or redundant councils, committees and boards

CODE REFERENCE: West Virginia Code §5B-2-2 through §5B-2-6, §15-5-28, §18A-3-2C and §33-16D-16 (Amends); §5B-2-3a and §5B-2-7 (Repeals)

The purpose of this bill is to eliminate certain councils, committees and boards deemed unnecessary, inactive or redundant, as well as remaining antiquated unnecessary code provisions.

More specifically, the bill:

- 1) Eliminates the Council for Community and Economic Development and moves to duties and authority to the Director of the West Virginia Development Office;
- 2) Eliminates the Statewide Interstate Mutual Aid Committee under MAPS;
- 3) Terminates the Principals Standards Advisory Council (Education); and
- 4) Terminates the West Virginia Health Insurance Planning Board (Insurance).

The bill also adds language to certain sections relating to states of preparedness for code consistency.

EFFECTIVE DATE: June 1, 2015

DATE OF PASSAGE: March 3, 2015

ACTION BY GOVERNOR: Signed March 11, 2015

SENATE BILL NO. 295

SHORT TITLE: Establishing appeal process for DHHR Board of Review and Bureau for Medical Services decisions

CODE REFERENCE: West Virginia Code §9-2-13 (New)

This bill establishes within the Bureau for Medical Services (BMS) a Board of Review to review grievances of applicants and recipients of state assistance, federal assistance, federal-state assistance and welfare assistance, as well as to providers of Medicaid services.

The bill defines key terms. It requires the Board of Review to provide a “fair, impartial and expeditious grievance and appeal process.” Any party adversely affected or aggrieved by a final decision or order of BMS may seek judicial review. To effectuate the appeal, a copy of the petition must be served upon the agency stating the reason for the appeal. The underlying decision of the agency is not stayed or superceded by the filing of an appeal. Additionally, the agency is required to provide a copy of the entire record to the Circuit Court. The bill identifies what documents are to be included in the record and also includes provisions for the cost of preparing the record. The Circuit Court is permitted to hear issues in the record but may also take additional testimony on issues beyond what is set forth in the record.

The actions which the court may take are set forth in the bill. These include affirming the decision of the Board of Review, remanding the matter for further proceedings or reversing the decision. A reversal requires that the court find that a substantial right of the petitioner was prejudiced because of the BMS decision that (1) violated constitutional or statutory provisions, (2) exceeded the agency’s authority, (3) was made through unlawful procedures, (4) was affected by other error of law, (5) was clearly wrong based up on reliable evidence or (6) was arbitrary and capricious, an abuse of discretion, or an unwarranted exercise of discretion.

The judgement of the Circuit Court is final unless reversed by the Supreme Court.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed April 1, 2015

SENATE BILL NO. 298

SHORT TITLE: Clarifying funds within Public Employees Retirement Fund

CODE REFERENCE: West Virginia Code §5-10-28 (Amends)

This bill amends the current section concerning unified accounting for the Public Employees Retirement System to state that all references to the members deposit fund, the employers accumulation fund, the retirement reserve fund, the income fund and the expense fund mean the Public Employee's Retirement Fund.

EFFECTIVE DATE: May 21, 2015

DATE OF PASSAGE: February 20, 2015

ACTION BY GOVERNOR: Signed March 3, 2015

SENATE BILL NO. 299

SHORT TITLE: Clarifying start date of State Police duty-related and nonduty related disability payments

CODE REFERENCE: West Virginia Code §15-2A-9 and §15-2A-10 (Amends)

This bill amends provisions of the WV State Police Retirement System (Plan B) concerning disability retirements. Section 9 concerns duty disability and Section 10 concerns non-duty disability. For both types of disability, the retirement board will commence disability benefit payments starting the first day of the month following the Retirement Board's approval of the disability and the trooper's termination of employment or on the date specified in a court order. Payments, in any case, may not begin until after the trooper terminates his or her employment.

EFFECTIVE DATE: May 24, 2015

DATE OF PASSAGE: February 23, 2015

ACTION BY GOVERNOR: Signed March 5, 2015

SENATE BILL NO. 302

SHORT TITLE: Relating to state retirement plans

CODE REFERENCE: West Virginia Code §5-10A-2 and §5-10A-6 (Amends)

This bill amends the provisions of the Code which disqualify a member for public retirement plan benefits. It adds the latest plan put under the administration of Consolidated Public Retirement Board, the Municipal Police Officers and Firefighters Retirement System. It also clarifies that any person who transferred from the Teachers' Deferred Compensation to the Teachers' Retirement System and whose benefits have been terminated for less than honorable service may not be refunded any transferred vested employer contributions.

EFFECTIVE DATE: May 21, 2015

DATE OF PASSAGE: February 20, 2015

ACTION BY GOVERNOR: Signed March 5, 2015

SENATE BILL NO. 304

SHORT TITLE: Relating to farmers markets

CODE REFERENCE: West Virginia Code §19-35-1 through §19-35-4 (New)

The purpose of this bill is to require the West Virginia Department of Health and Human Resources to establish a uniform farmers market vendor permit that is valid statewide. Current permit fees and requirements for farmers market vendors are handled by local health departments and can vary widely from county to county. A permit is required in each county because food permits are currently not recognized across county lines, putting additional regulatory and fiscal burdens on vendors selling in more than one county.

The bill prohibits additional, unnecessary and duplicative permits by a health department. As amended by the Senate Committee on Agriculture, the permit would cost \$15 annually. The bill defines “farm and food products” and requires that they be labeled “West Virginia grown” or otherwise properly labeled.

Four types of farmers markets are defined, (1) a traditional farmers market, (2) an on-farm market or farm stand, (3) an online farmers market, and (4) a consignment farmers market that will require a food establishment permit and not individual vendor permits.

Nothing in the bill eliminates or limits other state and federal rules and regulations that apply to certain farm and food products. DHHR, in conjunction with the Department of Agriculture, shall establish rules to implement the article based upon already established memoranda.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Committee on Agriculture and Agribusiness following an Interim study pursuant to SCR 42 of 2014 Regular Session.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

SENATE BILL NO. 312

SHORT TITLE: Relating to disqualification of general election nominees for failure to file campaign finance statements

CODE REFERENCE: West Virginia Code §3-8-7 (Amends)

The bill modifies the section of the West Virginia Code that sets forth penalties for a candidate's failure to file a financial statement. Specifically, the bill provides that a candidate who failed to file the required reports by the eighty-fourth day before the general election, or whose reports have not been received by the eighty-fourth day, may not have his name placed on the ballot. A vacancy thus created by a candidate's failure to file constitutes a disqualification and triggers the ballot vacancy provisions found elsewhere in the election code. The bill further defines the term "grossly" as that word is used to describe "grossly incomplete" or "grossly inaccurate" financial statements, and also directs the Secretary of State to promulgate legislative rules for providing written notice to candidates and others that are not in compliance with the filing requirement sixty days after the primary or other election.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 315**

SHORT TITLE: Relating to civil actions filed under Consumer Protection Act

CODE REFERENCE: West Virginia Code §46A-6-101, §46A-6-10, §46A-6-105 and §46A-6-106 (Amends)

This bill provides that the West Virginia Consumer Credit and Protection Act (WVCPA) should be interpreted in accordance with FTC rulings and federal court interpretations thereof. It also provides that “actual damages” under article two of the WVCPA shall mean “out of pocket loss.” Further, it provides that corporations may sue under the provisions of the WVCCPA.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

SENATE BILL NO. 318

SHORT TITLE: Relating to payment of wages by employers

CODE REFERENCE: West Virginia Code §21-5-3 (Amends)

This bill alters the frequency with which employers must pay employees by requiring employers to pay employees twice every month with a maximum of nineteen days between settlements. The bill would still permit payroll to be processed once in every two weeks but requires employees be paid at least twice every month.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 26, 2015

SENATE BILL NO. 322

SHORT TITLE: Eliminating mandatory electronic recount of ballots in recounts

CODE REFERENCE: West Virginia Code §3-4A-28 (Amends)

This bill removes unnecessary language concerning the handling of ballots cast electronically during any requested recount. As part of the required canvass following an election, three percent of the precincts in each county are subject to a hand-counting requirement, the purpose of which is to ensure the accuracy of the machine voting totals. To avoid duplication of these automatic recounts, the bill eliminates the requirement that an identical mandatory electronic recount of ballots occur during an election contest. It leaves unchanged a challenging candidate's ability to request a recount of one or more precincts as part of his election challenge.

EFFECTIVE DATE: June 8, 2015

DATE OF PASSAGE: March 10, 2015

ACTION BY GOVERNOR: Signed March 18, 2015

**COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 336**

SHORT TITLE: Eliminating Health Care Authority's power to apply certain penalties to future rate applications

CODE REFERENCE: West Virginia Code §16-29B-19 (Amends)

This bill would alter the powers and duties of the Health Care Authority by removing their authority to apply new penalties or penalties held in abeyance to any future rate applications filed with the Authority. It would change the authority of the Health Care Authority to collect from hospitals a financial obligation based upon gross revenue to amount based upon net revenue and would eliminate the authority of the Health Care Authority regarding rate review for hospitals.

EFFECTIVE DATE: March 11, 2015

DATE OF PASSAGE: March 11, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 344**

SHORT TITLE: Relating to duty to mitigate damages in employment claims

CODE REFERENCE: West Virginia Code §55-7E-1, §55-7E-2 and §55-7E-3 (New)

This bill creates a new article of code to address certain damages available in employment claims and to codify a duty on the part of an employee to mitigate his or her damages, even in instances where that discharge is determined to be malicious.

First, the bill defines the terms “front pay” and “back pay.” It sets forth legislative findings and states that the purpose of the bill is to “provide a framework for adequate and reasonable compensation to those persons who have been subjected to an unlawful employment action, but to ensure that compensation does not far exceed the goal of making a wronged employee whole.”

Finally, the bill places an affirmative duty on the employee or former employee to mitigate past and future lost wages. The malice exception to the duty to mitigate damages is explicitly abolished, and the bill states that unmitigated or flat back pay and front pay awards are not an available remedy. It remains the defendant’s burden to prove the lack of reasonable diligence. With respect to the available remedies, the bill vests the trial judge with the duty to make a preliminary ruling on whether front pay or reinstatement is the appropriate remedy. If front pay is determined to be appropriate, then the judge is to determine the appropriate amount.

EFFECTIVE DATE: June 8, 2015

DATE OF PASSAGE: March 10, 2015

ACTION BY GOVERNOR: Signed March 26, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 347**

SHORT TITLE: Creating Firearms Act of 2015

CODE REFERENCE: West Virginia Code §20-2-5, §20-2-6a, §61-7-3, 61-7-4 and §61-7-6 (Amends); §61-7-7a (New)

This bill creates the Firearms Act of 2015 by:

- 1) Amending §20-2-5, to allow a person to carry with or without a license for purposes of self defense in the “woods of this state”;
- 2) Amending §20-2-6a, by removing language requiring a concealed carry license, as long as that person is not prohibited from possessing a firearm pursuant to §61-7-7;
- 3) Amending §61-7-6, by establishing that §61-7-3 concealed weapon provisions for those under the age of 21 do not apply to numerous classes of persons already enumerated, specifically including active duty armed forces, reservists and National Guard members. The bill also removes the licensing and application fees exemption for certain judicial officers, prosecutors and staff and repeals the provisions creating exceptions to concealed carry license requirements including licensing fees;
- 4) Limiting the application of §61-7-3, the current law that makes it a crime to carry a concealed deadly weapon without a state license or other lawful authorization, to persons under the age of 21;
- 5) Amending §61-7- 4(j), making the award of costs and fees related to a license denial discretionary instead of mandatory;
- 6) Amending §61-7- 4(l), by setting out procedure for concealed handgun license transfer upon moving from one county to another county. Unless the sheriff of the new county determines the person is no longer eligible for a concealed deadly weapon, the sheriff shall issue a new license with new address, original expiration date and charge a \$5 fee; and
- 7) Creating a new section, designated §61-7-7a providing enhanced penalties for firearm possession in commission of a felony.

This act would affect law enforcement, courts and political subdivisions.

EFFECTIVE DATE: June 11, 2015

DATE OF PASSAGE: March 13, 2015

ACTION BY GOVERNOR: Vetoed on March 20, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 351**

SHORT TITLE: Relating to charitable organization contribution levels requiring independent audit reports

CODE REFERENCE: West Virginia Code §29-19-5 (Amends)

Charitable organizations which intend to solicit contributions, donations or grants in this state are required to file a registration statement with the Secretary of State. Currently, charitable organizations which raise more than \$200,000 per year in contributions must also submit a report of an audit by an independent certified public accountant. This bill would raise the threshold to \$500,000.

Under current law, charitable organizations which raise more than \$100,000, but less than \$200,000 are required to submit a statement of financial review by an independent certified public accountant. This bill changes the threshold to \$200,000 and the ceiling to \$500,000.

EFFECTIVE DATE: June 4, 2015

DATE OF PASSAGE: March 6, 2015

ACTION BY GOVERNOR: Signed March 12, 2015

**COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 352**

SHORT TITLE: Expanding scope of cooperative associations to goods and services including recycling

CODE REFERENCE: West Virginia Code §19-4-1, §19-4-2, §19-4-3, §19-4-4, §19-4-5, §19-4-13, §19-4-16, §19-4-22 and §24A-1-3 (Amends)

This bill amends the laws regarding cooperative associations in order to expand their scope to include a number of different goods and services, as well as recycling.

To accomplish that end, §19-4-1 expands the definitions and scope of cooperatives by adding definitions of “qualified person,” “qualified activity” and “goods and services.” “Goods and services” include food and beverages, arts and crafts, woodworking and furniture-making, and recycling, composting and repurposing materials. Recycling cooperatives are limited to being nonprofits that can only use one noncertificated motor vehicle to haul and must be recycling their own members’ recyclable goods. However, no recycling cooperative can be formed within a thirty-five mile radius of a facility that has been permitted and classified by the West Virginia Department of Environmental Protection as a mixed waste processing resource recovery facility. An exemption for recycling cooperatives is included in the motor carrier/PSC/certificate of need requirements in §24A-1-3.

Incorporating newly defined terms, §19-4-2 provides that “three or more qualified persons engaged in the production of agricultural products or the provision of goods and services” may form a cooperative association. §19-4-3 expands the qualifying purposes for a cooperative to include the expanded definitions from Section 1 to allow an association to be engaged in “one or more qualified activities in connection with the marketing or selling of agricultural products or the goods and services of its members or those purchased from other persons.”

In §19-4-4, agriculture-specific language is eliminated from the section dealing with powers of cooperative associations to correspond with the expanded definitions. Likewise, §19-4-16, the section dealing with marketing contracts, is expanded to incorporate the expanded scope of cooperative associations from purely agricultural entities to those that can engage in a number of different activities, including recycling activities. Finally, agriculture-specific language is again deleted from §19-4-22, which deals with interest in other corporations or associations, to comply with expanded definition of cooperative associations.

The eligibility criteria for membership within a cooperative association, laid out in §19-4-5, is expanded to allow membership or common stock to be issued to “qualified persons, employees, volunteers and persons engaged in qualified activities,” as those terms are defined. Changes made to §19-4-13 require that bylaws for a cooperative association provide that common stock cannot be transferred to individuals “who are not qualified persons, or organizations that are not engaged in qualified activities.”

EFFECTIVE DATE: June 11, 2015

DATE OF PASSAGE: March 13, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 357**

SHORT TITLE: The Coal Jobs and Safety Act of 2015

CODE REFERENCE: West Virginia Code Reference §22A-2A-302 through §22A-2A-307 (Repeals); §22-3-13, §22-3-19, §22-11-6, §22-11-8, §22A-1A-1, §22A-2-6, §22A-2-28, §22A-2-37, §22A-2A-101, §22A-2A-301, §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603 and §22A-2A-604 (Amends); §22-11-22a, §22A-1-41 and §22A-2A-204a (New)

This bill creates the Coal Jobs and Safety Act of 2015. Legislative findings related to the Act are contained in §22A-1-41.

First, the bill permits construction of a coal waste pile or other coal waste storage area using demonstrated technologies or measures consistent with good engineering practices to prevent acid mine drainage discharge in §22-3-13.

The bill directs the state Department of Environmental Protection (DEP) to promulgate rules relating to contemporaneous reclamation (*see* §22-3-13) and the granting of inactive status with respect to a permit previously issued (*see* §22-3-19), giving consideration in both cases to the adoption of federal standards.

With respect to the state's Water Pollution Control Act, the bill amends §22-11-6 to extend the Clean Water Act safe harbor for compliance with National Pollutant Discharge Elimination System (NPDES) permits to Section 303 of the Clean Water Act, and with all applicable state and federal permit conditions, with certain limitations. The bill also authorizes the Secretary of DEP to promulgate an emergency rule revising aluminum water quality values using a hardness-based equation. The bill requires, in §22-11-8, that NPDES permit water quality standards be based upon the qualities of the individual discharge point and the receiving stream, and not a wholesale incorporation of state and federal water quality standards. A new section, §22-11-22a, sets forth civil penalties for violations of the provisions of any permit issued under this article.

