



WEST VIRGINIA LEGISLATURE SENATE COMMITTEE ON THE JUDICIARY



2016 BILL SUMMARIES

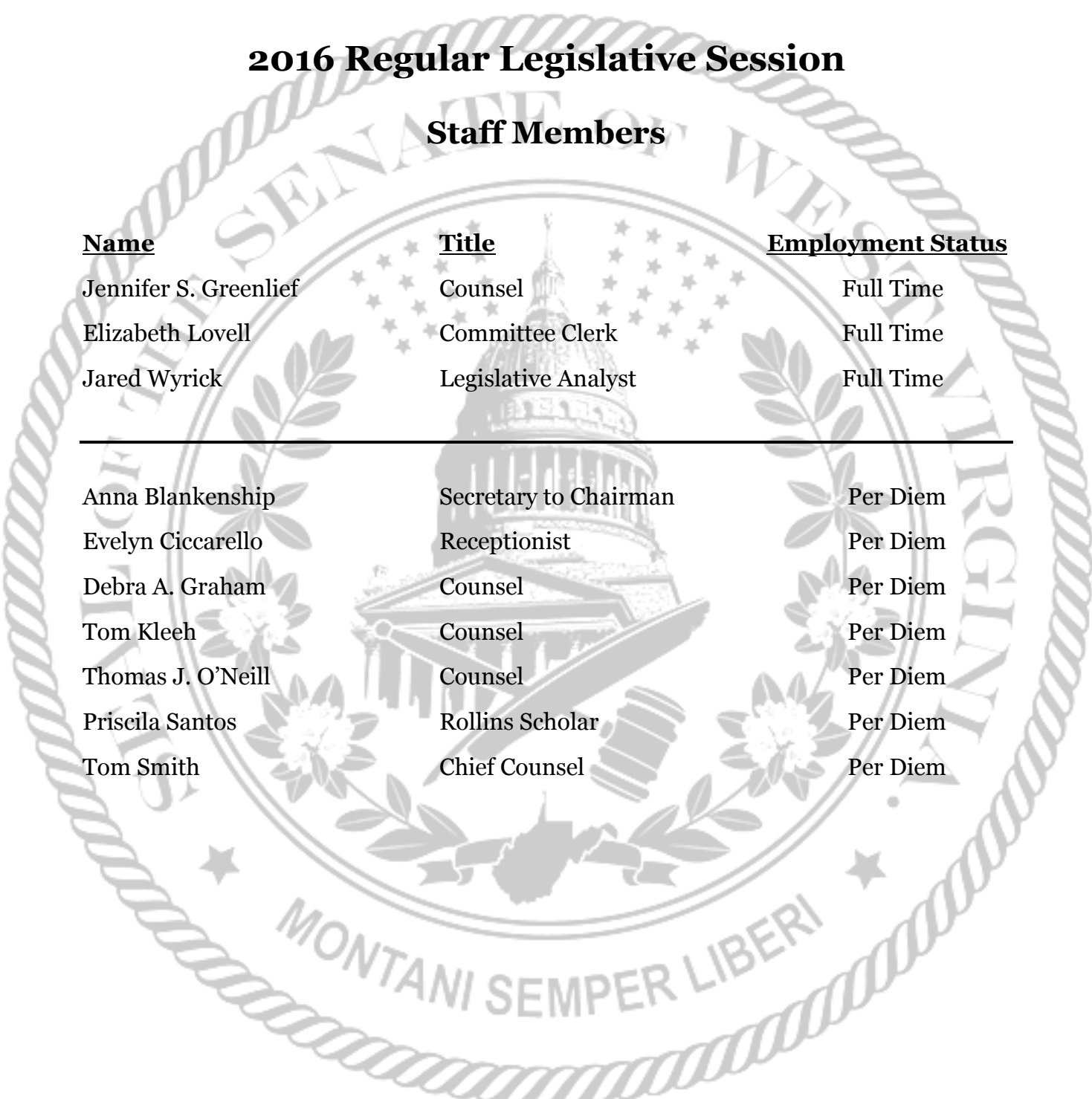
Charles S. Trump IV, *Chair*

2nd Session of the 82nd Legislature | Building 1, Room 210W 1900 Kanawha Boulevard E. Charleston, WV 25305 | 304.357.7880

SENATE COMMITTEE ON THE JUDICIARY

2016 Regular Legislative Session

Staff Members



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<hr/>		
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WEST VIRGINIA LEGISLATURE
SENATE COMMITTEE ON THE JUDICIARY

STATISTICS 2016

**TOTAL NUMBER OF BILLS AND RESOLUTIONS INTRODUCED
DURING THE 2ND SESSION OF THE 82ND LEGISLATURE:**

TOTAL BILLS:	1,896
RESOLUTIONS:	91
TOTAL CONCURRENT RESOLUTIONS:	196
TOTAL JOINT RESOLUTIONS:	54
TOTAL:	2,237

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

SENATE BILLS:	705
SENATE RESOLUTIONS:	73
SENATE CONCURRENT RESOLUTIONS:	71
SENATE JOINT RESOLUTIONS:	14
TOTAL:	863

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

HOUSE BILLS:	1,191
HOUSE RESOLUTIONS:	18
HOUSE CONCURRENT RESOLUTIONS:	125
HOUSE JOINT RESOLUTIONS:	40
TOTAL:	1,374

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

BILLS:	12
RESOLUTIONS:	0
TOTAL:	12

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

SENATE BILLS:	378
HOUSE BILLS:	90
SENATE CONCURRENT RESOLUTIONS:	4
SENATE JOINT RESOLUTIONS:	14
HOUSE CONCURRENT RESOLUTIONS:	0
HOUSE JOINT RESOLUTIONS:	0
TOTAL:	486

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

SENATE BILLS:	202
HOUSE BILLS:	62
RULES BILLS:	98
RESOLUTIONS:	5
TOTAL:	367

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

SENATE BILLS:	138
HOUSE BILLS:	138
TOTAL:	276*

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

SENATE CONCURRENT RESOLUTIONS:	46
HOUSE CONCURRENT RESOLUTIONS:	35
TOTAL:	81

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

SENATE BILLS:	60
HOUSE BILLS:	53
TOTAL:	113**

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

SENATE CONCURRENT RESOLUTIONS:	1
TOTAL:	1

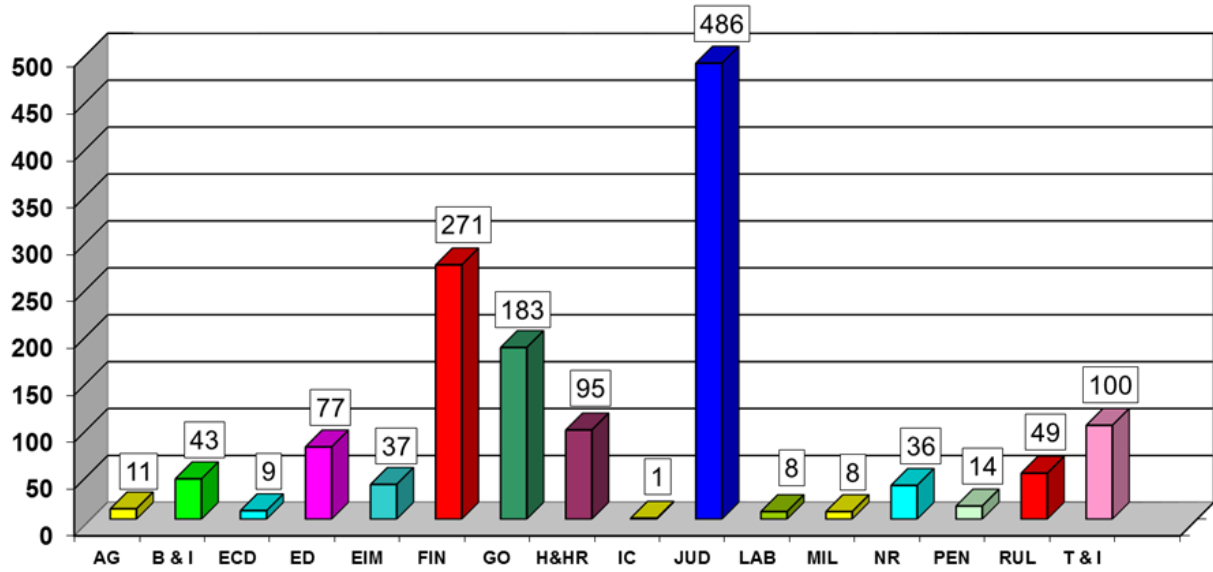
**TOTAL NUMBER OF BILLS REPORTED FROM SENATE
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SENATE BILLS:	55
HOUSE BILLS:	49
TOTAL:	104

*Of the 276 bills that completed legislative action during the 2nd Session of the 82nd Legislature, 27 bills were vetoed and 4 were overridden (S.B. 1, S.B. 10, H.B. 4005 and H.B. 4145).

**Of the 113 bills that were reported from the Senate Committee on the Judiciary during the 2nd Session of 82nd Legislature, 11 bills were vetoed and 2 were overridden (S.B. 1 and H.B. 4145)

2016 Regular Legislative Session Bills and Resolutions Referred to Committees



2016 Regular Legislative Session Bills and Resolutions Reported from Committees

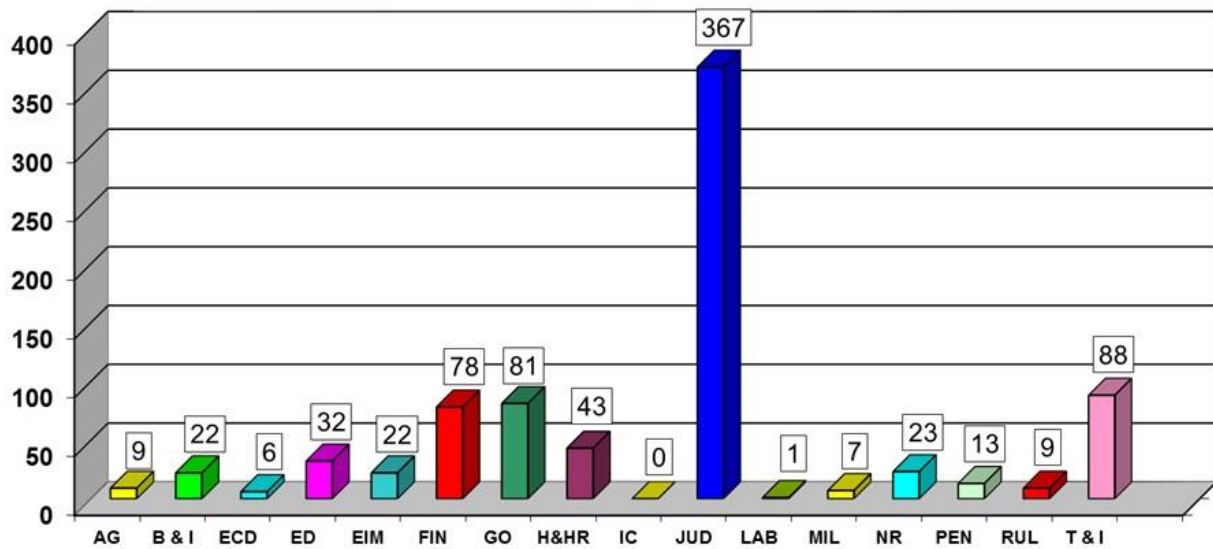


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Senate Bill 1

SHORT TITLE: Establishing WV Workplace Freedom Act

CODE REFERENCE: W. Va. Code § 21-1A-3 & §21-1A-4 (Amends); §21-5G-1, §21-5G-2, §21-5G-3, §21-5G-4, §21-5G-5, §21-5G-6, & §21-5G-7 (New)