The bill amends provisions related to the drug testing of miners. In §22A-1A-1, the bill extends the requirement for immediate temporary suspension of miners' cards in the case of a positive test for substance abuse to miners represented by a collective bargaining agreement, where it previously applied only to miners who were not so represented. Positive tests for prescription drugs cannot be excused with a prescription dated more than one year prior to the date of the drug test result.

§22A-2-6, relating to the moving of mining equipment in areas of active working, is completely rewritten by the bill. This section now requires that mining equipment being transported or trammed underground, other than ordinary sectional movements, shall be transported or trammed

by qualified personnel. If it is transported in an area where trolley wire is energized, the bill prohibits anyone from being in by the equipment in the ventilating split that is passing over such equipment, except for those directly involved with transporting or tramping the equipment and shall be under the supervision of a certified foreman. To avoid accidental contact with power lines, face equipment shall be insulated and assemblies removed, if necessary, so as to provide clearance.

A proviso is added to §22A-2-28 and §22A-2-37 to permit the use of sideboards on shuttle cars on which cameras are installed. Also, §22A-2-37 is amended to extend the distance from which track may stop from the nearest working face from five hundred to fifteen hundred feet, require shelter holes to be spaced no more than one hundred five feet apart and authorizes the mine foreman to permit persons to ride on a locomotive when safe riding facilities are provided.

Finally, the bill abolishes the Diesel Equipment Commission, transferring its duties and powers to the director of the Office of Miners' Health Safety and Training (*see* §22A-2A-301, §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-2A-307). Additional references to the Diesel Equipment Commission are modified throughout the code to eliminate references to the Diesel Equipment Commission give the Director of the Office of Miners' Health, Safety and Training (defined as "director" in §22A-2A-204a) the authority previously given to the Commission (*see* §22A-2A-101; §22A-2A-308; §22A-2A-309; §22A-2A-310; §22A-2A-402; §22A-2A-403; §22A-2A-404; §22A-2A-405; §22A-2A-501; §22A-2A-601; §22A-2A-602; §22A-2A-603; and §22A-2A-604).

EFFECTIVE DATE: June 1, 2015

DATE OF PASSAGE: March 3, 2015

ACTION BY GOVERNOR: Signed March 12, 2015

SENATE BILL NO. 360

SHORT TITLE: Repealing code sections relating to book indexes and claims reports required by court clerks

CODE REFERENCE: West Virginia Code §51-4-9 and §51-4-11 (Repeals)

This bill repeals two outdated sections of code dealing with a county circuit clerk's responsibilities. First, §51-4-9 currently requires a county circuit clerk to keep indices to such book to reference orders, records or entries. Failure to do so is punished by forfeiture of not less than \$20 nor more than \$100. Second, §51-4-11 requires Clerk of the Circuit Court to report, at the end of every term of court, a list of all claims from the court entered against the State Treasury and to keep a record book thereof. Failure to do so is punished by a forfeiture of not less than \$20 nor more than \$100.

EFFECTIVE DATE: March 12, 2015

DATE OF PASSAGE: March 12, 2015

ACTION BY GOVERNOR: Signed March 27, 2015

SENATE BILL NO. 363

SHORT TITLE: Establishing maximum rates and service limitations for reimbursement of health care services by Court of Claims

CODE REFERENCE: West Virginia Code §14-2A-19b (New)

This bill allows the Court of Claims to set maximum rates and service limitation reimbursement for health care services rendered by a health care provider for claims before the court. The rates are required to be submitted to the Joint Committee on Government and Finance. There are also provisions that preclude a health care provider from charging any difference between the cost of a service and the court's payment for that service.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

SENATE BILL NO. 370

SHORT TITLE: Reorganizing Governor's Committee on Crime, Delinquency and Correction and certain subcommittees

CODE REFERENCE: West Virginia Code §15-9-1, §15-9-2, §15-9-3, §15-9-5, §15-9-6, §15-9A-1, §15-9A-2, §15-9A-3, §15-9B-1, §15-9B-2, §30-29-2, §30-29-3, §30-29-4, §30-29-5, §30-29-6, §30-29-7, §62-11C-2, §62-11C-3, §62-11C-4, §61-11C-6, and §62-11C-8 (Amends)

The bill does the following:

(1) Codifies and continues the Governor's Committee on Crime, Delinquency and Correction which has since its creation in the 1960s been a creation of Executive Order. Over the years a number of its subcommittees such as Community Corrections, Law Enforcement Standards and Juvenile Justice have been codified;

(2) The bill establishes membership on the Committee:

- A) Secretary of MAPS
- B) Chair of Juvenile Justice subcommittee
- C) Chair of Community Corrections subcommittee
- D) Chair of the L.E.P.S. subcommittee
- E) Chair of the sexual assault
- F) Forensic examination commission
- G) Superintendent of the State Board of Education
- H) A representative of a post-secondary education system by
- I) Gubernatorial appointment (two years)
- J) A representative of a faith-based organization appointed by gubernatorial appointment (two years)
- K) Supreme Court Administration
- L) Executive Director of West Virginia Professional Attorneys Institute
- M) Executive Director of WV P.D.S.

This makes the committee somewhat smaller for purposes of manageability and obtaining quorums;

(3) Adds ensuring compliance with the Prison Rape Elimination Act (42 U.S.C. 1560) to Juvenile Facility Inspection duties;

(4) Authorizes legislative rule-making;

(5) Designates that the Division of Justice and Community Services to be the staffing entity for the Committee; and

(6) Updates and modifies language relating to the various subcommittees for purposes of clarity and consistency.

EFFECTIVE DATE: June 11, 2015

DATE OF PASSAGE: March 13, 2015

ACTION BY GOVERNOR: Signed March 26, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 373**

SHORT TITLE: Allowing wireless communication image serve as proof of motor vehicle insurance

CODE REFERENCE: West Virginia Code §17D-2A-4 (Amends)

This bill would permit an image displayed on a wireless communication device to serve as proof of insurance on a motor vehicle. This bill would require that such image contain the same information required to be contained on a certificate of insurance.

The term “wireless communication device” is defined as “a handheld device used to access a wireless telephone service or a text messaging device.”

EFFECTIVE DATE: June 11, 2015

DATE OF PASSAGE: March 13, 2015

ACTION BY GOVERNOR: Signed March 18, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 374**

SHORT TITLE: Permitting in absentia parole hearings in certain instances

CODE REFERENCE: West Virginia Code §62-12-13 (Amends)

The purpose of this bill is to create an exception to the statutory requirement that an inmate attend his or her parole hearing. The bill adds a new clause that “the requirement that an inmate personally appear (before the parole board) may be waived where a physician authorized to do so by the Commissioner of Corrections certifies that the inmate, due to a medical condition or disease, is too debilitated, either physically or cognitively, to appear”. This exception to the statutory requirement that an inmate attend his or her parole hearing will result in an easier transfer of ill inmates from Department of Corrections custody to medical facilities, resulting in a net cost savings.

EFFECTIVE DATE: March 6, 2015

DATE OF PASSAGE: March 6, 2015

ACTION BY GOVERNOR: Signed March 13, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 375**

SHORT TITLE: Specifying who receives parole hearing notices via regular or certified mail

CODE REFERENCE: West Virginia Code §62-12-23 (Amends)

Current law requires notice of parole hearings and notice of release be sent to numerous persons listed on the Parole Hearing Notification Form and Notice of Release by certified mail, return receipt requested. Among the listed persons are the primary law enforcement officers involved. The bill allows law enforcement only to be noticed by regular U.S. Mail.

EFFECTIVE DATE: June 4, 2015

DATE OF PASSAGE: March 6, 2015

ACTION BY GOVERNOR: Signed March 13 , 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 390**

SHORT TITLE: Authorizing PSC approve expedited cost recovery of natural gas utility infrastructure projects

CODE REFERENCE: West Virginia Code §24-2-1k (New)

This bill creates a new section of code to allow natural gas utilities to apply to the Public Service Commission to implement an infrastructure program which will permit accelerated collection of rates in compensation thereof, without waiting for a full base rate tariff filing. The bill provides for an application process, a standard for decision by the Public Service Commission and makes certain legislative findings.

EFFECTIVE DATE: June 11, 2015

DATE OF PASSAGE: March 13, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 393**

SHORT TITLE: Reforming juvenile justice system

CODE REFERENCE: West Virginia Code §49-1-206, §49-2-907, §49-2-1002, §49-2-1003, §49-4-403, §49-4-406, §49-4-409, §49-4-702, §49-4-711, §49-4-712, §49-4-714, §49-4-718, §49-4-719 and §49-5-103 (Amends); §49-2-912, §49-2-913, §49-4-413, §49-4-702a, §49-4-724, §49-4-725 and §49-5-106 (New)

This bill was a companion piece to the committee substitute for H.B. 2200 which completed legislative action first. This bill is a child welfare rewrite, and part of the Governor's Juvenile Justice Package which was the result of the Pew Charitable Trust Study. This bill amends some of the sections recodified by H.B. 2200 and does the following:

§49-1-206 adds the following nine (9) definitions:

- 1) "Community-based juvenile probation sanction"
- 2) "Community services"
- 3) "Evidence-based practices"
- 4) "Non-violent misdemeanor offense"
- 5) "Out-of-home placement"
- 6) "Risk and needs Assessment"
- 7) "Standardized Screener"
- 8) "Technical violation"
- 9) "Truancy Diversion Specialist"

Under current law, a juvenile who has been adjudicated delinquent may be transferred to a Division of Juvenile Services juvenile diagnosis center for a period not to exceed 60 days. As part of the diagnosis examination period, a multi-disciplinary treatment team (MDT) for the juvenile shall be convened.

Under §49-2-907, the transfer to a diagnostic center is limited to those individuals adjudicated delinquent that also have been (1) assessed as high risk by a risk and needs assessment or (2) have committed an act or acts of violence. A "risk needs assessment" is a new term defined essentially as a validated, standardized assessment that identifies specific risk factors that increase the likelihood of reoffending and the factors that can reduce the likelihood of reoffending. This bill additionally lowers the period of diagnostic examination/detention to 30 days.

§49-2-912 expressly authorizes the Division of Juvenile Services to operate community-based youth reporting centers. The Centers are intended to provide services to juveniles as an alternative to detention, corrections or out-of-home placement. This section also grants the Division of Juvenile Services rule-making authority. Additionally, the bill directs collaboration with county boards of education to provide educational services to youth.

§49-2-913 creates a new committee to oversee the implementation of reform measures intended to improve the state's juvenile justice system. The committee shall be comprised of seventeen members:

- 1) The Governor, or his or her designee, who shall preside as chair of the committee;
- 2) Two members from the House of Delegates, appointed by the Speaker of the House of Delegates;
- 3) Two members from the Senate, appointed by the President of the Senate;
- 4) The Secretary of the Department of Health and Human Resources, or his or her designee;
- 5) The Director of the Division of Juvenile Services, or his or her designee;
- 6) The Superintendent of the State Board of Education, or his or her designee;
- 7) The Administrative Director of the Supreme Court of Appeals, or his or her designee;
- 8) The Director of the Division of Probation Services, or his or her designee;
- 9) Two circuit court judges, appointed by the Chief Justice of the Supreme Court of Appeals;
- 10) One community member juvenile justice stakeholder, appointed by the Governor;
- 11) One juvenile crime victim advocate, appointed by the Governor;
- 12) One member from the law-enforcement agency, appointed by the Governor;
- 13) One member from a county prosecuting attorney's office, appointed by the Governor;
and
- 14) The Director of the Juvenile Justice Commission.

The members of the committee will serve two year terms with the ability to be reappointed. The committee directs the performance of certain functions, including an annual report by November 30th of the Governor, the President of the Senate, the Speaker of the House of Delegates and the Chief Justice of the Supreme Court of Appeals. The committee also directs the Division of Justice and Community Services to provide staff support to the Juvenile Justice Oversight Committee. The committee shall meet within 90 days of appointment and shall meet quarterly thereafter and has a sunset provision of December 31, 2020.

§49-2-1002 amends existing law relating to community-based programs and services and mandates that by January 1, 2017, at least 50% of DJS funding for community services shall be used to implement evidence-based practices. This section expands upon requirements for individualized programs of rehabilitation for any juvenile in an out-of-home placement, including a plan to return the juvenile to his or her home and a transition into community services to continue rehabilitation. This section also requires the DHHR to create a transition

plan for youth entering an out-of-home placement in their custody, and further requires that the youth transitions to nonresidential community services and out of the facility within thirty to ninety days of admission. If additional time in the facility is necessary and effective to attain rehabilitation goals, the court must find by clear and convincing evidence that additional time is necessary and may then order an extension of the time spent in the out-of-home placement facility or may order that the transition to nonresidential community services begins.

Current law requires DHHR to establish and maintain one or more rehabilitative facilities to be used exclusively for the lawful custody of status offenders. §49-2-1003 directs that rehabilitative and educational programs are to be provided at each facility. For the past decade, DHHR has contracted with DJS to place status offenders in DJS facilities. The bill expressly forbids such contracting with DJS and requires its current cessation by January 1, 2016. The bill also allows for contracting with other private and public entities.

In §49-4-403, the bill amends each judicial circuit to designate at least one day per month to hold multi-disciplinary team meetings in order to encourage attendance. It does permit additional meetings on other days when necessary.

In §49-4-406, the bill amends existing law relating to multi-disciplinary treatment to specifically include a risk and needs assessment. The bill clarifies participation to require attendance at a multi-disciplinary treatment meeting when seven days notice is provided, specifies that the appropriate school official at a multi-disciplinary team meeting is the county school superintendent or the superintendent's designee, and includes a treatment or service provider with training and clinical experience coordinating behavioral or mental health treatment in the members of the multi-disciplinary treatment team. The bill requires the team to determine and advise the court as to the individual treatment and rehabilitation goals for each juvenile. It also requires the team to monitor progress towards the goals by each juvenile at their regular meetings and report to the court on the juveniles's progress towards his or her goals.

§49-4-409 adds out-of-home placements to the list of aftercare planning necessary by the DJS and the MDT team.

§49-4-413, requires case planning for each juvenile ordered to probation supervision, an out-of-home placement or committed to the DJS.

Case plans for juveniles sent to probations shall include:

- 1) Identification of the actions to be taken by the juvenile and, if appropriate, the juvenile's parents, guardian or custodian to ensure future lawful conduct and compliance with the court's disposition order; and
- 2) Identification of the services to be offered and provided to the juvenile and, if appropriate, the juvenile's parents, guardian or custodian and may include services to address mental health and substance abuse issues, education, individual, group and family counseling services, community restoration or other relevant concerns identified by the probation officer.

Case plans for juveniles sent to an out-of-home placement shall include:

- (1) Specific treatment goals and the actions to be taken by the juvenile in order to demonstrate satisfactory attainment of each goal;
- (2) The services to be offered and provided by the residential service providers; and
- (3) A detailed plan designed to assure appropriate reintegration of the juvenile to his or her family, guardian, school and community following the satisfactory completion of the case plan treatment goals, including a protocol and timeline for engaging the parents, guardians or custodians prior to the release of the juvenile.

Case plans for juveniles committed to the DJS shall include:

- (1) Specific correctional goals and the actions to be taken by the juvenile to demonstrate satisfactory attainment of each goal;
- (2) The services to be offered and provided by the Division of Juvenile Services and any contracted service providers; and
- (3) A detailed plan designed to assure appropriate reintegration of the juvenile to his or her family, guardian, school and community following the satisfactory completion of the case plan treatment goals, including a protocol and timeline for engaging the parents, guardians or custodians prior to the release of the juvenile.

§49-4-702 allows a court to refer a juvenile to a truancy diversion specialist for a preliminary inquiry. This section also creates a two-step diversion for juveniles, under which a prosecutor refers certain juveniles to a diversion program.

Under this diversion program:

1) If the matter is a truancy offense, the referral may be to a DHHR worker, probation officer or truancy diversion specialist. Referral is mandatory unless the juvenile has a prior adjudication or “there exists a significant and likely risk of physical harm to the juvenile, a family member, or the public.”

2) If the matter is another status offense, referral may be to a DHHR worker or probation officer. Referral is mandatory unless the juvenile has a prior adjudication or “there exists a significant and likely risk of physical harm to the juvenile, a family member, or the public.”

3) If the matter is a non-violent misdemeanor, the prosecutor has the discretion whether to divert the case.