SUMMARY:

This bill establishes the West Virginia Workplace Freedom Act and makes changes to two sections of the West Virginia Labor-Management Relations Act to make those sections consistent with the new Act. The bill prohibits requiring a person, as a condition or continuation of employment, to become or remain a member of a labor organization, pay any dues or other fees or charges, however denominated, of any kind to any labor organization, or pay any charity or third party in lieu of those payments any amounts equivalent to or a pro rata portion of dues or other fees required of members of a labor organization.

The bill makes any contract or other understanding or practice, whether written or oral, which excludes from employment any person because of membership with or refusal to join any labor or employee organization unlawful, null and void, and of no legal effect. Violations of the West Virginia Workplace Freedom Act carry criminal penalties. Any labor organization, employer, public body or other person directly or indirectly violating the Act is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$5,000. Each day of violation is considered a separate and distinct offense. The bill creates avenues of civil relief and damages.

In addition to the criminal penalties set forth in the Act, any person injured as a result of any violation or threatened violation of the Act has a cause of action, and, if proven in a court of competent jurisdiction, may be entitled the following relief against a person or persons violating or threatening to violate the Act: (1) compensatory damages; (2) costs and reasonable attorney fees, which shall be awarded if the injured person substantially prevails; (3) punitive damages; (4) preliminary or injunctive relief; and (5) any other appropriate equitable relief.

The bill specifically excludes from its scope any employee or employer covered by the federal Railway Labor Act, 45 U.S.C. 151 *et seq.*, any employee of the United States or a wholly owned corporation of the United States, any employee employed on property over which the United States government has exclusive jurisdiction for purposes of labor relations and where the provisions of this article would otherwise conflict or be preempted by federal law. This bill addresses its construction and applicability. The bill states it is neither intended nor should it be construed to change or affect any collective bargaining or collective bargaining agreements in the building and construction industry. It applies to any written or oral contract or agreement entered into, modified, renewed or extended after July 1, 2016. The provisions of this bill do not otherwise apply to or abrogate a written or oral contract or agreement in effect on or before June 30, 2016.

DATE OF PASSAGE: February 5, 2016

EFFECTIVE DATE: May 5, 2016

ACTION BY GOVERNOR: Vetoed February 11, 2016; Overridden February 12, 2016

**Strike and Insert for
Committee Substitute for
Senate Bill 7**

SHORT TITLE: Establishing wrongful conduct rule prohibiting recovery of damages in certain circumstances

CODE REFERENCE: §55-7-13d & 55-7B-5 (Amends)

SUMMARY:

This bill amends W. Va. Code §55-7-13d, specifically subsection (c), which addresses a plaintiff's involvement in a felony criminal act. The bill provides a defendant is not liable for damages as a result of negligence or gross negligence, if a plaintiff's damages arise out of that plaintiff's commission, attempted commission or immediate flight from the commission or attempted commission of a felony. The plaintiff's injuries must have been suffered as a proximate result of those actions for the bar to apply. However, in some cases, such as wrongful death or adjudicated incompetency, the plaintiff may not be the actual injured person. The bill provides that it is the conduct of the injured person that generates the defense and not necessarily the named plaintiff.

The bill clarifies that the burden of proof for this defense rests on the party seeking to assert the defense. The bill provides that if the plaintiff has been convicted of, pleaded guilty or pleaded no contest to a felony, the court shall dismiss the claim, if the court determines as a matter of law, that the person's damages were suffered as a proximate result of the felonious conduct to which the plaintiff pleaded guilty or no contest, or upon which the plaintiff was convicted. The bill also offers a definition of damages. It includes all damages which may be recoverable for personal injury, wrongful death, property damage and also damages recoverable in a wrongful death action, including damages suffered by family members, such as loss of companionship and loss of income or services of the decedent. Further, the bill provides that if a criminal action is pending, the court shall stay the action at the request of the defendant until resolution of the criminal matter, including appeals, unless the court finds that the conviction would not constitute a valid defense under the bill.

The bill also establishes that the amendments to W.Va. Code §55-7-13d apply to causes of action accruing on or after its effective date. The bill also amends W. Va. Code §55-7B-5(d) of the Medical Professional Liability Act. It establishes that an action related to the prescription or dispensation of controlled substances may not be maintained against a health care provider pursuant to this article by or on behalf of a person whose damages arise as a proximate result of a violation of the Uniform Controlled Substances Act as set forth in §60A, the commission of a felony, a violent crime which is a misdemeanor, or any other state or federal law related to controlled substances. Additionally, the bill provides that an action may be permitted if the health care provider dispensed or prescribed a controlled substance in violation of state or federal law that proximately caused injury or death.

DATE OF PASSAGE: February 24, 2016

EFFECTIVE DATE: May 24, 2016

ACTION BY GOVERNOR: Signed March 2, 2016

**Strike and Insert for
Committee Substitute for
Senate Bill 13**

SHORT TITLE: Increasing penalties for overtaking and passing stopped school buses

CODE REFERENCE: §17C-12-7 (Amends)

SUMMARY:

This bill, for purposes of the current criminal provisions, creates a permissive inference that where a violation occurs and the vehicle operator's identity is not determined at the scene, but the vehicle license plate is known, that the owner or lessee was operating the vehicle for purposes of determining probable cause. Service of a complaint would be pursuant to W.VA. Rules of Criminal Procedure 4.

Penalties are also increased. Upon conviction for a first offense, a fine of not less than \$250 or more than \$500, or confinement in jail for not more than six months, or both fine and confinement is imposed. Upon conviction of a second offense, a fine of not less than \$500 nor more than \$1,000, or confinement in jail for not more than six months, or both fined and confined is imposed. Upon conviction of a third or subsequent violation, the driver shall be fined \$500 \$1,000, and confined not less than twenty-four forty-eight hours in jail, but not more than six months. License suspension periods remain the same as current law.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

**Committee Substitute for
Senate Bill 14**

SHORT TITLE: Limiting successor corporation asbestos-related liabilities

CODE REFERENCE: §55-71-1, §55-71-2, §55-71-3, §55-71-4, §55-71-5, §55-71-6 & §55-71-7 (New)

SUMMARY:

This bill limits the asbestos liability exposure of companies that acquired a business entity that previously produced asbestos or asbestos-containing products. This limitation on liability is available only in certain instances. First, the acquisition, whether through merger or consolidation or other legal process, must have occurred prior to May 13, 1968. Second, the successor must have been an “innocent” purchaser, meaning that the corporation did not continue to produce the same goods or products that the transferor asbestos company produced. Finally, the limitation of liability only applies once the total amount that the successor company has paid out in asbestos-related claims exceeds the value of the acquired transferor company, as adjusted and appreciated from the time of the merger. The bill sets the parameters for the calculation of the “fair market value” of the corporation at the time of acquisition, as well as the method of annually adjusting that value for purposes of the cap. The new article is to be construed liberally in favor of innocent successors.

DATE OF PASSAGE: February 22, 2016

EFFECTIVE DATE: May 22, 2016

ACTION BY GOVERNOR: Signed March 2, 2016

Senate Bill 15

SHORT TITLE: Adopting learned intermediary doctrine as defense to civil action due to inadequate warnings or instructions

CODE REFERENCE: §55-7-30 (New)

SUMMARY:

This bill reestablishes and codifies the “learned intermediary” doctrine which was abrogated by a Supreme Court of Appeals’ decision in 2007. The learned intermediary doctrine provides an exception to the general rule imposing a duty on manufacturers to warn consumers about the potential risks of their products because a prescribing physician or healthcare provider acts as a “learned intermediary” between the manufacturer and the ultimate consumer.

This bill provides that a manufacturer or seller of a prescription drug or medical device may not be held liable in a products liability action for a claim based on inadequate warning or instruction, unless the manufacturer or seller of a prescription drug or medical device acted unreasonably in failing to provide reasonable instructions or warnings regarding foreseeable risks of harm to prescribing or other health-care providers who are in a position to reduce the risks of harm in accordance with the instructions or warnings. Failure to provide reasonable instructions or warnings must have been a proximate cause of harm. The bill sets forth the Legislature’s intent to adopt and allow the development of a “learned intermediary” doctrine as a defense in cases based upon claims of inadequate warning or instruction for prescription drugs or medical devices.

DATE OF PASSAGE: February 17, 2016

EFFECTIVE DATE: May 17, 2016

ACTION BY GOVERNOR: Signed February 25, 2016

**Committee Substitute for
Committee Substitute for
Senate Bill 27**

SHORT TITLE: Permitting county commissions hire outside attorneys for collection of taxes through courts

CODE REFERENCE: §7-5-24 & §11A-2-2 (Amends)

SUMMARY:

This bill permits county commissions to retain outside counsel for prosecuting civil tax collection suits and to represent the county before any United States Bankruptcy Court. A county commission engaging an attorney for tax collection suits must have a written representation agreement which sets caps on any hourly fees to be paid, or sets a percentage cap in the case of a contingent fee agreement. It leaves the amount of those caps in the hands of the county commission and the attorney to negotiate. Any attorney fees or other costs associated with the collection of taxes shall be paid from the taxes collected prior to distribution to the various taxing units.