As part of the diversion program, the DHHR worker or probation officer shall:

- 1) Assess each youth to inform the diversion agreement;
- 2) Create a diversion agreement lasting no longer than six months;

3) Obtain consent from the juvenile and his or her parents or guardian; and

4) Refer the juvenile to services in the community, which, under subdivision (d)(2), may include community services, referral to services for the family, referral to community work service programs, a requirement that youth regularly attend school, community-based sanctions or any other efforts which may reasonably benefit the community, the juvenile, and his or her family or guardian.

If the DHHR worker or probation officer refers the juvenile to a service provider, the service provider must attempt to contact the juvenile and his or her family or guardian within 72 hours. The court may also issue orders to a parent or guardian that has consented to the diversion agreement. A diversion agreement tolls the statute of limitations for the underlying offense.

§49-4-702a, allows a court to refer a juvenile to a truancy diversion specialist and allows a court to refer a juvenile to community services prior to filing of a petition or during a six-month noncustodial period prior to the filing of a petition. This section also allows a court to require a parent, custodial or guardians to participate in community services ordered for a youth. It expressly bars admissibility of information obtained as a result of community services in a subsequent proceeding.

§49-4-711 requires a court to receive and consider the results of a risk and needs assessment following the adjudication of a youth but prior to or at the time of a dispositional proceeding. This section also requires a referral of a truant juvenile to a truancy diversion specialist in the dispositional options for status offenders available to the court and requires the court to include in the record the treatment and rehabilitation goals the court has accepted for the juvenile, after recommendation by the court's multi-disciplinary team, in order to guide the disposition of each juvenile.

§49-4-712 requires the DHHR to use community services for certain status offenders by prohibiting the DHHR from placing a status offender into an out-of-home placement if the juvenile (1) has had no prior adjudications for a status or delinquency matter, or (2) no prior dispositions to a pre-adjudicatory improvement period or probation for the current matter. The bill provides an exception to this restriction whenever the judge "finds the existence of a significant and likely risk of physical harm to the juvenile, a family member or the public by clear and convincing evidence, and continued placement in the home is contrary to the best interests of the child." This bill further requires a court, upon placement of a status offender in a residential facility, to issue findings of fact stating why the placement is necessary including the factors that indicate the likely effectiveness of placement in a residential facility and the community services which were previously attempted to attain the treatment and rehabilitation goals for that status offender. This bill prohibits status offenders from being placed in Division of Juvenile Services facilities after January 1, 2016.

§49-4-714 permits the court to use a standardized screener to evaluate a juvenile and obtain additional information and requires the court to receive and consider the results of a risk and needs assessment following the adjudication of a youth for a delinquent offense, but prior to or at the time of the disposition. It ensures that court makes every effort to place a youth in the most appropriate and least restrictive alternative for each youth and the community, but requires

courts to use community services for youth adjudicated (1) for a non-violent misdemeanor offense with no prior adjudications or (2) no prior dispositions to a pre-adjudicatory improvement period or probation dispositions for the current matter. This section provides exclusion whenever the judge “finds the existence of a significant and likely risk of physical harm to the juvenile, a family member or the public by clear and convincing evidence, and continued placement in the home is contrary to the best interests of the child.” It allows for juveniles committed to DJS, that their maximum sentence length take into account time served in detention and requires a court to place the treatment and rehabilitation goals the court has accepted for the youth after recommendation by the MDT in the findings of fact made for each disposition.

§49-4-718 requires reports to be provided every 90 days to the court regarding juveniles on probation. Probation officers may make recommendations to the court that juveniles who are fully compliant with the terms and conditions of their probation supervision and no longer need probation supervision may be discharged. Probation officers are additionally authorized to make recommendations to the court regarding additional or changed conditions or goals necessary to achieve compliance.

§49-4-719 permits the Supreme Court of Appeals to develop a system of community-based juvenile probation sanctions and incentives. The sanctions and incentives may consist of a continuum of responses from the least restrictive to the most restrictive, developed to respond swiftly, proportionally and consistently to violations of the terms and conditions of probation.

The Supreme Court of Appeals is requested to adopt a risk and needs assessments for juvenile dispositions. §49-4-724, directs a validation study of the risk and needs assessment at least every three years. It requires that each juvenile adjudicated for a status offense or delinquent offense is required to undergo a risk and needs assessment in order to determine specific factors that predict a juvenile’s likelihood of reoffending and factors that, when appropriately addressed, can reduce the likelihood of reoffending. It allows a probation officer, court official or DHHR worker trained in conducting such assessments to conduct the assessment.

§49-4-725 creates a restorative justice program to emphasize repairing the harm against the victim and the community caused by the juvenile and provides an opportunity for the youth to accept responsibility for the harm caused, and implement sanctions for the youth. The bill allows the Court or prosecutor to divert to the restorative justice program, if the offense is (1) a status offense, or (2) a nonviolent misdemeanor offense. It directs that successful completion of a restorative justice program causes the underlying petition to be dismissed and bars the admission of information obtained as a result of a restorative justice program in a subsequent proceeding.

§49-5-103 permits Department of Health and Human Resources’ social workers and Division of Juvenile Services staff access to a juvenile’s records for the purpose of case planning for the juvenile.

§49-5-106 directs the Division of Juvenile Services, the Department of Health and Human Resources and the Supreme Court of Appeals to collaborate to collect aggregate outcome

data for truancy diversion programs, other diversion agreements, improvement periods, probation, programs and services and out-of-home placements.

Information to be collected includes:

- (1) Referrals for a new offense within three years;
- (2) Subsequent adjudications within three years; and
- (3) Subsequent out-of-home placements or incarceration within three years.

This section also requires data collection relating to truancy and requires data collection relating to gender and race.

EFFECTIVE DATE: May 17, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 27, 2015

SENATE BILL NO. 403

SHORT TITLE: Increasing period during which motor vehicle lien is valid

CODE REFERENCE: West Virginia Code §17A-4A-15 (Amends)

This bill increases the length of time for which a lien noted on the face of a certificate of title to any vehicle is valid, extending the current time of ten years to fifteen years. In cases in which the lien-holder refiles the lien or encumbrance, it will be valid for successive additional periods of five years from the date of each refiling, rather than the current two years. Finally, the bill also clarifies that a lien-holder is not required to obtain the consent of the owner to refile the lien or encumbrance.

EFFECTIVE DATE: June 10, 2015

DATE OF PASSAGE: March 12, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 411**

SHORT TITLE: Creating Asbestos Bankruptcy Trust Claims Transparency Act and Asbestos and Silica Claims Priorities Act

CODE REFERENCE: West Virginia Code §55-7E-1, §55-7E-2, §55-7E-3, §55-7E-4, §55-7E-5, §55-7E-6, §55-7E-7, §55-7E-8, §55-7E-9, §55-7E-10 and §55-7E-11 (Amends); §55-7F-1, §55-7F-2, §55-7F-3, §55-7F-4, §55-7F-5, §55-7F-6, §55-7F-7, §55-7F-8, §55-7F-9 and §55-7F-10 (New)

This bill creates two acts - the Asbestos Bankruptcy Trust Claims Transparency Act (§55-7E-1 *et seq.*) and Asbestos and Silica Claims Priorities Act (§55-7F-1 *et seq.*).

The Asbestos Bankruptcy Trust Claims Transparency Act

Broadly speaking, this portion of the bill provides mechanisms to allow defendants, juries and the courts to be informed of all of the possible trust claims that a plaintiff in an asbestos action has or could bring. To do that, this Act requires disclosures of existing and potential asbestos bankruptcy trust claims. It establishes legal standards and procedures for the handling of asbestos claims. It provides for sanctions for failing to make the required disclosure. It provides for set-offs against any award of damages in the amount of any payment that has been or reasonably could have been obtained from an asbestos bankruptcy trust.

§55-7E-1 provides the short title for the Act. §55-7E-2 sets forth legislative findings related to the existence of asbestos bankruptcy trusts outside the tort system and the lack of coordination and transparency between the two systems, and further states the purpose of the act to provide transparency and reduce fraud. §55-7E-3 defines a number of terms.

The next section, §55-7E-4, requires certain disclosures be made by plaintiffs in asbestos actions filed in the State. First, a plaintiff must provide all parties with a sworn statement identifying all asbestos trust claims that have been filed or potentially could be filed by the plaintiff or by anyone on the plaintiff's behalf, including claims with respect to asbestos-related conditions other than those that are the basis for the asbestos action. The section sets forth what information shall be included in such statement, and that it shall include an attestation under penalty of perjury that it is complete and is based on a good faith investigation of all potential claims against asbestos trusts. A plaintiff must make available to all parties all trust claims materials for each trust claim, and the plaintiff has a continuing duty to supplement those disclosures. Failure to follow the requirements of the article shall constitute grounds for the court to decline to extend the trial date in an asbestos action.

Other provisions govern the procedural aspects of the asbestos litigation. §55-7E-5 includes provisions related to the use and admissibility of trust claims documents. §55-7E-6 provides that a court shall stay an asbestos action if it finds that plaintiff has failed to make the required disclosures within 120 days prior to the trial date. It also provides that if, in its

disclosures the plaintiff identifies potential trust claims, the court action shall be stayed until plaintiff files those trust claims and provides all parties with all trust claims materials for the claim. A plaintiff must also disclose the procedural posture of the claim.

§55-7E-7 lays out the actions that defendants can take if they identify an asbestos trust claim the plaintiff has not identified, and provides mechanisms for those actions. Once the defendant has made the showing required in this section, the plaintiff has 10 days to either (1) file the asbestos trust claim; (2) file a written response with the court describing why there is insufficient evidence to support the claim; or (3) file a response with the court requesting a determination that the plaintiff's anticipated expenses in filing the claim exceed his reasonably anticipated recovery from the trust. If the court determines the trust claim should have been filed, it shall order the plaintiff to file the claim and stay the asbestos action pending filing and distribution of trust claim materials to the defendants. However, if the court determines the claim is not economically worth filing, the court shall stay the action until the plaintiff provides all parties a verified statement of his history of exposure, usage or other connection to asbestos covered by the trust. Not less than 30 days prior to trial, the court shall enter into the record a trust claims document that identifies each claim the plaintiff has made against an asbestos trust.

The next section, §55-7E-8, provides that filing of a trust claim that has not yet been resolved may be considered relevant and admissible evidence, that trust claim materials sufficient to entitle a claim to consideration for payment under the applicable trust governance documents may support a jury finding that plaintiff was exposed to products that are the subject of the trust, and that such exposure may be a substantial factor in causing plaintiff's injury at issue in the asbestos civil action. Defendants are entitled to a setoff or credit in §55-7E-9 against any judgment in the amount of the valuation established under applicable trust governance documents. If multiple defendants are found liable, the court shall distribute the amount of setoff or credit proportionately among the defendants according to their percentage of liability.

A plaintiff who fails to provide all information required by this article is, pursuant to §55-7E-10, subject to sanctions under the West Virginia Rules of Civil Procedure and any other relief the court considers just and proper. Finally, §55-7E-11 makes this Act applicable to all asbestos actions filed on or after the effective date of the article.

The Asbestos and Silica Claims Priorities Act

This portion of the bill establishes medical criteria and procedures for asbestos and silica claims. It prohibits consolidation of cases for trial except for those relating to the exposed person and members of their household, but does not prohibit consolidation of cases for pretrial and discovery purposes. It prohibits class actions and also prohibits causes of action against manufacturers of non-asbestos containing products that were then sold to a third party who added asbestos to the final product, even where such third parties are not amenable to suit due to insolvency or immunity. The Act prohibits any award of damages for fear of increased risk of future disease, and further prohibits causes of action against premises owners for off-premises exposure or any punitive damages. The Act applies to both future and pending claims.

The short title is set forth in §55-7F-1, and §55-7F-2 contains a number of legislative findings detailing the history of asbestos and silica claims in West Virginia, and states the purposes of the Act. A number of terms are defined in §55-7F-3.

§55-7F-4 requires a plaintiff in an asbestos or silica action alleging a nonmalignant condition to file a “detailed narrative medical report and diagnosis,” which is signed by a qualified physician who does not work for or on behalf of the plaintiff’s attorney or law firm, and accompanied by supporting documentation. A defendant must be afforded a reasonable opportunity to challenge the adequacy of the prima facie evidence, and if a prima facie case is not made, the case shall be dismissed upon a finding of failure to establish a prima facie showing. This section also identifies the information that plaintiffs must provide with their complaint and requires that asbestos and silica actions must be filed separately.

The elements required to be proven in an asbestos action alleging a nonmalignant asbestos-related condition are enumerated in §55-7F-5. Likewise, §55-7F-6 identifies the elements to be proven in an silica action alleging silicosis. In §55-7F-7, the bill sets standards that evidence of physical impairment offered in any action governed by this legislation must satisfy.

The bill lays out the procedures to govern these actions in §55-7F-8. Specifically, the bill requires that evidence relating to the required *prima facie* showing does not create any presumption that the exposed person has an asbestos or silica-related injury or impairment and shall not be conclusive as to the liability of any defendant. No evidence may be introduced at trial and no jury shall be informed of the grant or denial of a motion to dismiss for failure to establish a *prima facie* case as defined in this bill, or the elements required to present a *prima facie* showing of asbestos or silica-related impairment. No discovery may take place until the plaintiff has established a *prima facie* case, as evidenced by the entry of an order by the court to that effect, unless the court so orders upon motion of a party and for good cause shown. This section also allows for consolidation of cases only upon consent of the parties, except that cases may be consolidated for pretrial and discovery purposes. No class actions of these claims are permitted.

§55-7F-9 provides that the statute of limitations shall not begin to run on an exposed person’s cause of action before the earlier of the date the person receive the relevant medical diagnosis, the date when the person discovered facts that would lead a reasonable person to obtain a medical diagnosis, or the date of death of the exposed person. This section also provides that an asbestos or silica related action arising out of a non-malignant condition is a distinct cause of action from one for an asbestos or silica related cancer, and states that no damages shall be awarded for fear of increased risk of future disease in an asbestos or silica action.

Finally, like the Asbestos Bankruptcy Trust Claims Transparency Act, this Act is made applicable to all asbestos actions filed on or after the effective date of the article by §55-7F-17.

EFFECTIVE DATE: June 9, 2015

DATE OF PASSAGE: March 11, 2015

ACTION BY GOVERNOR: Signed March 18, 2015

SENATE BILL NO. 412

SHORT TITLE: Relating to Real Estate Commission complaint filings

CODE REFERENCE: West Virginia Code §30-40-20 (Amends)

This bill expressly states that the statute of limitations for complaints filed with the Real Estate Commission is two years from the date of the acts or omissions with two exceptions:

The first exception to the two-year statute of limitations is commonly referred to as the “discovery rule”. If the licensee is alleged to have engaged in fraud, deceit, or misrepresentation, a complaint may be brought within two years of the date which the complainant discovered, or through reasonable diligence should have discovered, the alleged unprofessional conduct.

The second exception is that the two-year statute of limitations shall be tolled during any periods in which the material evidence against the licensee is unavailable due to an ongoing criminal investigation or prosecution.

This bill also requires that all complaints be submitted in writing and must fully describe the acts or omissions constituting the alleged unprofessional conduct.

EFFECTIVE DATE: June 10, 2015

DATE OF PASSAGE: March 12, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

**SENATE BILL NO. 415
(ORIGINATING BILL NO. 1)**

SHORT TITLE: Relating to circuit judges

CODE REFERENCE: West Virginia Code §51-2-1 (Amends)

This bill would add one judge each in the 5th Circuit (Calhoun, Jackson, Mason and Roane), the 10th Circuit (Raleigh), the 23rd Circuit (Berkeley, Jefferson and Morgan) and the 26th Circuit (Lewis and Upshur) effective January 1, 2017.

The cost of adding a circuit judge is \$452,459 annually. The cost of adding four judges is \$1.88 million the first year and \$1.84 million on subsequent years.

EFFECTIVE DATE: June 11, 2015

DATE OF PASSAGE: March 13, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

SENATE BILL NO. 418

SHORT TITLE: Relating to real estate sale under deed of trust

CODE REFERENCE: West Virginia Code §38-1-7 (Amends)

This bill provides that, in actions to recover a deficiency judgment following a trustee sale of real property, any defense that the trustee's sale failed to bring the fair market value for the property is not allowed. The effect of the bill is to codify the Supreme Court of Appeals decision in the 1997 matter of *Fayette County National Bank v. Lilly*, which was expressly overruled by the West Virginia Supreme Court of Appeals in its November 12, 2014 *Sostaric v. Marshall* decision.

EFFECTIVE DATE: June 11, 2015

DATE OF PASSAGE: March 13, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 421**

SHORT TITLE: Relating to punitive damages in civil actions

CODE REFERENCE: West Virginia Code §55-7-27 (New)

This bill establishes certain requirements before an award of punitive damages could be made in a civil action as well as providing limits on such awards. The bill requires a showing of clear and convincing evidence that the damages suffered were the result of actual malice toward the plaintiff or a “conscious, reckless and outrageous indifference to health, safety and welfare of others” before punitive damages can be awarded.

If requested by a defendant, the issue of punitive damages may be bifurcated and addressed in a separate trial from that conducted to determine liability for compensatory damages. The bill places a cap on punitive damages of the greater of \$500,000 or four times the amount of compensatory damages.

EFFECTIVE DATE: June 8, 2015

DATE OF PASSAGE: March 10, 2015

ACTION BY GOVERNOR: Signed March 27, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 423**

SHORT TITLE: Amending Aboveground Storage Tank Act

CODE REFERENCE: West Virginia Code §16-1-9f and §22-30-26 (New);
§22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6,
§22-30-7, §22-30-8, §22-30-9, §22-30-10,
§22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15,
§22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-21,
§22-30-22, §22-30-24, §22-30-25 and §22-31-2 (Amends);
§22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, § 22 - 31 - 8 ,
§22-31-9, §22-31-10, §22-31-11 and §22-31-12 (Repeals)

This bill made significant modifications to the Aboveground Storage Tank Act passed by the Legislature during the 2014 session. Overall, the bill now focuses enforcement and regulatory efforts on tanks with a capacity of 10,000 gallons or above within zones of critical concern of public water utilities. Certain definitions are amended and new ones have been added. The bill provides that the owner or operator of a tank must certify its compliance with an approved industry standard or program, or to the standards developed by the Department of Environmental Protection (DEP) by rule. Releases are defined in the same way as in other programs administered by the Department of Environmental Protection. Spill prevention and response plans are required. Much of Article 31 of Chapter 22 has been deleted, although key provisions have been moved to Article 30.

The bill adds a new section of code to the chapter relating to public health. §16-1-9f directs the Secretary of the Department of Health and Human Resources, in coordination with DEP and the Division of Homeland Security and Emergency Management, to compile an inventory of all potential sources of significant contamination within a public water system's zone of critical concern, and then to identify which of those sources are not currently permitted or subject to regulation by DEP.

Within the Aboveground Storage Tank Act itself (Article 30), slight modifications were made to the legislative findings set forth in §22-30-2.

The bill amends the definition of an "aboveground storage tank" ("AST") in §22-30-3. The substance of the definition is maintained, but the definition now acknowledges that certain tanks, specifically those that contain hazardous waste that are regulated pursuant to 40 C.F.R. §§ 264 and 265 (excluding those subject to regulation under 40 C.F.R. § 265.201), fall within the definition of an AST but are not regulated tanks. Twelve categories of tanks are specifically exempted from the definition of an AST:

- 1) Shipping containers already subject to federal law or regulation governing hazardous materials including railroad freight cars;
- 2) Barges or boats;

- 3) Swimming pools;
- 4) Process vessels;
- 5) Devices containing drinking water, surface or groundwater, demineralized water, non-contact cooling water or water stored for fire or emergency purposes;
- 6) Devices containing food for human or animal consumption that are regulated under the Federal Food, Drug and Cosmetic Act;
- 7) Devices located on a farm used exclusively for farm, but not commercial, purposes, except where that device is located in a zone of critical concern;
- 8) Devices holding wastewater that is actively being treated or processed;
- 9) Empty tanks in inventory or being offered for sale;
- 10) Pipeline facilities including gathering lines regulated under the Natural Gas Pipeline Safety Act (1968) or Hazardous Liquid Pipeline Safety Act (1979), or intrastate pipeline regulated by the West Virginia Public Service Commission or other state law comparable to the NGPSA or HLPSA;
- 11) Liquid traps, atmospheric and pressure vessels or associated gathering lines related to oil and gas production or gathering lines; and
- 12) Electrical equipment.

New definitions are added for “first point of isolation,” “regulated level 1 aboveground storage tank,” “regulated level 2 aboveground storage tank,” “regulated aboveground storage tank,” and “zone of peripheral concern,” while additional definitions, such as “process vessel,” “public water system,” “release” and “zone of critical concern” are modified.

In §22-30-4, the bill deletes the requirement that an inventory of tanks include all tanks, “regardless of whether it is an operational or nonoperational storage tank.” Tank owners or operators are required to submit a registration form for their tanks no later than July 1, 2015, even if the tank is placed into service after the effective date of this section. The information required to be included in the registration form is modified to delete the requirement that the tank owner or operator identify the nearest groundwater public water supply intake or surface water downstream public water supply intake, and to add information concerning the circumstances under which the registration must be updated. The Secretary of DEP is no longer required to make certain determinations about the tank’s design, construction and leak performance. Finally, new fees are codified: \$40 registration fee for all ASTs placed in service before July 1, 2015, and \$20 per tank for those placed into service thereafter.

The AST regulatory program is detailed in §22-30-5, and has been substantially modified by the bill. This section directs DEP to develop a regulatory program for new and existing regulated ASTs and secondary containment that takes into account the size, location and

contents of the tanks. This program must set out “tiered requirements” for regulated tanks, with Level 1 tanks being regulated to a higher standard than Level 2 tanks due to their proximity to an intake. The rules promulgated by DEP must include (1) criteria for the design, construction and maintenance of ASTs, (2) criteria for the design, construction, maintenance or methods of secondary containment, (3) criteria for the design, operation, maintenance or methods of leak detection including visual inspections, and inventory control system, together with tank testing or comparable system designed to identify AST leaks, (4) record keeping requirements, (5) requirements for the development of maintenance and corrosion prevention plans, (6) requirements for closure of ASTs, and necessary remediation resulting from an AST release, (7) assessment of registration fee, annual operation and response fees, (8) the issuance of a certificate to operate (“CTO”) after submission of an application, with review and approval by WVDEP, and (9) a procedure for administrative resolution of violations including assessment of civil penalties.

Additionally, Section 5 gives the Secretary of DEP authority to, at the request of the permittee, modify portions of permits and other plans issued pursuant to other provisions of Chapter 22 in order to include conditions pertaining to the management and control of regulated tanks. The plans and permits that may be so amended include those issued pursuant to (1) the Surface Coal Mining and Reclamation Act, (2) the Office of Oil and Gas’s authority found in W. Va. Code §§22-6 and 22-6A, or plans required under 35 C.S.R. 1, (3) the National Pollution Discharge Elimination System, and (4) the Solid Waste Management Act, as well as any groundwater protection plans developed pursuant to W. Va. Code §22-12. If a plan or permit is so modified to conform to the requirements of this Act, it is deemed to comply with the requirements of the Act, so long as the registration requirements are met.

The bill amends §22-30-6 to require regulated ASTs to be evaluated by a qualified individual (as defined in the bill), and to require owners and operators of ASTs to submit certifications of that evaluation to DEP. Initial certifications of evaluation must be completed within 180 days of the effective date of the rules promulgated by DEP. These evaluations are no longer required to be done annually, and the bill now permits DEP to set the timeline for subsequent review by legislative rule, but provides that the time in between evaluations may be no less than one year.

In §22-30-7, the provisions concerning financial responsibility are modified to limit the applicability of the section to owners and operators of regulated ASTs, and it gives the secretary of DEP authority to determine which bonds and other guarantees of performance satisfy the requirements of this section, which generally requires evidence of adequate financial resources to undertake any necessary corrective action. With respect to corrective action, §22-30-8 is amended to eliminate the requirement that the operator or owner of an AST develop a “preliminary corrective action plan” considering the types of fluids and tanks. Further, the Secretary of DEP is authorized to use money from the Protect Our Water Fund to undertake corrective action in the event of an actual release from an AST.

The requirement to prepare and submit a spill prevention and response plan, or SPRP, as required by §22-30-9, is limited to regulated ASTs, and may be submitted for a facility or location. SPRPs must be submitted no less frequently than every five years, a change from the three year submission timetable under current law, unless an event occurs that requires updating

sooner. The bill modifies the specific contents of the SPRP as well, and the requirements that these plans be site-specific and developed in consultation with the Bureau for Public Health are removed. In lieu of an SPRP meeting these requirements, AST owners or operators may certify that their AST is subject to a groundwater protection plan or spill prevention control and countermeasures plan, and such plan must be made available for review by the Secretary of DEP.

§22-30-10 directs owners and operators of regulated ASTs to give notice to the applicable public water system and relevant emergency response organizations of the contents of the ASTs, as well as provide the location of the Safety Data Sheets associated with the stored fluids. An alternative disclosure method is also provided. In both cases, the information provided is protected from disclosure under §22-30-14, which addresses public access to information provided under this article. §22-30-11 permits the signage required under the Act to be “displayed nearby.” Minor changes are made to §22-30-12 to provide for the collection of an annual operating fee in addition to an initial registration fee.

The bill modifies the section, §22-30-13, that creates the Protect Our Water Fund. This section has been amended to allow monies from this fund to be expended to address “releases” from ASTs, and not merely leaks, and to limit the applicability of the section to regulated ASTs, rather than all ASTs. A cap is placed on the contents of the fund, and thereby the fees that can be collected, of \$1 million at the end of three years, and \$1 million in the aggregate thereafter.

The provisions of §22-30-14, addressing public access to information, are modified to restrict public access to information designated by the Division of Homeland Security and Emergency Management as restricted from public access, including trade secrets and proprietary business information, and requires that such information be “secured and safeguarded” by the department. A criminal misdemeanor penalty for unauthorized disclosure is added that carries penalties of up to 1 year in prison and a \$5,000 fine if convicted. If there is a release into the waters of the State that could affect a public water supply, information about the release must be promptly made available to emergency responders.

In §22-30-15, the bill changes the inspection schedule, providing that “level 1” ASTs be inspected at least once every five years, and that a schedule for inspection of “level 2” ASTs be established by legislative rule. In §22-30-16, authority is given to the Environmental Quality Board to stay orders entered by the Secretary of DEP alleging violations of the Act. Appeal to the Environmental Quality Board is authorized, pursuant to §22-30-18, to challenge any “action, decision or order of the secretary,” whereas current law allows for appeals only from an “order.”

Civil and criminal penalties are modified in §22-30-17. First, the language in the section is amended to refer to “certificates to operate” rather than “permits.” Similar changes are made in §22-30-24. The misdemeanor for “knowingly and intentionally violat[ing] any provision of this article” is expanded to also cover violation of “any rule or order issued under or subject to the provisions of this article,” while felony charges are reserved only for subsequent willful violations. A person cannot be subject to criminal prosecution for pollution when carrying out a corrective action plan approved by the secretary of DEP. Finally, civil penalties collected may be deposited either in the Protect Our Water Fund or in the AST Administrative Fund. Technical changes are made to §22-30-19, which addresses duplicative enforcement.

In §22-30-21, the bill directs the Division of Homeland Security and Emergency Management, rather than the Secretary of DEP, to coordinate with state and local emergency response agencies to facilitate a coordinated emergency response and incident command. The requirement that the Secretary of DEP coordinate with the State Fire Marshal concerning National Incident Management System Training provisions is eliminated.

§22-30-22 expands the venue in which the Secretary of DEP may bring suit to either the circuit court of the county in which the “imminent and substantial danger exists” or the circuit court of Kanawha County. In the event of such a danger, the Secretary of DEP shall require the owner or operator of the AST to provide immediate notice to appropriate governmental authorities.

The bill amends §22-30-25 to permit the secretary of DEP to designate via legislative rules additional categories of ASTs for which one or more of the requirements of the Act may be waived. Waiver will be permitted only when those categories of ASTs “do not represent a substantial threat of contamination or they are currently regulated under standards that are consistent with the protective standards and requirements set forth in this article.” A new section, §22-30-26, which was originally contained in Article 31, provides that any person who holds an NPDES general permit for a facility containing regulated ASTs may be required by the secretary to obtain an individual permit, a change from the current law that makes such individual permit mandatory.

Article 31 of Chapter 22 is substantially repealed. This includes the repeal of §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12. The Public Water System Supply Study Commission initially contained in §22-31-12 has been relocated to §22-31-2, replacing the Act’s legislative findings. The composition of the Study Commission is modified, and will now contain three members appointed by the Governor, the designation of the Commissioner of the Bureau for Public Health as chair, the elimination of the nonvoting members appointed by the President of the Senate and the Speaker of the House, the inclusion of two representatives designated by the Business Industry Council, and one representative designated by the West Virginia Rivers Coalition. The Study Commission shall terminate on June 30, 2019.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 27, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 430**

SHORT TITLE: Permitting mutual protective orders enjoining certain contact between parties to domestic relations actions

CODE REFERENCE: West Virginia Code §48-27-507 (Amends); 51-2A-2a
(New)

This bill authorizes family courts to enter mutual orders prohibiting certain kinds of bothersome or annoying conduct by parties to domestic relations actions against one other. The Supreme Court of Appeals, in the matter of *Riffle v. Miller*, ruled that the family courts lacked the authority granted by this bill, to issue mutual orders. While their decision has been rescinded and is the subject of a rehearing, this bill codifies the traditional practice by the courts of entering orders of this type. The bill explicitly provides that a family court may restrict contact between the parties to an action pending in family court, even without a finding of domestic violence. Upon a finding of misconduct by a party, the court shall enter an order against the offending party to enjoin the conduct, so long as the conduct does not constitute domestic violence. The new section of code also gives the family court the ability to enforce orders entered pursuant to this section.

EFFECTIVE DATE: March 13, 2015

DATE OF PASSAGE: March 13, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 453**

SHORT TITLE: Relating to motor vehicle dealers, distributors, wholesalers, and manufacturers

CODE REFERENCE: West Virginia Code §17-6A-1, §17-6A-3, §17-6A-4, §17-6A-5, §17-6A-6, §17-6A-8, §17-6A-8a, §17-6A-9, §17-6A-10, §17-6A-11, §17-6A-12, §17-6A-13, §17-6A-15 and §17-6A-18 (Amends); §17-6A-12a, §17-6A-14a, §17-6A-15a, §17-6A-15b and §17-6A-15c (New)

This article deals with the relationships between motor vehicle manufacturers and new car dealers. The article covers and the bill modifies certain aspects of those relationships. The article nor the bill addresses dealer-consumer issues which are handled elsewhere in the code.

This bill redefines manufacturer when relating to persons who produce school buses, truck tractors, road tractors or trucks as defined in section one, article one of the chapter. Relatedly, it defines motor vehicle to include the engine, transmission or real axle as manufactured for installation in a school bus, truck tractor, road tractor or truck.

The bill requires the burden of proof be on the manufacturer to prove good cause by a preponderance of the evidence that a dealer agreement should be terminated; and, additionally, requires consideration of “whether the manufacturer made available the appropriate volumes and type of motor vehicles to the dealer, and a reasonable opportunity for sales and service training to the dealer.”

The bill notes that a change in ownership of the new motor vehicle dealer's dealership does not constitute good cause for the termination of a dealer agreement and notes the manufacturer's or distributor's prior written consent to accomplish the same may not be unreasonably or untimely withheld. The burden of proof in all cases involving suspension or termination of dealer agreements is defined to be preponderance of the evidence.

The bill alters the conditions for which a new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer upon termination of any dealer agreement to note that new motor vehicle inventory must not have not been materially altered, substantially damaged or driven for more than one thousand miles, up from the current seven hundred fifty standard. Any new motorcycle, new all-terrain vehicle or utility terrain vehicle inventory including motorhomes and travel trailers must not have been materially altered, substantially damaged or driven for more than fifty miles; and, for motor vehicles with a rating greater than twenty-six thousand one pounds gross vehicle weight driven no more than five thousand miles. For supplies and parts inventory, dealers shall be compensated if such were purchased at the published list price purchased from, or at the direction of, the manufacturer or distributor. It also provides that a dealer can claim any actual damages and costs the dealer incurred for facility upgrades or alternations required by the manufacturer, distributor or factory branch within the previous five years that can be proven by a dealer by a preponderance of the evidence.

The bill sets forth the mechanism by which parts and labor rates can be calculated. This includes markups for warranty work.

Manufacturers are forbidden to change the capital structure or financial requirements of the new motor vehicle dealership without reasonable business justification in light of the dealer's market, historical performance and compliance with prior capital structure or financial requirements and business necessity. They are forbidden to require any dealer to construct improvements to its facilities or to install new signs or other franchisor image elements that replace or substantially alter those completed within the proceeding ten years that were required and approved by the manufacturer. Nor, may a manufacturer condition the award, sale, transfer, relocation or renewal of a franchise or dealer agreement upon an agreement to renovate or make substantial improvements to a facility.

Manufacturers are forbidden to use a captive finance source or any subsidiary corporation, affiliated corporation or any other controlled corporation, partnership, association or person to accomplish what would otherwise be illegal conduct under this section on the part of the manufacturer or distributor.

Manufacturers are barred from owning an interest in a dealer or dealership; operating a dealership, including, displaying a motor vehicle intended to facilitate the sale of new motor vehicles other than through franchised dealers, unless the display is part of an automobile trade show or acting in the capacity of a new motor vehicle dealer.