DATE OF PASSAGE: March 5, 2016

EFFECTIVE DATE: June 3, 2016

ACTION BY GOVERNOR: Signed March 9, 2016

Senate Bill 29

SHORT TITLE: Tolling statute of limitations in certain cases

CODE REFERENCE: §55-2-21 (Amends)

SUMMARY:

This bill creates an exception to §55-2-21 for third party complaints. Currently, after a civil action is commenced, the statute of limitations on any claim that can be asserted in that civil action is tolled for the pendency of that civil action, including the statutory period on third-party complaints. The bill provides that this section tolls the running of any statute of limitation with respect to any claim for which the statute of limitation has not expired on the effective date of this section, but only for so long as the action tolling the statute of limitations is pending. This bill shortens the period during which the statute of limitations is tolled for bringing third party claims during the pendency of a law suit to the longer of 180 days following service of process of the original suit or the time remaining on the applicable statute of limitations. The bill provides a third-party defendant the same time period to bring a third-party complaint against any non-party person or entity (180 days from the date of service of process of the original complaint, or the time remaining on the applicable statute of limitations, whichever is longer).

Third party complaints are claims filed by a defendant against some person or entity that was not made a party to the original suit. This bill gives such entities the benefits of repose bestowed by any applicable statutes of limitation that they would enjoy but for the fact that a law suit, of which they may or may not have any knowledge at all, is pending. This bill preserves the ability of a defendant to bring a third party complaint even after the limited tolling period expired if that defendant did not discover any cause of action it might have against a third party until after the expiration of the limited tolling period. This bill specifically preserves that so-called “discovery rule” as well as the doctrine of equitable tolling sometimes used by courts in such situations.

DATE OF PASSAGE: March 7, 2016

EFFECTIVE DATE: June 5, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 32

SHORT TITLE: Relating to withdrawal of candidates for office and filling vacancies

CODE REFERENCE: §3-5-11, §3-5-18, §3-5-19 (Amends)

SUMMARY:

This bill modifies the State Election Code as it relates to the creation and filling of ballot vacancies. The impact of these changes is to codify the process by which candidates can file withdrawals of candidacy, set new deadlines by which candidate withdrawals must be filed, and eliminate the discretion of the State Election Commission to determine whether a candidate can withdraw from the ballot.

First, §3-5-11 is amended to require the Secretary of State to create a form to allow a candidate to withdraw by filing a "signed and notarized statement." If filed by the appropriate deadlines, the withdrawal is presumptively final. These deadlines are: for primary or special primary elections, by the third Tuesday following the close of candidate filing, and for the general or special general elections, no later than 84 days before the general election. Nonpartisan judicial election deadlines are the same as those for primary elections. In §3-5-18, the deadline for the Secretary of State to certify the identity of parties to be printed on the ballot is established as "the seventy-first day next preceding the date of the general election," and directs that the certification shall include all candidates "entitled to have their name placed on the official ballot . . . following the filling of vacancies made pursuant to" §3-5-19. Lastly, §3-5-19 eliminates all language related to a voluntary withdrawal by a candidate "due to extenuating personal circumstances which will prevent the candidate from serving in the office if elected." As modified, the statute removes any authority for the State Election Commission to evaluate and decide whether a candidate could withdraw. Instead, withdrawal by the established deadlines is presumptively valid and automatically triggers the ability of a party executive committee to nominate a replacement to fill that ballot vacancy.

DATE OF PASSAGE: February 6, 2016

EFFECTIVE DATE: February 6, 2016

ACTION BY GOVERNOR: Signed February 11, 2016

**Committee Substitute for
Senate Bill 39**

SHORT TITLE: Regulating off-road motorcycles within Hatfield-McCoy Recreation Area

CODE REFERENCE: §17F-1-1 & §17F-1-9 (Amends)

SUMMARY:

This bill authorizes the use of off-road motorcycles on the Hatfield-McCoy ATV Trail. The bill further clarifies that ATVs may operate as far to the right on the pavement as possible when there is little or no shoulder, to travel between a residence, lodging or trails for food, fuel, supplies and restrooms.

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: June 6, 2016

ACTION BY GOVERNOR: Signed March 16, 2016

**Strike and Insert for
Committee Substitute for
Senate Bill 43**

SHORT TITLE: Clarifying means of posting to prohibit hunting or trespassing

CODE REFERENCE: §20-2-8 & §61-3B-1 (Amends)

SUMMARY:

This bill allows posting of real property by certain clearly visible paint markings in order to prohibit hunting or trespassing.

The bill clarifies that there are two ways to post land to prohibit trespassing with:

1) "No trespassing" signs. The bill does not require the owner's name to be on the sign;

And,

2) Clearly visible boundaries marked with purple painted marking (a trend called the "purple posting law"). The painted marking is to be one vertical line no less than eight inches in length and two inches in width, and the bottom of the mark not less than three nor more than six feet from the ground or normal water surface. The marks must be affixed to immovable, permanent objects that are no more than one hundred feet apart. Signs must also be posted at all roads, driveways or gates of entry.

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

**Strike and Insert for
Committee Substitute for
Senate Bill 102**

SHORT TITLE: Conforming to federal Law-Enforcement Officers Safety Act

CODE REFERENCE: §7-4-1 & §30-29-12 (New)

SUMMARY:

The purpose of this bill is to require all law-enforcement agencies in this state to certify qualified law-enforcement officers to carry concealed firearms nationwide as provided by the federal Law-Enforcement Officers Safety Act, to provide statutory authority necessary to give prosecuting attorneys and assistant prosecuting attorneys the option to carry firearms for self-defense pursuant to that federal act upon completion of required training and an annual background check and to require law-enforcement agencies to provide qualified retired law-enforcement officers the opportunity to be certified to carry concealed firearms nationwide, under that Act.

The bill grants prosecutors and assistant prosecutors arrest powers for violations of state and federal laws and violations of W.Va. Rules of Criminal Procedure 42 (Criminal Contempt) committed in their presence and within the confines of the courthouse. The possession of arrest powers, combined with compliance with certification requirements, is designed to bring prosecuting attorneys and assistant prosecuting attorneys into the ambit of 18 U.S.C. §926B, which overrides certain state laws to allow law enforcement personnel to carry a concealed weapon for self-defense purposes throughout the country.

The bill requires law enforcement agencies to facilitate personnel in obtaining the necessary ID and certifications under §926B and addresses retired law enforcement personnel's ability to get the training necessary to carry concealed firearms nationwide.

DATE OF PASSAGE: March 7, 2016

EFFECTIVE DATE: N/A

ACTION BY GOVERNOR: Vetoed April 1, 2016

**Committee Substitute for
Senate Bill 104**

SHORT TITLE: Classifying Marshall University Forensic Science Center as a criminal justice agency

CODE REFERENCE: §15-2-24C (New)

SUMMARY:

This bill clarifies the relationship with regard to grant seeking between the West Virginia State Police and the Marshall University Forensic Science Center.

The bill, with regard to grants and state funding sources:

1. Designates the DNA Analysis Laboratory at the Forensic Center to be engaged in the administration of Criminal Justice. This opens some possible funding sources;
2. Requires the entities to confer on grants and funding sources and gives the West Virginia State Police primacy over decisions to seek grants; and
3. Requires the parties to enter an agreement to comply with the requirements of the bill.

DATE OF PASSAGE: March 9, 2016

EFFECTIVE DATE: March 9, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 107

SHORT TITLE: Uniform Interstate Depositions and Discovery Act

CODE REFERENCE: §56-12-1 et seq. (New)

SUMMARY:

This bill enacts the Uniform Interstate Depositions and Discovery Act in West Virginia. This Uniform Act is designed to address the need for an efficient and inexpensive procedure that would allow litigants to depose individuals and conduct discovery in a state other than the trial state. The bill defines terms of import including subpoena. The bill provides a procedure for issuance of a subpoena – for deposition, document production or site inspection - in West Virginia for litigation in another jurisdiction or state. Specifically, a party must submit a foreign subpoena to the clerk of the court in the county in which the discovery is sought. The clerk then shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed. Subpoenas issued under this Act must incorporate the terms used in the foreign subpoena and contain or be accompanied by the contact information of all counsel of record in the proceeding to which the subpoena relates. The Uniform Act requires that any subpoenas issued or depositions conducted comply with the West Virginia Rules of Civil Procedure. Similarly, any application or motion to enforce, quash or modify a subpoena must comply with West Virginia law and procedure and must be submitted in the county in which discovery is sought. The bill applies to requests for discovery in cases pending as of its effective date.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

**Committee Substitute for
Senate Bill 150**

SHORT TITLE: Authorizing Department of Transportation promulgate legislative rules

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

SUMMARY:

This bill authorizes the Department of Transportation to promulgate the following rules:

SB 150

Agency: Office of Administrative Hearings

Subject: Appeal Procedure. (105 CSR 1)

This rule amends a current rule. The amendments relate to: clarifying deadlines for filing responses to motions; allowing testifying by telephone or video conference; requiring that certain disclosures include an address for the employer of a person swearing to an affidavit with respect to blood draw or blood analysis; reducing the number of times a subpoenaed person may fail to appear before the examiner may conduct the hearing without that person; defining “substantial prejudice”; explicitly stating that hearing examiners have the authority to rule on procedural matters, but that they are subject to being overruled by the Chief Hearing Examiner for abuse of discretion; giving the OAH the discretion to modify or rescind the final order in certain circumstances, including in the case of a perceived erroneous legal conclusion or perceived legal deficiency, and states that doing so will toll the jurisdictional time limits; and giving the OAH the authority to reinstate a previously rescinded final order and, in doing so, may provide that the reinstated order takes effect on the date upon which the order of reinstatement is entered.

SB 215

Agency: Division of Highways

Subject: State Transportation Infrastructure Fund Program. (157 CSR 11)

This is a new rule necessitated by the passage of House Bill 2778 during the 2015 Regular Legislative Session. Generally speaking, the bill created the State Transportation Infrastructure Fund, in conformance with the federal State Infrastructure Bank Program, which is to be used to make loans to municipalities, counties, state agencies and quasi-state government agencies for eligible transportation projects in conformity with the National Highway System Designation Act of 1995.

SB 243

Agency: Division of Public Transit

Subject: Rail Fixed Guideway Systems State Safety Oversight. (225 CSR 1)

Senate Bill 407, passed during the 2015 Legislative Session, named the Division of Public Transit as the State Safety Oversight Agency and required this legislative rule. Federal transportation legislation created the State Safety Oversight Program, which requires each state to develop a federally compliant safety oversight plan regarding rail fixed guideway public

transportation systems. Currently, the PRT in Morgantown, WV, is the only rail fixed guideway system in the state.