Manufacturers are forbidden from undertaking alteration of a motor vehicle dealer's area of responsibility unless the franchisor shows, by a preponderance of the evidence, that the alteration is reasonable and justifiable in light of market conditions.

Manufacturers cannot require or coerce any new motor vehicle dealer to sell, offer to sell or sell exclusively extended service contract, maintenance plan or similar product, including gap or other products, offered, endorsed or sponsored by the manufacturer or distributor.

The bill clarifies provisions relating to succession of family members as principals in the even of death or incapacity.

The Senate committee substitute which modifies somewhat the original bill as introduced and added new sections: §§17A-6A-15a, -15b and -15c. The House strike and Insert amendment is an agreed to amendment to change one provision of the bill; that in the case of a dealer of new motorcycles, motorboat trailers, all-terrain vehicles, utility terrain vehicles and snowmobiles, the compensation of a dealer for warranty parts is the greater of the dealer's cost of acquiring the part plus thirty percent (NOT forty) or the manufacturer's suggested retail price.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed April 3, 2015

SENATE BILL NO. 454

SHORT TITLE: Criminalizing trademark counterfeiting

CODE REFERENCE: West Virginia Code §47-2-1 (Amends); §47-2-14a, §47-2-14b, §47-2-14c and §47-2-14d (New)

This bill creates the criminal offense of trademark counterfeiting, which is defined as the knowing sale or distribution, or use, display, advertisement, offer for sale, sale or possession of any item that bears a counterfeit of a registered or common law trademark. The bill adds a new definition for the term “retail value.” It creates misdemeanor and felony offenses; the offense is a misdemeanor if the total retail value of the items bearing the counterfeit mark is less than \$1,000, and it is a felony if that value is \$1,000 or more. Misdemeanor penalties are a fine of up to \$2,000 for the first offense and/or confinement in jail for a period not to exceed one year; for subsequent offenses, penalties are confinement or a fine not to exceed \$5,000. Felony penalties are one to five years in a correctional facility and/or fine not to exceed \$20,000. If the perpetrator is a firm, partnership, corporation, union, association, or other organization capable of suing or being sued in a court of law, the maximum fine is increased to \$10,000 for a misdemeanor offense and \$20,000 for a felony offense. The bill also provides for the seizure and forfeiture of property used in the commission of this crime.

EFFECTIVE DATE: June 8, 2015

DATE OF PASSAGE: March 10, 2015

ACTION BY GOVERNOR: Signed March 18, 2015

**SENATE BILL NO. 479
(ORIGINATING BILL NO. 2)**

SHORT TITLE: Adding additional family court judges

CODE REFERENCE: West Virginia Code §51-2A-3 (Amends)

This bill would add one family court judge each in the 6th Family Court Circuit (Cabell) and the 23rd Family Court Circuit (Mineral, Hampshire and Morgan) effective January 1, 2017.

The cost of adding two family court judges is \$582,294.00 annually.

EFFECTIVE DATE: June 11, 2015

DATE OF PASSAGE: March 13, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

SENATE BILL NO. 489

SHORT TITLE: Imposing statute of limitations on civil actions derived from surveying of real property

CODE REFERENCE: West Virginia Code §55-2-6a (Amends)

The bill adds actions relating to the actual surveying of real property to the 10-year statute of repose on actions for damages arising from activities related to improvements to real property.

EFFECTIVE DATE: June 8, 2015

DATE OF PASSAGE: March 10, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

SENATE BILL NO. 507

SHORT TITLE: Relating to monitoring inmates' electronic communications

CODE REFERENCE: West Virginia Code §31-20-5e (Amends)

This bill allows Regional Jail personnel the same authority to monitor inmate email and electronic communications as are now permitted for telephone calls. There is an exception for attorney-client communication.

EFFECTIVE DATE: March 6, 2015

DATE OF PASSAGE: March 6, 2015

ACTION BY GOVERNOR: Signed March 13, 2015

SENATE BILL NO. 508

SHORT TITLE: Reorganizing Hatfield-McCoy Regional Recreation Authority

CODE REFERENCE: West Virginia Code §15-10-3, §15-10-4; §20-7-1, §20-14-1, §20-14-2, §20-14-3, §20-14-4, §20-14-5, §20-14-8, §20-14-9, §20-15-2, §20-15-5, §30-29-1 and §61-7-6 (Amends); §20-14-6 and §20-14-7 (Repeals); §20-14-4a, §20-14-10, §20-14-11 and §20-14-12 (New)

The purpose of the bill is to reorganize the Hatfield-McCoy Regional Recreation Authority to remove confusion and uncertainties about what type of government entity it is intended to be which were raised by a legislative audit. This bill removes language and powers that ordinarily apply to a state agency and it structures the Authority as a multi-county joint development entity.

Principal changes to existing law include the following:

The bill would eliminate the existence of the Authority rangers as a police force. Instead, the Authority is authorized to contract with the DNR to have natural resources police officers assigned to provide law-enforcement coverage.

There is an added definition for "recreational purposes."

The Authority is reconstituted as a joint development entity authorized by the member counties, called "participating counties" in the bill. The bill expires the current terms of members of the Authority's board on June 30th and has each county appoint two members to begin on July 1st. Counties may reappoint previous board members but at least one of each county's appointees is to have an association with mining, logging or other natural resource extraction industry or be a licensed surveyor or professional engineer.

The bill also clarifies that the Authority is subject to the Freedom of Information Act and it establishes a fiscal year for the new entity.

The bill removes all bonding provisions as the Authority has never needed to issue bonds for revenue. It also removes legislative rule-making authority. In place of the legislative rules for the conduct of area users, this bill defines twelve misdemeanor offenses of misconduct by users and participants.

§20-14-9 - Consolidates existing law relating to limitations of liability for landowners and lessors of property.

§20-15-2 - Amendments to the ATV Responsibility Act expressly include local landowners as having no liability for the actions of participants in the Hatfield-McCoy Recreation Area.

There are four new sections:

§20-14-4a - Provides methods for financial oversight of the Authority and requires an annual audit by a private accounting firm and authorizes the Legislative Auditor to examine revenues, expenditures and performance if the Authority receives any funds from the Legislature.

§20-14-10 - Establishes procedures for purchasing and bidding. It includes dollar thresholds that match the state purchasing procedures and specifies the manner of advertising for and receiving bids. Vendors on contracts exceeding \$25,000 must also post completion bonds.

§20-14-11 - Prohibits conflicts of interest and self-dealing in contracting. It precludes contracting with close family members, spouses or companies owned by close family members or spouses and provides misdemeanor criminal penalties for violation of the section.

§20-14-12 - provides for civil remedies for violation of the purchasing and conflict of interest sections. It authorizes the county commission of any member county to bring an action for declaratory or injunctive relief.

EFFECTIVE DATE: May 31, 2015

DATE OF PASSAGE: March 2, 2015

ACTION BY GOVERNOR: Signed March 13, 2015

SENATE BILL NO. 510

SHORT TITLE: Amending Uniform Interstate Family Support Act

CODE REFERENCE: West Virginia Code §48-16-102, §48-16-103, §48-16-104, §48-16-201, §48-16-203, §48-16-204, §48-16-205, §48-16-206, §48-16-207, §48-16-208, §48-16-209, §48-16-210, §48-16-211, §48-16-301, §48-16-304, §48-16-305, §48-16-307, §48-16-310, §48-16-311, §48-16-313, §48-16-314, §48-16-316, §48-16-317, §48-16-318, §48-16-319, §48-16-401, §48-16-501, §48-16-502, ~~§48-16-504, §48-16-505~~, §48-16-601, §48-16-602, §48-16-603, §48-16-604, §48-16-605, §48-16-606, §48-16-607, §48-16-608, §48-16-609, §48-16-610, §48-16-611, §48-16-613, §48-16-614, §48-16-615, §48-16-701, §48-16-801, §48-16-802, §48-16-902, §48-16-903 (Amends); §48-16-105, §48-16-402, §48-16-616, ~~§48-16-702, §48-16-705~~, §48-16-706, §48-16-707, §48-16-708, §48-16-709, §48-16-710, §48-16-711, §48-16-712 and §48-16-713 (New)

This bill amends the Uniform Interstate Family Support Act. The bill establishes uniform procedures for processing international child support cases using language from the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. The bill establishes uniform improved enforcement of American child support orders abroad and ensures that children residing in the United States will receive the financial support due from parents, wherever the parents reside. The bill also provides guidelines and procedures for registration, enforcement and modification of foreign support orders from countries that are parties to the Convention. A support order from a country that has acceded to the Convention must be registered immediately, unless a tribunal in the state where the registration is sought determines that the language of the order goes against the policy of the state. It requires provision of notice to the non-registering party, allowing opportunity to challenge an order on certain grounds and provides for enforcement of an order, unless one of the grounds for denying recognition is established.

The 2014 federal law requires that all states enact the amendments by the end of their 2015 legislative session or possibly lose federal funding which supports state funding of child support. The agency reports that this would be a loss of \$23 million dollars.

EFFECTIVE DATE: June 11, 2015

DATE OF PASSAGE: March 13, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 523

SHORT TITLE: Creating Alcohol and Drug Overdose Prevention and Clemency Act

CODE REFERENCE: West Virginia Code §16-47-1 through §16-47-6 (New)

This bill creates a new article known as the Alcohol and Drug Overdose Prevention and Clemency Act. It provides that someone who, in good faith and in a timely manner, seeks emergency medical assistance for a person who reasonably appears to be experiencing an overdose shall have criminal immunity for certain offenses, including several underage drinking offenses and possession of controlled substances. Someone who qualifies for immunity under the act is not subject to a probation or parole revocation. In order to gain immunity, a person calling for help must remain with the individual in need of help and provide certain information to emergency responders. It also provides that individuals who help is called for may qualify for clemency options if they complete a drug treatment program.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

SENATE BILL NO. 532

SHORT TITLE: Relating to civil liability immunity for clinical practice plans and medical and dental school personnel

CODE REFERENCE: West Virginia Code §§55-7E-1, 55-7E-2, 55-7E-3, 55-7E-4, 55-7E-5 and 55-7E-6 (New)

This bill requires that the WV Board of Risk and Insurance Management provide medical professional liability insurance to the state's medical and dental schools, including all of their clinical practice plans, all of their directors, officers, employees and agents.

A fiscal note submitted by the WV Board of Risk and Insurance Management states that it currently provides such medical professional liability insurance so there should be no additional costs or expenses.

EFFECTIVE DATE: June 10, 2015

DATE OF PASSAGE: March 12, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

**COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 542**

SHORT TITLE: Clarifying provisions of Consumer Credit and Protection Act relating to debt collection

CODE REFERENCE: West Virginia Code §46A-2-125, §46A-2-126, §46A-2-128, §46A-3-112, §46A-3-113, §46A-5-101 and §46A-5-106 (Amends); §46A-5-107 (New)

This bill amends a number of provisions of the Consumer Credit and Protection Act for added clarity and specificity.

Beginning with §46A-2-125, the bill prohibits debt collectors from engaging in oppressive or abusive practices, and includes among the defined practices “[e]ngaging any person in telephone conversation” when the person’s identity has not been disclosed and the purpose is to annoy, harass or threaten. The new language modifies the current law, which prohibits broadly “[t]he placement of telephone calls.” Additional specificity is added to the provision concerning repeated telephone calls, as the new bill prohibits calling any person more than thirty times per week, or engaging in telephone calls with a person more than ten times per week. To determine if a violation of this provision has occurred, the reasonable person standard is to be used. The bill also adds a presumption that convenient times for calling are between 8:00 a.m. and 9:00 p.m.

In §46A-2-126, which relates to unreasonable publication of information, the bill clarifies that a debt collector does not unreasonably publicize information relating to an individual’s alleged indebtedness by identifying themselves to the debtor by name, identifying the debt collector’s employer by name if asked, or by providing contact information to the debtor. An additional provision is added to allow creditors and debtors to communicate with other people besides the consumer to acquire or confirm the consumer’s location information, so long as the creditor or debt collector complies with federal law.

Next, the bill amends §46A-2-128 to permit debt collectors to obtain a written acknowledgment of a debt obligation by a consumer where that affirmation is obtained pursuant to applicable bankruptcy law. The bill also modifies the requirements for a debt collector or creditor once a consumer notifies that he or she has retained an attorney, modifying the current language that orders an immediate cessation of communications to language that allows seventy-two hours to cease communications. To be effective, the attorney must have been retained in regard to the specific debt, and notice of representation must be in writing (either paper or electronic) and provide contact information for the attorney. Should an attorney fail to respond to communications, then communication with the consumer is not prohibited. Finally, regular account statements do not constitute prohibited communications.

The statutorily permissible amounts for finance charges have been amended in §46A-3-112 and §46A-3-113. While current law limits a delinquency charge to the greater of five percent of the unpaid amount or fifteen dollars, the bill changes the maximum to thirty dollars.

The bill makes a number of changes to §46A-5-101, which addresses the effect of violations of this Act on the rights of parties. Throughout, the scope of the section is expanded to apply explicitly to both creditors and debt collectors. The penalties available for various violations of the article, in addition to actual damages, are fixed at one thousand dollars per violation, with a maximum available recover of the greater of \$175,000 or the total outstanding indebtedness. These limits also apply to excess charges arising from consumer leases, and are applied severally in the event of a class action. A limitations period of four years after the violation occurs becomes effectively to all actions filed on or after September 1, 2015. When a creditor discovers an error, he has no liability for a penalty if he corrects the error within fifteen days, if the error affects no more than two persons, or within sixty days if it affects more than two persons.

Next, §46A-5-106 provides for the indexing of damages to the consumer price index, with a starting date of September 1, 2015. Finally, a new provision is added at §46A-5-107 to address venue. Venue for an action under this chapter is appropriate in the circuit court of the county in which the plaintiff last resided in West Virginia or the circuit court of the county in which the debt collector or creditor has its principal place of business or legal residence.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

**SENATE BILL NO. 574
(ORIGINATING BILL NO. 5)**

SHORT TITLE: Relating to liquor sales by distilleries and mini-distilleries

CODE REFERENCE: West Virginia Code §60-3A-17, §60-4-3, and §60-4-3a
(Amends)

The bill requires the Alcohol Beverage Control (ABC) commissioner to obtain for sale liquor requested by distillers and mini-distillers; it exempts distillers and mini-distillers from the usual wholesale markup percentage and handling fee; it imposes a separate wholesale markup fee and bailment fee on distillers and mini-distillers; it requires distillers and mini-distillers to charge at least as much as the price set by the ABC commissioner; it reduces the market zone payment percentage (from 10% to 2%) due from distillers and mini-distillers; it caps the market zone payment that may be paid by a distiller or mini-distiller at \$15,000 per year; it increases the number of gallons (from 20,000 to 50,000) that a mini-distiller may produce in one year; and it makes clarifying amendments.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

SENATE BILL NO. 578
(ORIGINATING BILL NO. 9)

SHORT TITLE: Relating to occupational disease claims

CODE REFERENCE: West Virginia Code §23-4-8d (Amends)

Under current law, the claimant, the employer and the Workers' Compensation Commission, other private insurance carriers and self-insured employers, whichever is applicable, may negotiate a final settlement of any and all issues in a claim, wherever the worker's compensation claim is in the administrative or appellate processes, except for medical benefits for nonorthopedic occupational disease claims. This bill removes the exception for settlements of medical benefits for nonorthopedic occupational disease claims, which would permit the negotiation of final settlements of all components of worker's compensation claims, permitting settlements of medical benefits for nonorthopedic occupational disease claims, including settlements of occupational pneumoconiosis claims. The bill requires that a claimant in a settlement of medical benefits for a nonorthopedic occupational disease claims be represented by legal counsel.

The bill specifies that the amendments enacted during the current 2015 regular session of the Legislature apply to all settlement agreements executed after the effective date of the legislation.

EFFECTIVE DATE: June 8, 2015

DATE OF PASSAGE: March 10, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

SENATE BILL NO. 582
(ORIGINATING BILL NO. 12)

SHORT TITLE: Relating to Herbert Henderson Office of Minority Affairs

CODE REFERENCE: West Virginia Code §5-26-1 (Amends); §5-26-3 (New)

This bill requires the Office of Minority Affairs to report to the Select Committee on Minority Affairs annually by January 1, on the efforts and progress of the Office; requires the Executive Director of the Office to review the recommendations of the Select Committee; establishes a Community-Based Pilot Demonstration Project for the duration of four years, to develop a model for comprehensive community development in communities across West Virginia; requires the West Side Revive Comprehensive Community Development Initiative to operate the pilot project under the supervision of the Bureau of Public Health; states that the objective of the pilot program is to address child and family poverty through a comprehensive community development program in the West Side neighborhood of Charleston, West Virginia; sets forth goals of the pilot project; and requires leveraging of existing resources.