DATE OF PASSAGE: February 22, 2016

EFFECTIVE DATE: February 22, 2016

ACTION BY GOVERNOR: Signed March 2, 2016

**Committee Substitute for
Senate Bill 157**

SHORT TITLE: Authorizing Department of Revenue to promulgate legislative rules

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

SUMMARY:

This bill authorizes the Department of Revenue to promulgate the following rules:

SB 157

Agency: WV Alcohol Beverage Control Administration

Subject: Nonintoxicating Beer Licensing and Operations Procedures. (176 CSR 1)

During the 2015 Regular Legislative Session, the Legislature passed S.B. 273, relating to nonintoxicating beer and craft beer, particularly addressing the sale of growlers. This is an existing rule that has been amended to be in conformity with the passed legislation and makes clarifications to the rule in light of a court decision.

SB 155

Agency: WV Alcohol Beverage Control Administration

Subject: Private Club Licensing. (175 CSR 2)

This rule amends a current rule relating to private clubs, by making a modification to subsection 4.10. This subsection addresses doors of private clubs. Currently, the rule states that all doors to and from the premises shall be closed, except for the ingress and egress of members and their guests. This rule will allow doors between the main private club and their legally demarcated deck or other outdoor area to be open between the hours of 11 a.m. and midnight, as approved by the Commissioner on a case-by-case basis. This rule also adds language requiring the county or municipality where the private club is located to authorize the limited open door exception by ordinance, zoning, or other written authorization.

SB 156

Agency: WV Alcohol Beverage Control Administration

Subject: Distilleries and Mini-Distilleries. (175 CSR 10)

This is a new rule, created in light of the passage of S.B. 574 during the 2015 Regular Legislative Session. That bill lowered the 28% markup percentage fee for distilleries and mini-distilleries to a 5% markup percentage fee plus a bailment fee of \$0.80 per case, reduced the market zone fee percentage from 10% to 2% for payments made by the distillery or mini-distillery to retail liquor outlets in the same market zone and capped the maximum annual payment at \$15,000. The rule provides the procedures whereby a distillery or mini-distillery shall comply for bailment procedures, sampling, retail operations, production, retail sales and reporting of activities.

SB 232

Agency: Racing Commission

Subject: Thoroughbred Racing. (178 CSR 1)

This is an amendment to an existing legislative rule. In sum, the rule makes the following two changes to the current rule: (1) it updates the rule in various places to adopt the most recent Model Rule provisions promulgated by the Association of Racing Commissioners International (RCI) pertaining to medications for thoroughbreds; and (2) allows jockeys to obtain physical fitness examinations from licensed health care providers other than physicians.

SB 233

Agency: Racing Commission

Subject: Pari-Mutuel Wagering. (178 CSR 5)

This legislative rule amends the current pari-mutuel wagering rule in two ways, as follows:

§178-5-4.2

This subsection addresses the minimum wagers and payouts in pari-mutuel pools by the racing association. The amendments lower the minimum straight wager from two dollars (\$2) to one dollar (\$1) and lowers the minimum payout from \$2.20 to \$1.10.

§178-5-8.7.b.6

This paragraph addresses one of the six approved methods of apportioning the Pick (n) pool in a Pick (n) wager, which is one that requires the selection of the first-place finisher in each of four or more contests, as designated by the association and approved by the Racing Commission. The current rule sets out six approved methods and the proposed amendments change method 6 from “Pick (n) with Minor Pool, Jackpot Pool, Major Carryover, and Jackpot Carryover” to the simplified “Pick (n) with Minor Pool and Jackpot Carryover.” The amendments simplify the payouts and eliminate the current payout option to people who selected the second most first place finishers of the designated races. The method places a pre-determined percentage of the wagers into a Major Pool and Minor Pool. If no unique wager picks all the first place finishers, the Major Pool is split between the people who selected the most first place finishers and the Minor Pool is added to the Jackpot Carryover (or creates the Jackpot Carryover if one does not exist yet). If a unique wager selects all the first place finisher, that person wins the Major Pool, the Minor Pool, and the Jackpot Carryover (if any). The Racing Commission retains approval authority over the Pick (n) contests.

SB 241

Agency: State Tax Department

Subject: Payment of Taxes by Electronic Funds Transfer. (110 CSR 10F)

This rule amends a current legislative rule in response to Enrolled H.B. 2877, which passed during the 2015 Regular Legislative Session, which raised the threshold for electronic funds transfers from \$10,000 to \$25,000, for returns filed after January 1, 2016. The proposed rule also provides a \$50,000 threshold for the period of June 12, 2015 (effective date of HB2877) until January 1, 2016, based on a perceived gap in implementation and authority under the statute.

The following taxes have been added to the list of taxes which must be paid by electronic funds transfer: beer barrel tax; wine liter tax; wine liquor excise tax; pass through entity tax; district excise tax; taxes paid under ifta; and acute care hospital tax. Personal income tax now includes nonresident composite income tax and fiduciary income tax. Severances taxes include the additional annual severance tax. Personal income tax withholding includes personal income tax back-up withholding.

SB 242**Agency:** State Tax Department**Subject:** Exchange of Information Agreement between the Commissioner of the Tax Division of the Department of Revenue and the Secretary of the Department of Commerce, the Secretary of the Department of Environmental Protection, the Director of the Division of Forestry of the Department of Commerce and the Commissioners of the Public Service Commission. (110 CSR 50H)

This new rule allows the Department to enter into an exchange of information agreement with the Secretary of the Department of Commerce, the Secretary of the Department of Environmental Protection, the Director of the Division of Forestry of the Department of Commerce and the Commissioners of the Public Service Commission to allow the Department to permit them to more efficiently and effectively perform their tax collection and licensing responsibilities. The agreement must specify the type and manner of information to be exchanged and contain provisions for safeguarding any confidential tax information received pursuant to the agreement. A copy of the agreement and any subsequent provisions must be filed with the Tax Commissioner before their effective date.

The House of Delegates amended the rule on page one, subsection 3.1, by adding the Office of the Secretary of State to the list of agencies who may exchange confidential tax information with the other listed agencies.

Agency: Department of Revenue**Subject:** Valuation of Timberland and Managed Timberland. (110 CSR 1H)

This rule was initially filed June 11, 2015, and was later withdrawn following the November 2015, Legislative Rule-Making Review meeting. The House of Delegates added the rule back into the Revenue Bundle.

This rule establishes the procedures for the classification and valuation of timberland and managed timberland. This rule amends the current rule, shifting the grading of parcel in the managed timberland program. This rule causes the State Tax Department to have to re-enter parcel acres into the computer system and will require either temporary assistance or overtime. It is anticipated that this will take two years to convert all parcels once the rule is approved. While local revenues might be impacted somewhat by the proposed rule changes, state revenues would be minimally.

Agency: Lottery Commission**Subject:** Limited Video Lottery. (179 CSR 5)

This section directs the Lottery Commission to amend a current legislative rule to incorporate a definition for the term "Licensed limited video lottery location approved by the Commission" from an interpretive rule of the Lottery Commission. The definition is amended to allow a limited video lottery location 150 feet from a public park and a business that sells petroleum products.

This bill also directs the Department to repeal the following rules:

Agency: Tax Division**Subject:** Listing of Interests in Natural Resources for Purposes of First Statewide Appraisal. (110 CSR 1B)

Agency: Tax Division
Subject: Guidelines for Assessors to Assure Fair and Uniform Nonutility Personal Property Values. (110 CSR 1C)

Agency: Tax Division
Subject: Review By Circuit Court on Certiorari. (110 CSR 1D)

Agency: Tax Division
Subject: Review of Appraisals by the County Commission Sitting as an Administrative Appraisal Review Board. (110 CSR 1E)

Agency: Tax Division
Subject: Additional Review and Implementation of Property Appraisals. (110 CSR 1F)

Agency: Tax Division
Subject: Review By Circuit Court on Certiorari. (110 CSR 1G)

Agency: Tax Division
Subject: Revision of Levy Estimates. (110 CSR 8)

Agency: Tax Division
Subject: Inheritance and Transfer Tax. (110 CSR 11)

Agency: Tax Division
Subject: Annual Tax on Incomes of Certain Carriers. (110 CSR 12A)

Agency: Tax Division
Subject: Telecommunications Tax. (110 CSR 13B)

Agency: Tax Division
Subject: Tax Credit for Employing Former Members of Colin Anderson Center. (110 CSR 13I)

Agency: Tax Division
Subject: Tax Credits for New Value-Added, Wood Manufacturing Facilities. (110 CSR 13M)

Agency: Tax Division
Subject: Tax Credits for New Steel, Aluminum and Polymer Manufacturing Operations. (110 CSR 13N)

Agency: Tax Division
Subject: Business Investment and Jobs Expansion Tax Credit, Corporation Headquarters Relocation Tax Credit and Small Business Tax Credit. (110 CSR 13C)

Agency: Tax Division
Subject: Appraisal of Property for Periodic Statewide Reappraisals for Ad Valorem Property Tax Purposes. (110 CSR 1)

Agency: Banking Commissioner
Subject: West Virginia Consumer Credit and Protection Act. (106 CSR 8)

Agency: Banking Commissioner

Subject: West Virginia Board of Banking and Financial Institutions. (107 CSR 5)

Agency: Office of the Insurance Commissioner

Subject: Utilization Management. (114 CSR 51)

Agency: Office of the Insurance Commissioner

Subject: Medicare Supplement Insurance Coverage. (114 CSR 17)

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: N/A

ACTION BY GOVERNOR: Vetoed April 1, 2016

Committee Substitute for Senate Bill 159

SHORT TITLE: Authorizing promulgation of legislative rules by miscellaneous boards and commissions

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

SUMMARY:

This bill authorizes miscellaneous agencies and boards to promulgate the following legislative rules:

SB 159

Agency: West Virginia Board of Examiners in Counseling

Subject: Licensing. (27 CSR 1)

This rule makes numerous changes to the current legislative rule relating to applications, supervision of applicants, reciprocity, degree accreditation, provisional licenses, areas of competence, retirement status and contact hours in counselor related ethics and mental health conditions specific to veterans and their families.

SB 160

Agency: Virginia Board of West Examiners in Counseling

Subject: Licensed Professional Counselor License Renewal and Continuing Professional Education Requirements. (27 CSR 3)

This rule amends definitions, clarifies renewal requirements and requires contact hours in counselor related ethics and mental health conditions specific to veterans and their families.

SB 161

Agency: West Virginia Board of Examiners in Counseling

Subject: Marriage and Family Therapist Licensing. (27 CSR 8)

This rule makes numerous changes to the current legislative rule relating to applications, reciprocity, endorsement review, requirements for supervising professionals, provisional licenses and licensee retirement status.

The House of Delegates amended the rule to more accurately conform to current statute.

SB 162

Agency: West Virginia Board of Examiners in Counseling

Subject: Marriage and Family License Renewal and Continuing Professional Education Requirements. (27 CSR 10)

This rule amends definitions, clarifies renewal requirements and requires contact hours in counselor related ethics and mental health conditions specific to veterans and their families.

SB 148

Agency: Board of Accountancy

Subject: Board Rules and Rules of Professional Conduct. (1 CSR 1)

The rule amends definitions, establishes requirements to sit for the licensing exam, adds additional requirements for foreign academic credentials, amends the provisions for retaking test sections, amends continuing education requirements, amends requirements for reactivating an inactive certificate and amends fees.

SB 151

Agency: Department of Agriculture

Subject: Inspection of Nontraditional, Domesticated Animals. (61 CSR 23D)

This rule amends a current rule in response to Committee Substitute for S.B. 237, the Captive Cervid Farming Act and H.B. 2658, relating to the slaughter of nontraditional agriculture. Both bills passed during the 2015 Legislative Session.

The rule states that the slaughter of rabbits that are exempt from inspection may take place where the rabbits were raised if the premises are registered with the Commissioner and the slaughtering process is performed in a sanitary manner. It also exempts the slaughtering and processing of up to 1,000 rabbits at one premise from inspection if they were raised on the premises, the premises is registered with the Commissioner and WVDA procedures are followed. The rabbits may only be sold to individuals, at farmers markets or through consignment markets.

The exemption of the slaughtering of white tailed deer from the provisions of the rule was removed.

SB 152

Agency: Department of Agriculture

Subject: Poultry Litter and Manure Movement In to Primary Poultry Breeder Rearing Areas. (61 CSR 28)

This rule amends a current legislative rule. The current rule prohibits the movement or sale of poultry litter into any area engaged in the production of commercial primary poultry breeder stock without a certification of inspection from the Commissioner. "Area" is defined as any land within a one-mile radius of the poultry house. The rule prohibits bringing the litter into the county and makes it consistent with other provisions of the section.

SB 153

Agency: Department of Agriculture

Subject: Livestock Care Standards. (61 CSR 31)

This rule is a current legislative rule and is being amended in response to the Captive Cervid Farming Act. The following is a synopsis of the substantive amendments:

The definition section has been amended by adding a definition for the term "captive cervid farming facility". The definition for the term "Quarantine" has been amended to specify that an equine quarantine must be a minimum of 200 yards from any animal. In the case of a captive cervid infected with any contagious or infectious disease, the entire premise is quarantined.

The rule currently requires that indoor stocking of livestock must allow for a single layer of animals. The rule requires sufficient floor space for poultry to perch or rest based upon poultry production standards, production type, management guides and housing type. In addition, this

section currently requires that, once loaded for transport, livestock must be able to stand in their natural posture or position or rest in a single layer. The rule requires sufficient floor space for poultry to perch or rest based upon poultry production standards, production type, management guides and housing type.

A new section in the rule, requires body scoring using the Canadian System and also Purina Mills. On a scale of 1 to 5, an owner of any captive cervid with a score of less than 2 that is not under the care of a licensed veterinarian is in violation of the rule.

SB 154

Agency: Department of Agriculture

Subject: Captive Cervid Farming. (61 CSR 34)

This rule is new and is in response to Enrolled Committee Substitute for S.B. 237, which passed during the 2015 Legislative Session. It contains provisions regarding the transition of captive cervid facilities, license applications, fees, license renewal, sale or transfer of a license, inspections, facility, fencing, identification and recordkeeping requirements, disease testing and slaughter.

The House of Delegates amended the rule on page nine, subdivision 13.1.a, by reducing the minimum number of acres, 200 to 150, for commercial shooting preserves.

SB 158

Agency: State Conservation Committee

Subject: WV Conservation Agency Financial Assistance Program. (63 CSR 2)

This rule is new and is in response to Enrolled Senate Bill No. 250, which passed during the 2015 Regular Session. Previous law provided that where a conservation district supervisor applied for financial assistance, the application was considered by a conservation district other than the one he or she supervised. Senate Bill 150 transferred the decision-making authority to the WV Conservation Agency. The bill also prohibits a conservation district supervisor from authorizing, approving or ratifying a contract benefiting him or her or an immediate family member.

SB 170

Agency: Board of Dentistry

Subject: Continuing Education Requirements. (5 CSR 11)

This rule sets forth the continuing education requirements for the practice of dentistry. The rule is updated to reiterate the statutory requirement that training also occur on prescribing and administering an opioid antagonist. It also adds the WV Dental Assistants' Association as an approved CLE provider.

SB 171

Agency: Board of Dentistry

Subject: Expanded Duties of Dental Hygienists and Dental Assistants. (5 CSR 13)

This rule sets forth the permitted duties of dental hygienists and dental assistants. The changes clarify the duties by changing the words "clinical examination" to the word "screening".

SB 207

Agency: State Election Commission

Subject: Regulation of Campaign Finance. (146 CSR 3)

The State Election Commission states that the current rule is amended to reflect “amendments to the Code during subsequent legislative sessions” after 2008 and “the results of federal court challenges to existing laws.”

SB 208

Agency: State Election Commission

Subject: West Virginia Supreme Court of Appeals Public Campaign Financing Program. (146 CSR 5)

In 2015, the Legislature passed H.B. 2010, which made all judicial elections, from magistrate to Supreme Court of Appeals, nonpartisan, and also changed the timing of those elections to the time of the primary elections in May. Changes were made to this rule to conform to the new statute, chiefly by removing language that referred to the primary and general election, or to political parties and partisan elections.

SB 209

Agency: West Virginia State Board of Registration for Professional Engineers

Subject: Examination, Licensure and Practice of Professional Engineers. (7 CSR 1)

This rule amends the current rule to comply with statutory changes enacted by S.B. 401 in 2013 and S.B. 389 in 2015. The amendments update the series to provide for the change in terminology from “expired status” to “non-practicing status”, the modification in the requirements to be a registered EI or PE, or to obtain a COA, and the modification of the provisions relating to renewal and reinstatement from an annual, fiscal year process to a biennial, calendar year process as permitted by statute. The rule also reflects changes due to modifications in examination requirements, test administration procedures, and scoring or testing methods by the Board approved testing entity, NCEES, providing standardized tests for use by the Board as permitted by W.Va. Code §30-13-15 (e).

SB 214

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

Subject: Law Enforcement Training and Certification Standards. (149 CSR 2)

The amendments to this rule are in response to legislation passed during the 2015 Regular Session, notably S.B. 370, as well as changes to reflect best practices concerning certification and training. These changes include: amending the definitions within the rule; clarifying the standards and qualifications of instructor certifications, along with the ability to suspend certifications upon complaint; clarifying the scholastic grade requirement for passage at the training academy; authorizing a list of approved medical providers for the completion of medical examinations for an officer candidate at the training academy; amending and clarifying the firearm qualification standards; amending the authority to annually review certification compliance; removing outdated language; adding authority to issue subpoenas for; and adding language authorizing the setting of administrative fees.

Further, in accordance with the reorganization of the Governor’s Committee that was established as part of Senate Bill 370, the rule is amended throughout to properly reflect the delegation of duties to the subcommittee and relationship to the Governor’s Committee.

SB 221**Agency:** WV Medical Imaging & Radiation Therapy Technology Board of Examiners**Subject:** Radiologic Technologists. (18 CSR 1)

This bill amends the current rule to conform to the new fees charged by the American Registry of Radiologic Technologists (AART) for “state only” examinations. An applicant’s successful passage of an examination allows practice in West Virginia but is not transferable to any other state. The fees for the radiography, nuclear medicine technology, radiation therapy technology, and post primary mammography have increased from \$100.00 to \$140.00, respectively.

The rule series also adds a \$100.00 fee for any examination the Board would administer. Currently, the Board administers one examination for NMT’s who wish to perform CT with a PET scan.

SB 223**Agency:** Board of Medicine**Subject:** Establishment and Regulation of Limited License to practice medicine and surgery at certain state veterans nursing home facilities. (11 CSR 11)

This rule creates a limited license to practice medicine and surgery at certain state veterans nursing home facilities for certain qualified individuals.

SB 225**Agency:** Nursing Home Administrators Licensing Board**Subject:** Nursing Home Administrators. (21 CSR 1)

This rule sets forth the standards to practice nursing home administration. The rule is updated to permit a person to use administrative experience to count toward the hours required for a person to obtain licensure as a nursing home administrator. It defines terms, including personnel management, planning and organizing, and fiscal management. These terms describe actions which will be included in the term “management experience” which the board will include in its experience calculations. The rule sets forth three circumstances where the board will waive the administrator in training requirement:

An applicant for licensure must complete twelve hours in health care management and 1,000 hours of in an inpatient health care facility; possess a baccalaureate degree; have worked in a certain administrative positions within the long term care field for 3 years; possess a baccalaureate degree or higher from a National Association of Long Term Care Administrator’s Board accredited college program; and have completed an internship or a degree in Health Care Administration, Health Services Administration or similar field that requires the completion of an internship. Applicants must submit to a criminal background check.

SB 227**Agency:** WV Board of Pharmacy**Subject:** Licensure and Practice of Pharmacy. (15 CSR 1)

This rule amends the Board of Pharmacy’s rule concerning the licensure and practice of pharmacy.

It adds a section which creates a waiver for special handlings of medications and new innovative practices. It clarifies that it is okay for pharmacies to be “registered controlled substances take back sites” in accordance with DEA regulations. It adds a late fee. It adds more required information on a prescription label. Finally, it specifies under what circumstances a licensee may practice telepharmacy.

SB 228

Agency: WV Board of Pharmacy

Subject: Uniform Controlled Substance Act. (15 CSR 2)

This rule permits pharmacies properly registered with the DEA as an authorized controlled substances take-back site to operate as such.

It adopts the DEA guidance, which sets forth the circumstances in which a pharmacist may make a change to a prescription written for a controlled substance.

SB 229

Agency: WV Board of Pharmacy

Subject: Record Keeping Automated Data Processing Systems. (15 CSR 4)

This rule sets forth the requirements on the usage of an automated data processing system. The rule removes old and no longer applicable provisions. It sets forth what information a pharmacist is required to obtain when practicing outside of a pharmacy setting.