EFFECTIVE DATE: March 14, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Vetoed March 18, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2002**

SHORT TITLE: Predicating actions for damages upon principles of comparative fault

CODE REFERENCE: West Virginia Code §55-7-13 and §55-7-24 (Repealed); §55-7-13a, §55-7-13b, §55-7-13c and §55-7-13d (New)

This bill changes the law in West Virginia concerning the apportionment of fault in tort actions. It repeals two sections of code. The first, §55-7-13, established a statutory claim for contribution by joint judgment debtors, while §55-7-24 set out the manner in which Courts are to apply joint and several liability to judgment debtors in West Virginia.

Four new sections of code are added by the bill. First, §55-7-13a establishes the modified comparative fault standard by defining the term “comparative fault” as “the degree to which the fault of a person was a proximate cause of an alleged personal injury or death or damage to property, expressed as a percentage” and directs recovery in tort actions to be based on principles of comparative fault whereby the fault and damages should be apportioned “in direct proportion to that person’s percentage of fault.” In §55-7-13b, a number of terms are defined, including “compensatory damages,” “defendant,” “fault” and “plaintiff.”

§55-7-13c requires in subsection (a) that in any action for damages, liability shall be several, rather than joint, and that each defendant is only liable for the amount of damages in direct proportion to that defendant’s percentage of fault. The bill allows joint liability to be imposed when two or more defendants “consciously conspire and deliberately purpose a common plan or design to commit a tortious act or omission.” The procedure for the sitting judge to use in apportioning damages is spelled out in subsection (b), requiring the percentage of fault to be multiplied by the total damages to determine a defendant’s maximum liability. Subsection (c) allows a plaintiff to recover, even if partially at fault, so long as the plaintiff’s fault is less than the combined fault of all other persons. An exception to a defendant’s maximum liability is provided in subsection (d), which allows a plaintiff who is unable to collect from one of the defendants to file a motion to collect the uncollectible amount from the other defendants, but the defendant’s apportionment is limited to his own percentage of fault multiplied by the uncollectible amount. This section also identifies a number of situations in which defendants shall continue to be jointly and severally liable, and a number of sections of Code to which this provision does not apply.

Finally, in §55-7-13d, the bill spells out, in subsection (a), how fault is to be determined. In particular, the bill requires that the fault of all persons who contributed be considered, regardless of whether the person was or could have been named as a party to the litigation. Under certain circumstances the fault of a nonparty can be considered, such as if the plaintiff entered into a settlement agreement with the nonparty or if a defendant gives notice identifying that nonparty. If a nonparty is assessed fault, or if a plaintiff has settled with a nonparty, then the plaintiff’s possible recovery is reduced by that percentage. The subsection clarifies that

assignments of fault for nonparties are not binding in subsequent actions. Special interrogatories are to be used by the triers of fact to determine fault.

In subsection (b), the bill clarifies that a party may still be held liable for another person's fault if that person was acting as an agent of the party or by any other applicable provision of statutory or common law. Subsection (c) provides that a defendant is not liable for damage suffered by a plaintiff in the commission of, or while attempting to flee from the commission of, a felony criminal act, so long as the plaintiff has been convicted or the jury makes a finding that the plaintiff committed the felony. The burden of proof established in subsection (d) rests with the person seeking to establish fault. Subsection (e) clarifies that no independent cause of action is created by this section.

EFFECTIVE DATE: May 25, 2015

DATE OF PASSAGE: February 24, 2015

ACTION BY GOVERNOR: Signed March 5, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2004**

SHORT TITLE: Providing a procedure for the development of a state plan under section 111(d) of the Clean Air Act

CODE REFERENCE: West Virginia Code §22-5-20 (Amends)

This bill requires the involvement and approval of the Legislature in the development of the State's plan as required by section 111(d) of the Clean Air Act. First, the bill establishes a new subsection setting forth legislative findings that details how the plan "necessitates establishment and creation of law affecting the economy and energy policy of this State," and declaring a compelling state interest to require legislative review and passage of law prior to submission of the plan to the Environmental Protection Agency (EPA).

Subsection (b) prohibits the Department of Environmental Protection (DEP) from submitting a plan to the EPA without specific legislative action granting such authority. This subsection clarifies that DEP is permitted to develop a proposed state plan in consultation with the DEP Advisory Council and other entities, in accordance with this section.

In subsection (c), the bill sets forth the timing of a proposed state plan to the Legislature, including requiring DEP to make certain determinations of feasibility of a state plan. The plan must be on a unit-specific performance basis, and must also be based upon either a rate-based model or a meter-based model. In addition to submitting the plan to the Legislature, DEP is also directed to publish the report and any proposed state plan on its website. The Legislature may approve the state plan in either regular session or special session.

If the EPA fails to issue, or withdraws, its federal rules or guidelines for reducing carbon dioxide, then the requirements of this section are void, and no state plan is necessary. If the Legislature refuses to approve DEP's proposed state plan, DEP must submit a modified plan for reconsideration by the Legislature.

EFFECTIVE DATE: February 19, 2015

DATE OF PASSAGE: February 19, 2015

ACTION BY GOVERNOR: Signed March 3, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2010**

SHORT TITLE: Requiring the elections of justices of the West Virginia Supreme Court of Appeals, circuit court judges, family court judges and magistrates be nonpartisan and by division

CODE REFERENCE: West Virginia Code §3-1-16, §3-1-17, §3-4A-11a, §3-5-4, §3-5-7, §3-5-13, §3-5-13a, §3-10-3, §3-12-3, §3-12-6, §3-12-10, §3-12-11, §3-12-12, §3-12-14, §6-5-1, §50-1-1, §50-1-6, §51-1-1 and §51-2A-5 (Amends); §3-5-6a, §3-5-6b, §3-5-6c and §3-5-6d (New)

This bill modifies the manner in which justices of the Supreme Court of Appeals, circuit judges, family court judges and magistrates are elected by requiring that they be elected on a nonpartisan basis at the time of the primary election in May.

First, the bill provides that, beginning with the 2016 election, all elections for these positions will be done on a nonpartisan ballot (*see* §3-1-16 and §51-1-1 for Supreme Court of Appeals justices, §3-1-17 for circuit judges and magistrates, §50-1-1 for magistrates, and §51-2A-5 for family court judges). For justices of the Supreme Court of Appeals and magistrates who are not currently elected by division, elections will now be by division when more than one justice or magistrate is to be elected (*see* §3-1-16 and §3-1-17). These sections are further underscored by the addition of four new sections, §3-5-6a, §3-5-6b, §3-5-6c, and §3-5-6d, which provide explicitly that the election of these officers is to be done on a nonpartisan basis and by division.

Next, the bill modifies ballot design and layout. In §3-4A-11a, §3-5-13, and §3-5-13a, changes are made to include nonpartisan judicial elections on the separate nonpartisan ballot used for Board of Education elections and questions to be voted upon. §3-5-4, which addresses the nomination of candidates in primary elections, is amended to remove language relating to candidates for judicial office being nominated at the time of the primary.

Changes are made to §3-5-7, which addresses filing announcements of candidacies, to change the filing location for candidates for circuit judge and family judge. Under current law, the location for filing varies based on whether the circuit is a single or multi-county district. The bill requires that all candidates for circuit and family court judge file candidacy papers with the Secretary of State, regardless of the dimensions of the circuit. This section also allows an unsuccessful candidate in a nonpartisan judicial election to be considered to fill a ballot vacancy during the subsequent general election. §3-10-3 and §50-1-6 are amended to address the manner in which vacancies in judicial offices are to be filled. The bill updates §6-5-1, which relates to terms of office for all judicial officers.

Finally, the bill amends a number of sections related to the West Virginia Supreme Court Of Appeals Public Campaign Financing Pilot Program. §3-12-3, §3-12-6, §3-12-10, §3-12-11, §3-12-12 and §3-12-14 are amended to remove language relating to primary and general elections in favor of a defined “nonpartisan judicial election campaign period,” and references

are updated throughout. The bill eliminates any reference to campaign financing during a primary election period, and also makes unavailable any funding of campaigns that are uncontested.

§51-2-1 was amended to clarify that the election of the offices is to be done on a non-partisan basis by divisions.

EFFECTIVE DATE: June 8, 2015

DATE OF PASSAGE: March 10, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2011**

SHORT TITLE: Relating to disbursements from the Workers' Compensation Fund where an injury is self inflicted or intentionally caused by the employer

CODE REFERENCE: West Virginia Code §23-4-2 (Amends)

This bill amends West Virginia's deliberate intent statute in an effort to clarify and clearly articulate the liability standards applicable to such a claim.

Subsection (a) adds additional specificity to the provisions permitting an employer to require an employee to undergo a blood test to determine if he or she is intoxicated by establishing a drug and alcohol testing procedure. The test must be a blood test and, if an employee tests positive as defined, then the intoxication is deemed the proximate cause of any injury.

The bill modifies subsection (c) by bifurcating the provisions related to employee injury from those related to employee death and lays out the specific rights to recovery in each case. A new provision is added to require that, unless good cause is shown, the employee or his or her representative file a claim for workers' compensation benefits.

In subsection (d), which spells out the specific factual findings that must be shown for an employer to lose the immunity provided under the workers' compensation code, the bill clarifies and adds to these findings. With respect to the second of the five findings, that the employer had actual knowledge of the specific unsafe working condition, the bill adds the requirement that actual knowledge be specifically proven by the employee or individual seeking to recover and sets forth the manner in which such actual knowledge can and cannot be proven. To satisfy the third element, the bill lays out the evidentiary standards for showing that the specific unsafe working condition was a violation of a safety statute, rule or regulation, or of a commonly accepted and well-known safety standard within the industry or business. Clarifying language is added to the fourth finding to ensure that the employer being sued under the deliberate intent exemption must be a person who has "actual knowledge" as required by the second of the five findings.

The bill also modifies the fifth of the findings in subsection (d), which requires a showing that the employee suffered "serious compensable injury or compensable death . . . as a direct and proximate result of the specific unsafe working condition." New language limits the factual circumstances supporting this finding to four:

1. The injury results in a permanent physical and/or psychological impairment of at least thirteen percent, or that otherwise causes permanent serious disfigurement, permanent loss or significant impairment of a bodily function, or objectively verifiable dermatomal radiculopathy;

2. The injury, as verified by a written certification by a licensed physician, is likely to result in death within eighteen months or less from the date of the filing of the complaint;
3. The injury causes permanent serious disfigurement, permanent loss or significant impairment of a bodily function, or objectively verifiable dermatomal radiculopathy; or
4. In the case of occupational pneumoconiosis claims, a verification from a board certified pulmonologist must be submitted showing that the employee is suffering from complicated pneumoconiosis or pulmonary massive fibrosis that has caused pulmonary impairment of at least fifteen percent, as confirmed by valid and reproducible ventilatory testing.

Certain procedural requirements for making a deliberate intent claim are also provided, including filing a verified statement from a person with “knowledge and expertise of the workplace safety statutes, rules, regulations and consensus industry safety standards” applicable to the particular injury. The employer may request, and the court must duly consider, a request to bifurcate discovery related to liability from that related to damages.

Finally, in subsection (e), the bill provides that venue is appropriate in the circuit court of the county where the alleged injury occurred, or in the circuit court of the county where the employer has its principal place of business.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2025**

SHORT TITLE: Prohibiting certain sex offenders from loitering within a facility

CODE REFERENCE: West Virginia Code §61-8-29 (New); §62-12-26 (Amends)

The purpose of this bill is to prohibit certain sex offenders (those on supervised release for ten years to life) from loitering within one thousand feet of a victim's home, schools and facilities providing care and entertainment for children. This prohibition would apply during the entirety of the court-ordered supervised release period. A violation of this prohibition may result in incarceration for the remainder of the supervised release period. It is prospective, applying only to those sentenced after the effective date.

The bill also creates the misdemeanor offence of being on supervised release for ten years or more and "loitering" within one thousand feet of places where children congregate. To be guilty one must be asked to leave and refuse or return after leaving. The penalty is up to thirty days incarceration.

EFFECTIVE DATE: May 26, 2015

DATE OF PASSAGE: February 25, 2015

ACTION BY GOVERNOR: Signed March 3, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2053**

SHORT TITLE: Relating to the form of trust deeds

CODE REFERENCE: West Virginia Code §38-1-2 and §40-1-9 (Amends)

This bill permits the filing of a memorandum of a deed of trust and in lieu of the filing of a full deed of trust in County Clerks' offices. The bill establishes minimum information which must be included in the memorandum, including: (1) the names and addresses of all relevant parties, (2) the amount of the indebtedness secured by the deed of trust, (3) the date of execution of the deed of trust, (4) the date of maturity of the indebtedness, (5) a description of the property encumbered by the lien, (6) a title in compliance with other provisions of code if the indebtedness is a line of credit, (7) a statement of whether advances are obligatory if the indebtedness is a line of credit, (8) provisions of the deed of trust regarding substitution of a trustee, (9) a summary of applicable notice and publication requirements in case of default, (10) whether the loan was originated or serviced pursuant to specified government programs, and (11) the name of the person from whom, upon written request from any interested party, the original deed of trust, or a copy thereof, may be obtained.

The bill provides that the memorandum is as valid as in the complete deed of trust recorded on the date the memorandum is admitted to record, and includes a requirement that the original deed of trust must be recorded prior to the commencement of any foreclosure or other execution of the deed of trust.

EFFECTIVE DATE: June 8, 2015

DATE OF PASSAGE: March 10, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2128**

SHORT TITLE: Permitting those individuals who have been issued concealed weapons permits to keep loaded firearms in their motor vehicles on the State Capitol Complex grounds

CODE REFERENCE: West Virginia Code §61-6-19 (Amends)

The purpose of this bill is to allow concealed carry permit holders to keep firearms they have in their motor vehicles on the State Capitol Complex grounds if the vehicles are locked and the weapons are out of normal view. The Senate's strike and insert amendment, on which the House later concurred, clarifies that the exemption applies only to persons holding valid current permits issued in West Virginia or elsewhere.

EFFECTIVE DATE: June 10, 2015

DATE OF PASSAGE: March 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

HOUSE BILL NO. 2138

SHORT TITLE: Adding aircraft operations on private airstrips and farms to the definition of recreational purpose

CODE REFERENCE: West Virginia Code §19-25-5 (Amends)

This bill limits the liability of landowners who make land available for the use of aircraft or ultralight aircraft operations by adding aircraft or ultralight operations on private airstrips or farms to the definition of “recreational purposes” found in this section.

EFFECTIVE DATE: May 12, 2015

DATE OF PASSAGE: February 11, 2015

ACTION BY GOVERNOR: Signed February 18, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2157**

SHORT TITLE: Relating to absentee ballot fraud

CODE REFERENCE: West Virginia Code §3-9-19 (Amends)

This bill creates a new criminal offense within the State's Election Code, making it a felony for any person "with the intent to commit fraud" to obtain, remove or disseminate an absent voter's ballot, intimidate an absent voter or complete or alter an absent voter's ballot. An individual convicted of this offense would be guilty of a felony and subject to either a fine between \$10,000 and \$20,000 and imprisonment for 1-5 years, or both.

EFFECTIVE DATE: June 1, 2015

DATE OF PASSAGE: March 3, 2015

ACTION BY GOVERNOR: Signed March 11, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2161**

SHORT TITLE: Adopting the Uniform Act on Prevention of and Remedies for Human Trafficking

CODE REFERENCE: West Virginia Code §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5, §15-14-6, §61-2-17a and §61-2-17b (New); §61-2-17 and §62-1D-8 (Amends)

This bill creates the Uniform Act on Prevention of and Remedies for Human Trafficking. Human Trafficking is committed by an individual if that person knowingly recruits, transports or harbors an individual for forced labor or to engage in commercial sexual activity, knowingly coerces an individual to provide labor or services except where permissible under law, knowingly uses a minor for commercial sexual activity, or uses coercion or deception to make an adult engage in commercial sexual activity.

The bill creates the Commission on Human Trafficking and specifies its membership. The Commission is required to hold its first meeting no later than September 1, 2015, and meetings are to be held twice a year thereafter.

Victims are eligible for state benefits, awards from the Crime Victims Compensation Fund and child protective services. A law enforcement officer who encounters a victim is to notify the appropriate agencies identified in the plan.