SB 230

Agency: WV Board of Pharmacy

Subject: Licensure of Wholesale Drug Distributors, Third-Party Logistics Providers and Manufacturers. (15 CSR 5)

The changes update the regulation concerning manufacturers, wholesale drug distributors and third party logistics providers. The update is required because of the passage of the Drug Quality and Security Act by Congress. The law preempts states from continuing to license third party logistics providers as wholesale distributors. Therefore, this rule creates a new category for third party logistics provider licensure.

It will treat certain drug compounding facilities as manufacturers if they are bulk selling. Currently, this state licenses out of state manufacturers as whole drug distributors, this is no longer permitted under the DQSA. Out-of-state manufacturers will now be licensed as non-resident manufacturers.

Lastly, the rule adds late fees to wholesale distributors and third party logistics providers who renew late.

SB 231

Agency: Property Valuation Training and Procedures Commission

Subject: Tax Map Sales. (189 CSR 5)

This rule substantially amends the current legislative rule.

The section on general guidelines states that the revenue from the sale of tax maps will cover the costs of consumables, such as paper, but not necessarily the salaries of full-time

employees. The charges provided in the rule are in addition to surcharges for use of the Courthouse Facilities Improvement Fund. Tax maps distributed free of charge are not subject to the surcharges. Fees, except those related to non-cadastral map data, are set by the Commission.

An assessor may charge for an employee's time, at a reasonable base rate, when preparing a customized map. Assessors may choose to not charge for internet maps. Finally, an assessor may provide other governmental agencies, economic development projects or other uses that benefit the public tax maps at no charge.

The rule contains a price schedule for paper or printed tax maps and one for digital tax map files.

Only assessors and their agents, as well as the Tax Department's Property Division may sell, reproduce, etc. tax maps. The Tax Department may retain a portion of the fee for certain specified cost and must remit the remainder to the appropriate county on a semi-annual basis.

Funds received by the assessors or their agents must be deposited monthly in the assessors re-valuation fund. This section also lists the locations where maps may be purchased.

SB 234

Agency: Board of Social Work

Subject: Qualifications for the Profession of Social Work. (25 CSR 1)

During its 2015 Regular Session, the Legislature passed Senate Bill 559 which amended West Virginia Code § 30-30-16 regarding provisional licensure to practice as a social worker. The law became effective on June 7, 2015. The Board of Social Work filed emergency rules pursuant to subsection (b) addressing the eligibility and application process for a newly created exception to the twelve credit hour education requirement for a provisional license. Current West Virginia Code § 30-30-16(c)(2) requires that a provisionally licensed social worker must complete twelve credit hours of core social work study within the four-year provisional license period. Senate Bill 559 includes an exception to that education requirement for a provisionally licensed social worker who is employed by WV DHHR. This category of provisional licensees may satisfy the education requirement "upon completion of the social work training program" with WV DHHR. The Secretary of WV DHHR is required to promulgate legislative rules to implement the training program.

SB 235

Agency: West Virginia Secretary of State

Subject: Registration Forms and Receipts. (153 CSR 3)

This legislative rule proposed by the Secretary of State repeals a currently active legislative rule relating to voter registration forms and receipts. The current rule prescribes voter application forms for registration by mail and permits an alternate form of voter registration to be used in addition to what was provided elsewhere in code. The current rule also allows the clerk of the county commission to mail a voter registration card as a receipt for voter registration.

As basis for repeal, the Secretary of State declares that "the provisions of this rule have been overridden" by "changes in federal and state law."

SB 236

Agency: West Virginia Secretary of State

Subject: Elimination of Precinct Registration Books. (153 CSR 9)

This rule relates to the elimination of voter precinct registration books. This legislative rule repeals a currently active legislative rule enacted in 2000 pursuant to legislative rulemaking authority granted in W. Va. Code § 3-2-21(l). The current legislative rule provides that a county may eliminate precinct registration books once it has officially adopted the State Uniform Data System, at which time it can apply in writing to the Secretary of State to eliminate the precinct registration books.

SB 237

Agency: West Virginia Secretary of State

Subject: Absentee Voting by Military Voters Who Are Members of Reserve Units Called to Active Duty. (153 CSR. 23)

This bill repeals 153 CSR 23. This rule was first enacted in 1992, most recently revised in 2007, and lays out absentee voting procedures to be used when a member of the military reserves who has been called to active duty applies for an absentee ballot and is unable to receive and return that ballot within the time required using normal procedures. The rule provides that reserve members who were called into active duty could cast absentee ballots by mail or by voting in person at the office of the county clerk, and thereafter set forth the procedures for doing that, as well as the text of the affidavit that a reserve member would execute in order to avail himself of the rule's provisions.

As the basis for recommending repeal of this rule, the Secretary of State avers that "the provisions of the rule are already obsolete" and that "[t]he provisions of the rule have been superseded by changes to federal and state law."

SB 238

Agency: West Virginia Secretary of State

Subject: Freedom of Information Act Database. (153 CSR 52)

This is a new legislative rule that is recommended following passage of House Bill 2636 in 2015. This bill, which created a new section of code at § 29B-1-3a, requires public bodies to provide certain information concerning requests received pursuant to the West Virginia's Freedom of Information Act (FOIA requests) to the Secretary of State, who is then required to create a "publically accessible database available on the Secretary of State's website" that will make that information publicly available. W. Va. Code § 29B-1-3a (b); *see also* § 29B-1-3(f) (requiring the Secretary of State to "maintain an electronic database of notices of requests as required by section three-a, of this article"). The information-providing and recordkeeping requirements of this law will take effect on January 1, 2016.

SB 239

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

Subject: Licensure of Speech Pathology and Audiology. (29 CSR 10)

This rule change creates a new section six, "Additional Requirements for International Applicants – English as a Second Language Applicants." The section requires all application documents submitted to the Board be in English or sent with a certified translation into the English language. Any transcript from a foreign college or university must be submitted with a transcript evaluation by a credentials evaluation agency approved by the Board.

Section six also provides that an applicant whose primary language is not English, must meet in person with the Board before a license may be issued. The Board, at its discretion, may conditionally issue a license subject to an English remediation plan and/or restrictions on practice.

The rule amends the required clock hours a Speech-Language Pathology applicant must complete. The amount of required clock hours in Audiology is reduced from 30 to 20.

The rule also amends the required clock hours an Audiology applicant must complete under subsection 12.3. The amount of required clock hours in Speech-Language Pathology is reduced from 30 to 20.

SB 240

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

Subject: Speech-Language Pathology and Audiology Assistants. (29 CSR 2)

This rule amends the definition of “Credentialing” by providing that credentialing may take different forms, such as recognition, registration or certification. The rule removes “credentialing” as a possible form and inserts “certification”.

The current rule provides the same language for both speech-language pathology and audiology assistants in regards to their responsibilities. The new rule separates the two professions and outlines differing responsibilities into two separate sections. All the current responsibilities and limitations for a speech-language pathology assistant remain the same under section six. The rule creates a new section seven, outlining specific responsibilities and limitations for an audiology assistant.

The Legislative Rule-Making Review Committee recommended the rule be amended to allow a supervisor of speech-language pathology or audiology to supervise no more than three full-time assistants at any one time. The Legislature adopted the amendment and authorized the rule as modified and amended by the Rule-Making Review Committee.

Originating Bill No. 1

Agency: Department of Agriculture

Subject: Industrial Hemp. (61 CSR 29)

The Committee on the Judiciary voted to originate a bill which directs the Department of Agriculture to amend and promulgate a current legislative rule. The Committee on Agriculture and Rural Development adopted amendments to the rule during the 2015 Legislative Session and the Committee on the Judiciary also adopted those amendments. Due to a clerical error those amendments were not incorporated into the rules bundle. The amendments bring the rule within the scope of the Department’s authority. This is the appropriate bundle into which the originating bill should be incorporated.

HB 4406

Agency: Enterprise Resource Planning Board

Subject: Enterprise Resource Planning System User Fee. (213 CSR 1)

This rule amends an existing legislative rule promulgated by the Enterprise Resource Planning Board in 2015 relating to a user fee imposed upon state agencies for the maintenance of the enterprise resource system. These amendments were not proposed by the Enterprise

Resource Planning Board for review by the Legislative Rule-Making Review Committee during the most recent legislative rule-making cycle.

The existing rule gives the West Virginia Enterprise Resource Planning (ERP) Board exclusive authority to assess a user fee to be imposed upon every spending unit of state government using the ERP System (wvOASIS), with no limitation on the amount of the fee nor any opportunity for its review by the Legislature. The only criteria in the rule for setting the fee is whether the ERP Board's Special Revenue Fund has "a sufficient balance . . . to meet the operational and maintenance requirements of the ERP system."

The amendment to the rule freezes ERP user fee at \$200 per full-time employee and cap the ERP Fund's annual expenditure limit at \$8,312,200, all as provided by the ERP Board's fiscal note when the rule was initially considered last year, and expires the user's fee in its entirety at the end of 2017, effectively giving the ERP Board a full legislative rule-making cycle to propose for the Legislature's review its own amendments to the rule that establishes a different method for setting the annual fee.

Agency: Board of Medicine

Subject: Licensing and Disciplinary Procedures; Physicians; Podiatrists. (11 CSR 1A)

The House of Delegates added this rule to the Miscellaneous Bundle. The House amended one section of the current active rule related to the causes for denial, suspension, revocation or other limitations on licenses for osteopathic physicians. One basis for such action is the prescription of Schedule II controlled substances except under certain circumstances. The amendment to this rule would permit an osteopathic physician to prescribe a Schedule II controlled substance for the treatment of a person with a binge eating disorder and suffer no adverse consequences on his or her license.

Agency: Board of Osteopathic Medicine

Subject: Licensing Procedures for Osteopathic Physicians. (24 CSR 1)

The House of Delegates added this rule to the Miscellaneous Bundle. The House amended one section of the current active rule related to the causes for denial, suspension, revocation or other limitations on licenses for osteopathic physicians. One basis for such action is the prescription of Schedule II controlled substances except under certain circumstances. The amendment to this rule permits an osteopathic physician to prescribe a Schedule II controlled substance for the treatment of a person with a binge eating disorder and suffer no adverse consequences on his or her license.