The costs associated with the bill will be to the Division of Highways for signage since the bill requires the Division of Highways to display a public-awareness poster containing the National Human Trafficking Resource Center hot line information in every public rest area and welcome center in the state.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Vetoed April 1, 2015

HOUSE BILL NO. 2200

SHORT TITLE: Revising, rearranging, consolidating and recodifying the laws of the State of West Virginia relating to child welfare

CODE REFERENCE: West Virginia Code §49-1-101 through 106, §49-1-201 through 209, §49-2-101 through 125, §49-2-201 through 207, §49-2-301 through 304, §49-2-401, §49-2-501 through 505, 49-2-601 through 605, §49-2-701 through 708, §49-2-801 through 813, §49-2-901 through 911, §49-2-1001 through 1006, §49-3-101 through 102, §49-4-101 through 116, §49-4-201 through 205, §49-4-301 through 303, §49-4-401 through 412, §49-4-501 through 504, §49-4-601 through 610, §49-4-701 through 723, §49-4-801 through 803, §49-4-901 through 904, §49-5-101 through 105, §49-6-101 through 115, §49-7-101 through 102, §49-7-201 through 204 and §49-7-301 through 304 (New)

This bill amends Chapter 49 in its entirety by reorganizing and recodifying. The intent of the reorganization was limited to reorganizing, consolidating and recodifying the provisions of Chapter 49. The WV Supreme Court’s Court Improvement Program, CIP, stressed that the intent was not to make substantive changes to the law, but merely to reorganize. The only substantive changes that were allowed were identification and removal of outdated language or updates to comply with Court rulings concerning child welfare.

The final version of the reorganization was approved and adopted by all interested parties. The bill removed the twenty-five articles and replaced them with seven articles and multiple sub-parts. As structured, the framework of the new Chapter 49 is as follows:

- Article 1- General Provisions and Definitions
- Article 2- State Responsibilities for Children
- Article 3- Specialized Advocacy Programs
- Article 4- Court Actions
- Article 5- Record Keeping and Database
- Article 6- Missing Children Information Act
- Article 7- Interstate Cooperation

EFFECTIVE DATE: February 16, 2015

DATE OF PASSAGE: February 16, 2015

ACTION BY GOVERNOR: Signed February 19, 2015

HOUSE BILL NO. 2201

SHORT TITLE: Requiring the Public Service Commission to adopt certain net metering and interconnection rules and standards

CODE REFERENCE: West Virginia Code §24-2F-8 (Amends)

This bill amends the net metering provisions remaining in Chapter 24, Article 2F the code following the enactment of H.B. 2001, which repealed all of Article 2F except for section eight. The bill defines three new terms: “net metering,” “customer-generator” and “cross-subsidization.” Subsection (d) requires that the Public Service Commission (PSC), in adopting rules concerning electric utilities providing rebates or discounts for customer-generated electricity, ensure that any net metering tariff does not create a cross-subsidization between customers within one class of service.

Subsection (g) requires electric utilities to offer net metering to customer-generators that generate electricity on the customer-generator side of the meter. This net metering is to be offered on a first-come, first-served basis, and the total generation capacity is capped at three percent of the electric utility aggregate customer peak demand in the state during the previous year of which one-half percent is reserved for residential customer-generators.

Subsection (h) directs the PSC to adopt a rule requiring compliance with the National Electrical Code and the Institute of the Electrical and Electronics Engineers (IEEE), including having a disconnect readily available to utility lineworkers.

EFFECTIVE DATE: February 28, 2015

DATE OF PASSAGE: February 28, 2015

ACTION BY GOVERNOR: Signed March 12, 2015

HOUSE BILL NO. 2224

SHORT TITLE: Providing that historical reenactors are not violating the provision prohibiting unlawful military organizations

CODE REFERENCE: West Virginia Code §15-1F-7 (Amends)

This bill exempts historical reenactors and individuals who perform, parade or do drills at public ceremonies, such as funerals, from the prohibition against unlawful military organizations. Current law makes it unlawful for “any body of men whatever other than the regularly organized National Guard or the troops of the United States, to associate themselves together as a military company or organization in this state.” An exemption already exists in current law for the Governor to allow certain schools to have students “organize themselves into companies of cadets.” This bill adds a new subsection to provide that it is not a violation “for a group of individuals to associate as a military company or organization for historical, artistic or fictional performances; or, for an individual or group of individuals to drill, perform or parade at public ceremonies, including funerals.”

EFFECTIVE DATE: March 13, 2015

DATE OF PASSAGE: March 13, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2233**

SHORT TITLE: Requiring that legislative rules be reviewed five years after initial approval by the Legislative Rule-Making Review Committee and the Legislative Auditor's Office

CODE REFERENCE: West Virginia Code §29A-3-16 (Amends)

This bill requires the Legislative Rule-Making Review Committee, with the assistance of the Legislative Auditor, to review any rule promulgated after January 1, 2015, within five years of its effective date. The LRMRC is to make recommendations to the Legislature for amendment or repeal of any rule. The LRMRC is to determine whether or not a rule is achieving its purpose and whether it should be eliminated, continued or amended. The LRMRC and the Legislative Auditor's Office are to submit their findings and recommendations to the Joint Committee on Government and Finance.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2234**

SHORT TITLE: Requirement to permit a party to resume using a former name without the necessity of filing a petition pursuant to West Virginia Code §48-25-101 during a divorce proceeding

CODE REFERENCE: West Virginia Code §48-5-613 (Amends)

The purpose of this bill is to enable a court to permit a party to resume using a former name without the necessity of filing a petition pursuant to West Virginia Code §48-25-101. Furthermore, if a name change is requested during a divorce proceeding, the court shall also issue a certificate of divorce reflecting that change in name.

The certificate shall:

- 1) Be no longer than one page;
- 2) Not be considered an order;
- 3) Include the style of the divorce case;
- 4) Include the name on the birth certificate of the party requesting the name change;
- 5) Include the party's date of birth;
- 6) Include the party's social security number;
- 7) Include the date on which the name change is effective; and
- 8) Include the new name of that party.

In order to be valid, the certificate shall be certified by a clerk of the court. The certified certificate may be used by that person for all lawful purposes, including as a proof of legal name change for driver licensing purposes or state identification card at the Division of Motor Vehicles.

EFFECTIVE DATE: May 26, 2015

DATE OF PASSAGE: February 25, 2015

ACTION BY GOVERNOR: Signed March 3, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2240**

SHORT TITLE: Providing offense by act of domestic violence aggravated felony offense

CODE REFERENCE: West Virginia Code §61-2-9d (New)

This bill addresses crimes against the person, providing that strangling is a criminal offense, defining bodily injury and strangling, providing a felony offense of strangling another and providing criminal penalties.

The bill adds a new subsection designated §61-2-9d, which does the following:

- 1) Defines “bodily injury” as “substantial physical pain, illness or any impairment of physical condition;”
- 2) Defines “Strangle” as “knowingly and willfully restricting another person’s air intake or blood flow by the application of pressure on the neck or throat;”
- 3) Provides that the act of a person strangling another and causing bodily injury or loss of consciousness is guilty of a felony; and
- 4) Sets penalties for conviction of said felony as a jail term of not less than one year or more than five years, a fine of not more than \$2,500, or both.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Vetoed April 1, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2266**

SHORT TITLE: Relating to the publication requirements of the
administration of estates

CODE REFERENCE: West Virginia Code §44-1-14a (Amends); §44-2-2 and
§44-2-3 (Repeals)

This bill repeals the sections of code relating to the duty of a fiduciary commissioner to publish notice of the time for receiving claims against decedents' estates and to certify such publication, and to include this notice in the publications made by the County Clerk during the course of the estate administration.

The bill (1) increases the threshold for the mandatory appointment of a fiduciary commissioner from estate assets showing on the appraisal of \$100,000 to \$200,000; (2) reduces the creditor claims period on estates from ninety to sixty days; (3) requires the State Registrar to include any known legal residences of a decedent on forms pursuant to applying for a certificate of death; and (4) permits a county clerk to require the filing of a death certificate upon opening of an estate.

There is no fiscal impact.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14 , 2015

ACTION BY GOVERNOR: Signed March 31, 2015

HOUSE BILL NO. 2274

SHORT TITLE: Authorizing the Commissioner of Corrections to enter into mutual aid agreements

CODE REFERENCE: West Virginia Code §25-1-5a (New)

This bill authorizes the Commissioner of Corrections to enter into mutual aid agreements with political subdivisions of this state, other states and the federal government. This bill also requires that any agreements must be approved by the Secretary of the Department of Military Affairs and Public Safety and must contain a provision that the Secretary may terminate an agreement at anytime.

EFFECTIVE DATE: May 21, 2015

DATE OF PASSAGE: February 20, 2015

ACTION BY GOVERNOR: Signed February 25, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2283**

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

CODE REFERENCE: West Virginia Code §64-3-1 (45 CSR 14), §64-3-1 (45 CSR 16), §64-3-1 (45 CSR 25), §64-3-1 (45 CSR 30), §64-3-1 (45 CSR 34), §64-3-1 (60 CSR 4), §64-3-1 (33 CSR 20), §64-3-1 (47 CSR 2), §64-3-1 (47 CSR 30) and §64-3-1 (33 CSR 1) (Amends)

The purpose of this bill was to authorize the DEP to promulgate ten legislative rules – five from the Division of Air Quality; one from the Secretary’s Office; and four from the Division of Water and Waste Management. Most of these rules involved standard updates to DEP rules to ensure such rules matched EPA updates in order to ensure the DEP remains the primary enforcer of EPA law in WV. Several of the rules were more complex and/or controversial, most significantly:

- 47 CSR 2, relating to water quality standards in WV; among other things, designating part of the Kanawha River known as “zone 1” to a “water category A”, meaning suitable for drinking water;
- 47 CSR 30, relating to NPDES permitting for coal operators; providing clarification that coal operators are subject to the same standards as other industries regarding NPDES permitting, as was previously clarified in S.B. 615 enacted in 2012, and to hopefully provide clarity of WV law to a WV federal court which had relied on the prior version of the rule to make adverse rulings against WV coal operators; and
- 33 CSR 1, relating to solid waste management, updating the rule to permit solid waste facilities to accept waste from natural gas well sites under a regulatory framework and standards set forth in the updated rule, pursuant to a previously enacted bill during the first special session in 2014, H.B. 107.

EFFECTIVE DATE: March 12, 2015

DATE OF PASSAGE: March 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2395**

SHORT TITLE: Storm Scammer Consumer Protection Act

CODE REFERENCE: West Virginia Code §46A-6M-1 through 46A-6M-6 (New)

This bill creates the Storm Scammer Consumer Protection Act. After July 1, 2015, it allows a person to cancel a contract with a roofing contractor, where the goods and services are expected to be paid from the proceeds of a property and casualty insurance policy and the person has received notice that part or all of the loss is not covered by the insurance policy. The contract must be canceled prior to midnight of the fifth day after notice is received from the insurer. Cancellation requires written notice delivered in person, through the U.S. mail, fax or email.

The bill also sets forth information which a roofing contractor must provide to the owner of the residential real estate. After July 1, 2015, a roofing contractor may not require any advance payments, until after the cancellation period, if payment is expected to be made from the proceeds of a property or casualty insurance policy. The contractor has ten days after cancellation to return any payments or partial payments, except those tendered for emergency services.

This bill prohibits a roofing contractor from negotiating an insurance claim on behalf of the owner. It also prohibits a roofing contractor from offering any tangible item having a monetary value to the owner to receive a contract. Finally, this bill provides that a building contractor who willfully violates the provisions of the article is guilty of a misdemeanor and subject to a fine of no more than \$5,000, confinement in jail for one year or both.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed April 1, 2015

HOUSE BILL NO. 2461

SHORT TITLE: Relating to delinquency proceedings of insurers

CODE REFERENCE: West Virginia Code §33-10-4 and 33-10-26 (Amends)

This bill amends the provisions of the West Virginia Code relating to delinquency actions brought by the Commissioner of Insurance. The bill provides that the commencement of a delinquency proceeding by the Commissioner of Insurance against an insurer that is a member of a federal home loan bank does not operate as a stay, injunction or prohibition of the exercise by the federal home loan bank of its rights regarding collateral pledged by the insurer-member. The bill prohibits the voiding by the receiver of transfers made by an insurer-member to a federal home loan bank in the ordinary course of business within four months of the commencement of a delinquency proceedings or which received prior approval of the receiver, unless the transfer was made with actual intent to hinder, delay or defraud the insurer-member, a receiver appointed for the insurer-member or existing or future creditors.

The bill requires that, upon the request of a receiver, the federal home loan bank shall, within 10 days of the request, provide a process and establish timing for: (1) the release of collateral that exceeds the lending value required to support secured obligations remaining after any repayment of advances; (2) the release of any collateral remaining in the federal home loan bank's possession following repayment of all outstanding obligations; (3) the payment of fees and the operation of deposits and other accounts with the federal home loan bank; and (4) the redemption or repurchase of deposits and other accounts with the federal home loan bank. In addition, the federal home loan bank shall provide any options for the insurer-member to renew or restructure an advance to defer associated prepayment fees. Finally, the bill provides that nothing in the section affects a receiver's rights pursuant other federal laws.

EFFECTIVE DATE: June 10, 2015

DATE OF PASSAGE: March 12, 2015

ACTION BY GOVERNOR: Signed April 1, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2502**

SHORT TITLE: Possessing deadly weapons ~~on sites of educational facilities~~

CODE REFERENCE: West Virginia Code §61-7-11a (Amends)

This bill allows certain law enforcement officers and retired law enforcement officers to carry a gun on school property for the purpose of serving as school security. This bill authorizes active and retired law-enforcement officers in certain circumstances to possess a firearm or deadly weapon on a school bus, on school property or at school sponsored functions, when certain conditions are met. The bill also establishes reporting requirements for the school principal.

This bill:

- 1) Removes the provision allowing active law enforcement officers to carry guns only while serving as school security and allows them to carry guns on school property at all times;
- 2) Clarifies that retired law enforcement officers serving as school security must be employed by a law enforcement agency and covered for liability purposes;
- 3) Requires that a principal reports a gun free zone violation as soon as possible;
- 4) Clarifies by standard language that two years imprisonment or fine of \$5,000 violation now subject to imprisonment and fine;
- 4) Expands the law enforcement agencies to which the principal can report a violation to include county and municipal law enforcement offices; and
- 5) Amends the article title to reflect evolution of family law masters to family courts.

EFFECTIVE DATE: June 9, 2015

DATE OF PASSAGE: March 11, 2015

ACTION BY GOVERNOR: Signed March 27, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2527**

SHORT TITLE: Creating a Task Force on Prevention of Sexual Abuse of Children; "Erin Merryn's Law"

CODE REFERENCE: West Virginia Code §49-2-126 and §49-2-814 (New)

This bill establishes a Task Force on Prevention of Sexual Abuse, consisting of:

- 1) The Senate and House Education and Health and Human Resources Chairmen;
- 2) Two citizen members, one appointed by the President and one appointed by the Speaker;
- 3) A citizen member appointed by the Governor, who is a survivor of child sexual abuse;
- 4) The president of the State Board of Education;
- 5) The State Superintendent of Schools;
- 6) The Secretary of DHHR;
- 7) The Director of the Prosecuting Attorney's Institute;
- 8) One representative each of each state-wide professional teachers' organization, the state-wide school service personnel organization, the state-wide school principals' organization and the state-wide professional social workers' organization;
- 9) One representative of a teacher preparation program of a regionally accredited institution of higher education appointed by the Chancellor of the Higher Education Policy Commission;
- 10) The Chief Executive Officer of the Center for Professional Development;
- 11) The Director of Prevent Child Abuse WV;
- 12) The Director of the WV Child Advocacy Network;
- 13) The Director of the WV Coalition Against Domestic Violence;
- 14) The Director of the WV Foundation for Rape Information and Services;
- 15) The Administrative Director of the WV Supreme Court of Appeals;
- 16) The Executive Director of the WV Sheriffs Association;
- 17) One representative of a law enforcement organization appointed by the State Police Superintendent; and

18) One practicing school counselor appointed by the leader of the West Virginia School Counselors Association.

The task force is to make recommendations for decreasing the incidence of sexual abuse of children in this state and is to submit a report with its recommendations to the Governor and the Legislature. Task force members do not receive compensation or expense reimbursement.

This bill also sets forth legislative findings regarding foster children and states that the Legislature declares that the design and delivery of child welfare services should be directed by the principle that the health and safety of children should be of paramount concern. The bill sets forth goals for foster children and requires the WV Department of Health and Human Resources to propose rules that ensure that a child has an effective means of being heard if he or she believes the goals of this section are not being met. Finally, the bill requires that when a child who was previously placed into foster care and left the custody or guardianship of the Department, and is again placed into foster care, the foster parents who most recently cared for the child must be notified of the child's availability for foster care placement in order to determine if the foster parents are desirous of seeking a foster care arrangement for the child.

EFFECTIVE DATE: June 11, 2015

DATE OF PASSAGE: March 13, 2015

ACTION BY GOVERNOR: Signed April 1, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2536**

SHORT TITLE: Relating to travel insurance limited lines producers

CODE REFERENCE: West Virginia Code §33-12-32b (New)

This bill creates the “Travel Insurance Entity Producer Limited License Act.” It allows the Insurance Commissioner to issue a “travel insurance entity producer license” for an annual \$200 fee. Travel retailers and their employees would be permitted to offer travel insurance on behalf of the travel insurance entity producer.

“Travel insurance” means an individual or group policy of insurance that provides coverage for personal risks incident to planned travel, including: interruption or cancellation of a trip or event; loss of baggage or personal effects; damages to accommodations or rental vehicles; and sickness, accident, disability or death occurring during travel. It does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting six months or longer.

Under the bill, a travel insurance retailer may not provide insurance coverage advice when making available informational brochures to prospective purchasers. Travel insurance entity producers must (1) maintain a register of all travel retailers that offer travel insurance on behalf of the producer, (2) comply with fingerprinting requirements, (3) pay licensing fees and (4) provide training for the employees offering the insurance, including instructions on the types of insurance offered, ethical sales practices and required disclosures to prospective customers.

The bill exempts producers and those operating under the travel insurance entity producer license from examination and continuing education requirements. It permits a lapsed license to be reinstated within twelve months after the expiration date with payment of a \$50 penalty.

The bill permits a travel insurance entity producer to be appointed and to act as an agent subject to the insurer filing a notice of appointment and payment of a nonrefundable appointment processing fee of \$25. It permits an insurer to appoint a travel insurance entity producer to all or some insurers within the insurer’s holding company system or group by filing a single notice of appointment.

Travel retailers are authorized to receive compensation for offering and disseminating travel insurance. The producer is liable for the acts of the travel retailer in offering and disseminating travel insurance. The bill also specifies certain enforcement measures against a travel retailer, its employees and the producer.

EFFECTIVE DATE: June 10, 2015

DATE OF PASSAGE: March 12, 2015

ACTION BY GOVERNOR: Signed April 1, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2568**

SHORT TITLE: The Pain-Capable Unborn Child Protection Act

CODE REFERENCE: West Virginia Code §16-2M-1 through §16-2M-7 (New)

This bill prohibits abortions in most instances after the twentieth week after conception, or twenty-two weeks after the first day of the mother's last menstrual cycle. The bill makes legislative findings and definitions, provides for exceptions to that prohibition, sets forth a reporting requirement for medical providers and establishes penalties for failing to comply with the provisions of the article.

The first section, §16-2M-1, sets forth a number of legislative findings that directly address the ability of the fetus or unborn child to feel and respond to painful stimuli. This section also asserts "a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain." §16-2M-2 defines a number of terms used throughout the article.

§16-2M-3 requires, in most instances, that a physician performing an abortion must determine the probable gestational age of the fetus or unborn child before performing the abortion. Such a determination is not required when a medical emergency exists, the fetus is non-viable, or the determination of gestational age has been made by another doctor and that determination is relied upon by the performing doctor.

The next section, §16-2M-4, prohibits any person from performing or inducing, or attempting to perform or induce, an abortion of a fetus once it has reached pain-capable gestational age. Certain exemptions are provided, including cases in which the fetus is determined to be non-viable or when the pregnancy complicates the mother's physical health and medical condition such that an abortion is necessary "to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions." This section also requires that, when a fetus or unborn child is aborted after it has reached pain capable age, that the abortion will be conducted in a manner that "in reasonable medical judgment, provides the beset opportunity for the fetus to survive," with certain exceptions.

Physicians who perform an abortion are required, pursuant to §16-2M-5, to make reports to the Bureau for Public Health, with certain information about the abortion, including: (1) probable gestational age, (2) the manner in which the age was determined, (3) if no gestational age was determined, the reason for not doing so, (4) the method of abortion, (5) the basis for determining that the fetus was non-viable or there was a medical condition that necessitated an abortion after pain capable age, (6) whether the method of abortion used was the one that provided the best opportunity for the fetus to survive, and (7) if not, the basis of the determination that doing so would place the mother at substantial risk. Additional language protects the privacy of the patient. The information collected from these reports is to be compiled by DHHR and issued annually beginning June 30, 2016.

§16-2M-6 delineates penalties for violations of this article. For physicians and licensed medical practitioners, violating the article would be treated as acting outside the scope of practice, making them subject to discipline from the applicable licensure board. For non-licensed medical practitioners, violations of this article would be considered the unauthorized practice of medicine, which would be a misdemeanor. The penalties for that unauthorized practice could a \$5,000 fine and/or up to twelve months in jail. The bill does not limit available remedies by a patient, and further ensures that the patient herself is not subject to any penalties or criminal sanctions.

Finally, §16-2M-7 provides explicitly for severability of any portion of the article that is “found to be unconstitutional or temporarily or permanently restrained or enjoined by judicial order, or both,” and to allow for the remainder of the article to remain in effect.

EFFECTIVE DATE: May 26, 2015

DATE OF PASSAGE: February 25, 2015; Governor’s Veto Overridden March 20, 2015

ACTION BY GOVERNOR: Vetoed March 2, 2015

HOUSE BILL NO. 2606

SHORT TITLE: Clarifying the potential sentence for disorderly conduct

CODE REFERENCE: West Virginia Code §61-6-1b (Amends)

This bill clarifies the potential sentence for disorderly conduct by removing language that a person may be "committed to the custody of the Division of Corrections" rather than "confined in jail."

Current law provides that persons convicted of a violation of this provision shall be "committed to the custody of the Division of Corrections". This is only done when persons are committed to a prison or other correctional facility, and is seldom done in cases involving violations which rise only to the level of a misdemeanor. This bill fixes this issue, by requiring that persons convicted of an offense of this section be confined in jail.

EFFECTIVE DATE: June 9, 2015

DATE OF PASSAGE: March 11, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

HOUSE BILL NO. 2607

SHORT TITLE: Relating to the violation of interfering with emergency services communications and clarifying penalties

CODE REFERENCE: West Virginia Code §61-5-17 (Amends)

This bill contains criminal penalties for interfering with or fleeing from law enforcement, probation and parole officers. It amends the penalties for several of the violations to make it clear that the convicted person may be both fined and confined.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

HOUSE BILL NO. 2608

SHORT TITLE: Cleaning up redundant language in the statute relating to misdemeanor offenses for violation of protective orders

CODE REFERENCE: West Virginia Code §48-27-903 (Amends)

Current law provides that persons convicted of a violation of this provision shall, upon conviction, be jailed “which jail term shall include actual confinement of not less than thirty days, and fined not less than \$500 nor more than \$3,000 or both [sic]” and that a person convicted of a subsequent offense “which [sic] the violation occurs within ten years of a prior conviction of this offense is guilty of a misdemeanor.”

This bill eliminates the words “or both”; eliminating a redundancy as persons convicted of a violation of these provisions already must be both jailed and fined, and changes the word “which” to “when” to eliminate the absurdity in subsection (c) relating to subsequent offenses.

EFFECTIVE DATE: March 12, 2015

DATE OF PASSAGE: March 12, 2015

ACTION BY GOVERNOR: Signed March 27, 2015

HOUSE BILL NO. 2627

SHORT TITLE: Providing protection against property crimes committed against coal mines, utilities and other industrial facilities

CODE REFERENCE: West Virginia Code §61-3-29 (Amends)

The purpose of this bill is to increase fines and criminal penalties for those who knowingly and willfully damage certain personal property.

This bill does the following:

1) Adds facilities that “store oil, timber, timber processing” to the existing list: natural gas, coal, water, wastewater, stormwater, and telecommunications or cable service.

2) This section contains offenses with associated penalties:

- a. Knowingly and willfully damage or destroy property (with added facilities above): \$2,000 fine or one year in jail or both.
- b. Knowingly and willfully damage or destroy property and creates substantial risk of serious bodily harm: Felony, \$5,000 or one to three years in jail or both.
- c. Knowingly and willfully damage or destroy property and causes serious bodily injury: \$5-50,000 or one to three years in jail or both.
- d. Knowingly and willfully damage or destroy property and hinders, impairs or disrupts, directly or indirectly the normal operation: \$5-10,000 plus the cost to repair or one to three years in jail or both).

3) Civil remedies are still available.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Vetoed April 1, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2636**

SHORT TITLE: Exempting information contained in a concealed weapon permit application from the Freedom of Information Act

CODE REFERENCE: West Virginia Code §29B-1-2, §29B-1-3, §29B-1-4 and §61-7-4 (Amends); §29B-1-3a (New)

This bill makes certain changes to the state’s Freedom of Information law. First, in §29B-1-2, the bill modifies the definition of “public record” to expand its reach to include documents “prepared or received by a public body, the content or context of which, judged either by content or context, relates to the conduct of the public's business.”

The bill also, in §29B-1-3, prohibits a public body from charging man-hour expenses for the preparation of a response to a FOIA request, or from charging a search or retrieval fee. This section also mandates the creation of a statewide FOIA database, accessible through the Internet, under the Secretary of State, including the promulgation of forms for public bodies to disclose all FOIA requests and their disposition. A new section of code is added at §29B-1-3a, which requires public bodies to report certain information about FOIA requests received and their responses. This section also grants rulemaking authority to the Secretary of State.

In §29B-1-4, the bill states a presumption of public accessibility to all public records. A new exemption is added to the list of FOIA exemptions for concealed weapon permit applications. Two exceptions apply, first for aggregate information that does not disclose the identity of individual permit holders and second for disclosure for law enforcement purposes.

Finally, §61-7-4, which relates to how concealed weapon permits are obtained, is modified. The procedures relating to appealing the denial of a permit are modified to allow an applicant who successfully files a challenge to his denial to receive attorney’s fees and reasonable costs. Further, the bill allows a sheriff to decline to issue a concealed weapon permit to a holder at a new address if he finds that the holder is not eligible. If the individual remains eligible, then he or she can be charged no more than \$5 for the new permit. A misdemeanor penalty for failing to carry a photo ID while carrying a concealed weapon is eliminated. Lastly, the bill provides for misdemeanor offenses for violations of that confidentiality.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed April 1, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2648**

SHORT TITLE: Allowing authorized entities to maintain a stock of epinephrine auto-injectors to be used for emergency

CODE REFERENCE: West Virginia Code §16-47-1 through §16-47-5 (New)

This bill creates a new article titled Epinephrine Auto- Injector Availability and Usage. It defines terms, authorizes the Department of Health and Human Resources to propose rules for promulgation, requires that educational programs be conducted by a nationally recognized organization experienced in training lay persons or an entity approved by the Department, sets minimum curriculum and provides for the prescribing and dispensing of epinephrine auto injectors to authorized entities.

An authorized entity is required to designate trained persons to be responsible for the storage, maintenance and general oversight of the auto injectors. A trained individual may provide an auto injector to a person he or she believes in good faith is experiencing a severe allergic reaction for self -administration or the individual may administer the injection.

This bill also states that the administration of an epinephrine auto-injector is not the practice of medicine. It states that the prescribing physician, the authorized entity, the person who conducted the training and the trained person who administered the injection are not subject to civil liability.

EFFECTIVE DATE: June 16, 2015

DATE OF PASSAGE: March 18, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2664**

SHORT TITLE: Creating "Andrea and Willy's Law"; increasing certain penalties for driving under the influence of alcohol, controlled substances or drugs

CODE REFERENCE: West Virginia Code §17C-5-2 and §17C-5A-2 (Amends)

This bill eliminates the offense of misdemeanor DUI causing death and makes all instances of DUI that proximately cause the death of another within one year following the incident into a felony punishable by three to fifteen years imprisonment.

It also creates the new felony offense of DUI causing serious bodily injury, which is punishable by two to ten years imprisonment.

This bill was vetoed by the Governor on March 17, 2015. The House of Delegates amended the bill and the Legislature again passed the bill on March 18, 2015; as a result of the objections of the Governor.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed April 1, 2015

HOUSE BILL NO. 2726

SHORT TITLE: Clarifying choice of laws issues in product's liability actions

CODE REFERENCE: West Virginia Code §55-8-16 (Amends)

This bill revises one section of code, relating to choice of law in product liability actions, and expands its application to all products liability claims. The current law declares the public policy of the state to be that product liability claims brought by a nonresident against a manufacturer or distributor of a prescription drug for failure to warn shall be governed by the product liability law of the place of injury. The bill applies the doctrine *lex loci delicti* ("law of the place where the delict [tort] was committed") to all products liability claims brought in West Virginia by nonresidents.

EFFECTIVE DATE: July 1, 2015

DATE OF PASSAGE: March 3, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2790**

SHORT TITLE: Relating to minimum responsibility limits of car insurance

CODE REFERENCE: West Virginia Code §17D-4-2, §17D-4-7, §17D-4-12, §33-6-31 and §31-6-31d (Amends); §33-6-31h (New)

This bill makes certain changes with respect to the required proof of financial responsibility required for motor vehicles registered in this state.

The bill increases the minimum proof of financial responsibility to respond for liability for damages incurred in automobile accidents: (1) an increase from \$20,000 to \$25,000 for bodily injury or death of one person in any one accident, (2) an increase from \$40,000 to \$50,000 because of injury or death to two or more persons in any one accident, and (3) an increase from \$10,000 to \$25,000 because of injury or destruction of property of others in any one accident.

The bill provides that insurers are not required to offer new or additional uninsured and underinsured motor vehicle coverages when liability coverage on a policy is increased solely because of the new increased requirements of proof of financial responsibility. Those insurers who have issued policies that carry limits below the minimum required financial responsibility limits in effect on December 31, 2015, shall increase such limits to an amount equal to or above the new minimum required financial responsibility limits when the policy is renewed, but not later than December 31, 2016.

As a result of the decision of the West Virginia Supreme Court of Appeals in *Jones v. Motorists Mutual Insurance Company*, 177 W. Va. 763 (1987), insurers who issue policies with named driver exclusions must nonetheless provide minimum financial responsibility limits coverage for drivers who are excluded from coverage under the terms of a motor vehicle liability policy. This bill would provide that insurers who issue policies with named driver exclusions are not required to provide such coverage, notwithstanding the requirements of proof of financial responsibility.

EFFECTIVE DATE: June 9, 2015

DATE OF PASSAGE: March 11, 2015

ACTION BY GOVERNOR: Signed April 1, 2015

HOUSE BILL NO. 2914

SHORT TITLE: Providing for voluntary dissolution of resort area district

CODE REFERENCE: West Virginia Code §7-25-6, §7-25-11 and §7-25-15
(Amends); §7-25-7a and §7-25-27 (New)

The bill would amend the provisions of the Code relating to Resort Area Districts. The bill makes the following substantive changes to the current code provisions:

- 1) Provides for the voluntary dissolution of a resort area district;
- 2) Specifies requirements for a notice for the election that resort area board members are required to send out;
- 3) contains provisions regarding proxy votes;
- 4) Provides requirements for making nominations for board positions;
- 5) Allows nominations for board positions to be made via mail or electronic means, but must be made prior to the meeting at which a vote on board members is scheduled;
- 6) Requires board members be elected by a plurality of the votes cast as opposed to a majority;
- 7) Limits the assessment against any one parcel of real property to 5% of the appraised value of the real property, as shown on the property tax records of the county; and
- 8) Requires a favorable vote of by a majority of the votes cast at a meeting of the owners of the district that will be subject to the assessment before an assessment proposed by the board may be authorized by the board.

The amendments contained in the legislation are not to cause any petition creating a resort district currently before the governing body to be voided and allows the petition to be modified to conform with any new requirements.

EFFECTIVE DATE: June 9, 2015

DATE OF PASSAGE: March 11, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

**COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2939**

SHORT TITLE: Relating to requirements for mandatory reporting of sexual offenses on school premises involving students

CODE REFERENCE: West Virginia Code §49-1-201, §49-2-803, and §49-2-812
(Amends)

This bill expands the scope of the definition of “sexual assault” beyond just parents, guardians or custodians; adds three new subsections to section eight hundred three, article two, chapter forty-nine; increases the existing penalties for failure to report; and adds a new subsection to section eight hundred twelve, article two, chapter forty-nine.

§49-2-803 Person mandated to report suspected abuse and neglect; requirements

1) New subsection (c) requires school personnel to report sexual contact, sexual intercourse or sexual intrusion observed or disclosed to school teachers or personnel within a twenty-four hour period.

2) New subsection (d) requires county school boards and private school administrators to provide all employees with a written statement setting forth reporting requirements. In addition, requires all school employees to sign the acknowledgment that they have received and understand the reporting requirement.

3) New subsection (e) making clear the requirement to report student-student conduct and teacher-student conduct. The new subsection (e) additionally requires immediate notification to parents of children involved in the alleged conduct.

§49-2-812 Failure to report; penalty

The bill increases the existing penalties for Failure to Report from 30 days to not more than 90 days in jail. And increased the fine from \$1,000 to \$5,000.

The new subsection (b) establishes a penalty that specifically addresses the failure to report a sexual incident on school premises. Any person who fails to report an incident is guilty of a misdemeanor and, upon conviction, will be confined in jail not more than six months or fined not more than \$10,000 or both.

EFFECTIVE DATE: June 12, 2015

DATE OF PASSAGE: March 14, 2015

ACTION BY GOVERNOR: Signed March 25, 2015