This bill also directs the Department to repeal the following rules:

Agency: Department of Agriculture

Subject: Tobacco. (61 CSR 11A)

Agency: Department of Agriculture

Subject: Conduct of Beef Industry Self-Improvement Assessment Program Referendums. (61 CSR 11C)

Agency: Department of Agriculture

Subject: West Virginia Seal of Quality. (61 CSR 15)

Agency: Department of Agriculture
Subject: Aquaculture Farm Rules. (61 CSR 23)

Agency: Department of Agriculture
Subject: Conduct of Tree Fruit Industries Self-Improvement Assessment Program Referendums. (61 CSR 20)

Agency: Secretary of State
Subject: Matters Relating To Corporations and Other Business Entity Filing. (153 CSR 5)

Agency: Secretary of State
Subject: Matters Relating To Official Election Forms and Vendor Authorization. (153 CSR 26)

Agency: Cable TV Advisory Board
Subject: Franchising Procedures. (187 CSR 1)

Agency: Cable TV Advisory Board
Subject: Implementing Regulations. (187 CSR 2)

Agency: Cable TV Advisory Board
Subject: Calculation and Collection of Late Fee. (187 CSR 6)

Agency: Cable TV Advisory Board
Subject: Administrative Procedures for Consumer Complaint Resolution Under the West Virginia Cable TV Systems Act. (187 CSR 3)

Agency: Cable TV Advisory Board
Subject: Rate Regulation Procedures. (187 CSR 4)

Agency: Cable TV Advisory Board
Subject: Form and Service of Notice Under Section Eight, Article Eighteen-A, Chapter Five of This Code. (187 CSR 5)

Agency: Contractor Licensing Board
Subject: Consumer Complaints. (28 CSR 3)

Agency: Respiratory Care Board
Subject: Procedure for Licensure Applications. (30 CSR 1)

Agency: Attorney General
Subject: Freedom of Information. (142 CSR 2)

Agency: Municipal Bond Commission
Subject: Rules Of Procedure Covering Board and Executive Committee Meetings of the Municipal Bond Commission. (109 CSR 1)

Agency: Housing Development Fund
Subject: Refiling Of Administrative Rules Pertaining to Administration of Single-Family Mortgage Loans. (88 CSR 1)

Agency: Public Service Commission

Subject: Rules and Regulations for Carrier Access to the Lines and Facilities of Other Carriers. (150 CSR 18)

Agency: Public Service Commission

Subject: Rules and Regulations for Shipper Access to the Lines and Facilities of Rail Carriers. (150 CSR 19)

Agency: Infrastructure and Jobs Development Council

Subject: Establishing Procedures to Provide Public Notice of Date, Time, Place, Agenda and Purpose of Meetings of the West Virginia Infrastructure and Jobs Development Council and Manner in Which Meetings Are to Be Conducted. (167 CSR 2)

Agency: Water Development Authority

Subject: New Procedures In Relation to Providing Public Notice of Date, Time, Place and Purpose of Meetings of the West Virginia Water Development Authority and Manner In Which Meetings Are to Be Conducted. (44 CSR 3)

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: N/A

ACTION BY GOVERNOR: Vetoed April 1, 2016

Committee Substitute for Senate Bill 195

SHORT TITLE: Authorizing DHHR to promulgate legislative rules

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

SUMMARY:

This committee substitute bundles the following rules:

SB 195

Agency: Department of Health and Human Resources

Subject: West Virginia Clearance for Access; Registry and Employment Screening. (69 CSR10)

This is a new rule from the Office of the Inspector General within the Department of Health and Human Resources. The rule would create the West Virginia Clearance for Access: Registry and Employment Screening – known as WV CARES. This would require prescreening and criminal background checks on applicants for employment with direct patient access in long term care facilities. The rule was made necessary with the passage of S.B. 88 during the 2015 Regular Session of the Legislature.

The rule sets forth the standard scope, authority, dates, application and enforcement sections. It also defines key terms. Many of these terms are lifted from the authorizing statute. There are some additions, such as “Conviction” which has been defined in a similar manner as is currently in other legislative rules or the W. V. State Code; “Fitness Determination” which is defined as a finding by the Secretary after review of an applicant’s criminal history record information that the applicant is either eligible for employment or not; and “State Board of Review”, which is defined as a board within the Department designated by state law through which an applicant may appeal a negative fitness determination. There has also been greater detail provided for the definition of “Disqualifying Offense”. The statute states that the Secretary may specify in the rule other crimes that would constitute a “disqualifying offense”.

The rule provides for prescreening of applicants by an internet search of registries and licensure databases. A negative finding would preclude employment. There are also provisions for fingerprinting of applicants whose prescreening produced no negative findings. The collection of fingerprints is for a state and federal criminal history record information check. There are also notice requirements regarding retention of the fingerprints.

Following receipt of the results of the criminal background check the Secretary is required by the rule to make a determination as to the fitness of the applicant for hire. The rule provides that the Secretary may grant a variance if mitigating circumstances, as set forth in the rule, are found to exist by the Secretary. Applicants may also be hired on a conditional basis for 60 days pending the results of the criminal background check.

The rule contains a section which sets forth the appeal process for an adverse decision. It also covers the responsibility of covered providers and contractors. These include record retention and preclusions on employment without the proper background check. There is also a section on changes in employment to over covered providers which would not require fingerprinting and background checks.

SB 186**Agency:** Department of Health and Human Resources**Subject:** Emergency Medical Services. (64 CSR 48)

This is an amendment to an existing rule. The changes to the rule are a result of the passage of H.B. 4312 during the 2014 Regular Session of the Legislature. Many of the changes are stylistic and non-substantive.

The definition section was reorganized and updated with no substantive changes. In various places in the rule references to EMS were amended to Emergency Medical Services. There were also changes of a non-substantive nature to the portions of the rule regarding criminal background checks that make it more readable and understandable.

Of a substantive nature, the rule proposes to eliminate certification of Advanced Care Technicians. Any reference to this has been eliminated from the rule. The elimination of this classification is to be phased out over the course of the next two years with complete elimination by March 31, 2017. Consistent with the aforementioned bill, the rule also substitutes the term "EMT-Industrial" for "EMT-Miner" and adjusts the necessary training requirements to mirror the changes to the statute.

The rule also provides for the establishment of up to six (6) community paramedicine demonstration projects. This would allow a two (2) year project for an emergency medical service provider in an out of hospital setting to provide episodic patient evaluation, advice and care to prevent and improve medical conditions which may result in emergency medical services. At the conclusion of the two year project, a report is required to be submitted to the Commissioner of the Bureau for Public Health regarding utilization, analysis of community care and coordination improvement, and reduction in health care costs.

SB 187**Agency:** Department of Health and Human Resources**Subject:** Fees for Service. (64 CSR 51)

This is an amendment to an existing rule. The rule sets fees for services provided by the Bureau for Public Health and for local boards of health. The amendments to the rule provide for fees for services that are not currently charged.

The current rule provides for the standard Application and Enforcement section and defines key terms used in the rule. Neither of these sections were amended. Within the actual rule the only change was to eliminate the section pertaining to fees for record searches (4.4). This section was in contradiction to West Virginia Code §29B-1-3(e) which prohibits a charge for search or retrieval fees as part of costs associated with making reproductions of records.

The more substantive changes were to the appendix section of the rule which sets forth the actual fees to be charged. Primarily the charges are for services that were being provided for which there was no fee set. These include:

Testing for inorganic chemicals and include a Metals Regulatory Package, Metals Secondary Package, Metals Lead and Copper, Wet Chemistry Package and an Anions Package. An "anion" is defined as a negatively charged ion.

Testing for organic compounds that include EPA Unregulated Contaminants, EPA Regulated Synthetic Organic Compounds such as pesticides, Trihalomethanes and Haloacetic Acids< DBP Anions and Organic non Routine Analysis. Definitions of these terms are listed here:

1. **Trihalomethanes (THMs)** are chemical compounds in which three of the four hydrogen atoms of methane (CH₄) are replaced by halogen atoms. Many trihalomethanes find uses in industry as solvents or refrigerants and
2. **Haloacetic acids** are carboxylic acids in which a halogen atom takes the place of a hydrogen atom in acetic acid. Haloacetic acids (HAAs) are a common undesirable by-product of drinking water chlorination.
3. **DBP Anions** are vitamin D binding proteins.

There is a new section dedicated to Fees for Diagnostic Immunology that pertain to testing for commonly known communicable diseases. These include: syphilis, rubella, HIV screening hepatitis, etc. A comprehensive list of these tests are set forth in Appendix A, Section 9.

SB 188

Agency: Department of Health and Human Resources

Subject: Infectious Medical Waste. (64 CSR 56)

This is an amendment to an existing rule. The rule pertains to disposal of medical waste and has not been updated since 1999. Advances in technology, federal regulation, state law and practice have led to the need to update the provisions of the rule. A number of stakeholders and stakeholder groups were invited to participate in the drafting of the changes to the rule.

A number of substantive changes were made to the rule. These include definitions for “hazardous waste” and “waste”. These definitions can be found in Section 3 of the rule. The definitions reference the appropriate definitions of these terms in State code and federal regulations. The rule also updates the notice requirements throughout the rule and requires that public notices include an appropriate e-mail address.

The portion of the rule pertaining to waste management plans (Section 5) has been updated to provide for prevention and mitigation procedures for spills. This section also removes the ability for the Secretary of the Department of Health and Human Resources to grant a waiver for one year for U.S. EPA rules relating to medical waste incineration.

A new subsection (subsection 7.3) has been added to the rule pertaining to small quantity generators. This section contains information on location and contents of kits to provide for rapid and efficient cleanup of spills. It is similar to the provisions for large quantity generators that was in the existing rule. There is also a new subsection (subsection 7.4) which pertains to transportation of infectious medical waste. This section sets forth what must be contained in a transport contamination kit.

The sections pertaining to civil and criminal penalties have been updated to reflect and mirror what is provided for in the West Virginia Code at §22-18-16 and §20-5J-9. Finally, the unnecessary severability section (Section 20) was deleted.

The rule has been updated throughout to include references to applicable federal regulations.

SB 189

Agency: Department of Health and Human Resources

Subject: AIDS-Related Medical Testing and Confidentiality. (64 CSR 64)

This is an amendment to an existing rule. The rule pertains to procedures for AIDS related testing and confidentiality standards. The amendment to the rule is minimal and corrects an error in the section of the rule pertaining to the data that laboratories must report. The change is in Section 13 of the rule and the amendment changes the language in Subdivision 13.1.b to mirror the reporting requirements in Subdivision 13.1.

SB 190

Agency: Department of Health and Human Resources

Subject: Tuberculosis Testing, Control, Treatment and Commitment. (64 CSR 76)

This is an amendment to an existing rule regarding tuberculosis testing. The changes were made necessary with the passage of H.B. 2669 during the 2015 Regular Session of the Legislature. That bill eliminated the necessity of requiring all students transferring from a school outside of this state, or enrolling for the first time after moving from another state to furnish a certification from a licensed physician that a skin test was performed within the preceding four months.

The newly amended provisions of the rule simply provide that students who are identified or suspected of active tuberculosis are to be removed from school pending a review of their case by their personal physician and the local health officer. They are only permitted to return after a finding is made by their personal physician, the local health officer and the Commissioner of the Bureau for Public Health that it safe and appropriate. A similar provision is also included regarding school personnel.

The rule also contains a number of drafting and stylistic updates.

SB 191

Agency: Department of Health and Human Resources

Subject: Farmers Market Vendors. (64 CSR 102)

This is a new rule from the Bureau for Public Health pertaining to permits to be issued for vendors participating in farmer's markets. The rule was promulgated with input from the Department of Agriculture in response to S.B. 304 which passed during the 2015 Regular Session of the Legislature.

The bill contains the standard applicability section. It also defines key terms used in the rule. The rule provides for a procedure to obtain a permit to sell in a farmers market. There are two types of permits. The first is Uniform Farmers Market Permit which permits sales at more than one market in more than one county in West Virginia. The second is a permit to sale within a single jurisdiction of one local health department.

There are provisions for an application that includes what is necessary to complete the application. There is also a section regarding fees. There are permit posting requirements and a

provisions for expiration of the permit – they are valid from July 1 to June 30 every year. The rule also grants authority for inspections by local health officers.

Finally there are provisions for denial, suspension and revocation for a vendor not meeting the statutory requirements of West Virginia Code §19-35-1, et. seq.

SB 192

Agency: Department of Health and Human Resources

Subject: The Certification of Opioid Overdose Prevention and Treatment Training Programs. (64 CSR 104)

This rule was made necessary by the passage of S.B. 335 during the 2015 Regular Session of the Legislature. That bill provided for first responders to carry an opioid antagonist to administer to persons who are experiencing an opioid overdose. The administration of the antagonist would neutralize the effects of the opioid.

This rule would provide the structure for the training that is necessary for the administration of the antagonist. It contains the standard applicability and purpose sections and defines key terms. It sets forth the necessary factors for the training for competence, skill and education of responders. It also sets out the procedure for distribution of training materials, how the training is to be presented, minimum acceptable proficiency and a certificate of completion.

The means for application and approval of training programs is established in the rule. There is an application process – including a timeline. The process also includes what information must be submitted on the application for approval. There are conditions set forth on what constitutes a complete application and a means for correcting deficiencies. There is also a provision on continuing approval that provides for re-approval in specified circumstances and a provision that allows for on-site reviews of training courses.

The final provision in the bill provides for denial, suspension or revocation of approval if the program fails to meet the statutorily required mandates. This section provides for notice provisions and allows for an administrative hearing which will be conducted in accordance with the WV Administrative Procedures Act.

SB 193

Agency: Department of Health and Human Resources

Subject: Chronic Pain Management Licensure. (69 CSR 8)

This is an amendment to an existing rule. The rule pertains to licensing procedures and requirement for operation of a pain clinic in West Virginia. The Office of Health Facilities Licensure and Certification began the process of reviewing clinics in July of 2014. Since that time they have realized some amendments are necessary to the rule for it to be fully effective.

The rule was made necessary by the passage of S.B. 437 during the 2013 regular session of the Legislature. It establishes the standard for operation of a pain management clinic.

The rule contains standard scope, applicability, purpose and enforcement sections. It also defines key terms. Notable among these are:

- Chronic Pain - which is pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously

or episodically, for longer than three continuous months. Chronic pain does not include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

- Opioid Drug Product - any finished dosage form that contains as one of its active ingredients a drug substance that has pharmacological properties similar to morphine, including its analgesic action and its addiction-forming or addiction-sustaining liability, or that can be converted by the body into a drug substance having such properties. Opioid drug products include, but are not limited to, those containing morphine, codeine, hydrocodone and oxycodone.

The amendments proposed to the rule contain a new definition for “Designate Physician Owner”. This is an owner who is fully accountable and responsible for operation of the Clinic who must own at least a 25% share of the business. The Department was finding that owners were owning a very small percentage of the business and no physician was involved in the operation of the clinic. This change would require the physician to take an active role.

The rule contains a separate definition section that defines a pain clinic and sets forth exemptions. This is a privately owned clinic facility or office that treats patients for chronic pain and where more than 50% of all patients in one month are prescribed tramadol, carisoprodol, opioid drugs or other Schedule II or III controlled substances. To reach the 50% mark you divide the average monthly total of patients over a 12 month period by the number of unique patient encounters during any one month for a diagnosis of chronic pain and being prescribed the aforementioned drugs. Exemptions from pain clinics include: a facility associated with a medical school, a facility that does not prescribe controlled substances for treatment of chronic pain, a hospital, a physician practice owned by a hospital, hospice programs, nursing homes, ambulatory surgical facilities, facilities conducting clinical research, state owned hospitals and any facility granted an exemption by the Secretary.

There is a section that pertains to general licensing provisions. New to this section with these amendments would be a provision allowing for a one year license if the clinic does not meet all of the provisions of the rule but their non-compliance does not pose a significant health or safety risk. This section has also been amended to make the required timeframes more readable. It also now contains a section regarding reapplication upon an initial denial.

The rule provides of unannounced inspections and sets forth guidelines for conducting these inspections. Deficiencies found during an inspection may result in a plan of correction. Owners, employees, volunteers and associates of the clinic are required to have a criminal background check. Persons with felony convictions may not own, be employed or associate with a pain clinic. There are also restrictions when a DEA number has been revoked, a license to prescribe controlled substances has been denied or when someone entered a guilty plea on a felony drug charge. Amendments made to the rule lay out what information the Department would be reviewing during an inspection. These include:

1. Identifiers of persons receiving treatment;
2. Patient diagnosis;
3. Demographic information;
4. Lists of medications administered, including dates; and

5. Access to patient records.

Responsibilities and duties of ownership are spelled out in the rule. These include an annual review of clinic operations. There are also specified licensing, training, education and experience requirements for physician owners. There are also requirements for a clinic administrator. These include job responsibilities and duties and education requirements.

The rule sets forth clinic and facility requirements regarding space, maintenance, security and parking. There are also staffing requirements relative to licensing and credentialing, experience, prohibitions set forth in the rule, developing job descriptions and personnel files. An amendment to this section requires policies and procedures regarding confidentiality of all patient records.

The rule spells out patient rights regarding being informed, the right to receive treatment, the right to participation in developing their plan of care, knowledge of the need to access the controlled substance monitoring database, required drug testing, confidentiality, a safe setting and a grievance procedure.

The requirements for coordination of patient care set out an initial assessment and all that is required of that, the need for subsequent assessments, a plan of care and medication security and administration. This section limits dispensing of any controlled substance to a 72 hour supply. It also requires physicians to access the Controlled Substances Monitoring Database at specified times during the course of treatment. There are also storage, handling, documentation and access requirements set forth in the rule. An amendment to this section provides for laboratory tests and toxicology screening at least every 90 days as part of patient assessments.

Record keeping requirements are set forth in the rule. These include both patient and business records. The rule specifies what must be included in patient records. They are required to meet all state and federal laws - most specifically HIPAA. Records are required to be maintained for 5 years post treatment and shall be kept confidential.

There are specified laboratory requirements that state all clinics need to have the capacity to obtain medication blood levels and urine samples. There is also a requirement that the clinics access quality and performance improvements for patient care at least annually. They are also required to have internal policies regarding quality assessment and performance improvement. This information is to be provided upon request to the Secretary.

The rule requires an effective infection control program that meets nationally recognized standards. The clinic is required to designate a persons to oversee this. They are also required to develop policies regarding adverse events. The rule specifies that these include medication errors, patient suicide, patient deaths, harm to other from ingesting a patient's medication, selling drugs on the premises, drug diversion, harassment or patients by staff, threats and intimidation of staff and violence. Adverse events are required to be reviewed quarterly. Deaths are required to be reported to the Secretary within 48 hours.

Any advertisement regarding the pain management clinic is required to contain the name of the physician owner.

The rule states the grounds for revocation or suspension of a license. A suspension may not last longer than 1 year. There are also requirements for a stay to properly refer and place

patients, the need to remove identifying signs, disposition of drugs and a preclusion for a new application within 5 years. Following a revocation the Secretary may considered a new application if all deficiencies have been corrected. An amendment to this section provides for what specific information is required to be shared with the Department upon a revocation, suspension or denial of a license. These include copy of closure notices, copy of patient letters regarding the closure, the number of effected patients and a copy of the legal advertisement placed in the local paper.

There is a section that permits the Secretary to access a civil penalty for operating a pain clinic without the appropriate license. This section also contemplates injunctive relief to be sought by the Secretary. Finally, the rule allows for necessary due process requirements prior to suspension or revocation of a license and allows the owner to appeal a decision of the Secretary to the Circuit Court of Kanawha County or in a county where the petitioner resides or does business.

SB 194

Agency: Department of Health and Human Resources

Subject: Neonatal Abstinence Centers. (69 CSR 9)

This is a new rule filed by the Department of Health and Human Resources. The rule became necessary with the passage of H.B. 2999 during the 2015 Regular Session of the Legislature. The rule provides for the licensing of Neonatal Abstinence Centers. Currently only one of these centers exist in West Virginia.

The rule contains the standard general provisions regarding Scope, Authority, Filing Date, etc. It also defines terms. Its sets out the requirements of a license including a process, fees and an inspection. It provides for three types of licenses: initial, provisional and complete. It also contains a procedure for denial of a license if the application is incomplete, the center is operating outside state standards, the inspection was not sufficient or there have been misrepresentations in obtaining the license. There is also a section on license renewal.

The powers and duties of the agency are set forth. These include the application process, inspections - including inspection of records, monitoring of center activities, a complaint process, plans of correction, etc. The specifics of all of these duties are included in the rule and are fairly standard for centers of this nature. There is also a section on penalties. This section allows the oversight agency to levy a fine, suspend or revoke a license. A center is permitted to avail itself of an informal dispute resolution which is set forth in the rule upon a finding of any discrepancies.

There is a section detailing the administrative organization of a center. These provide for a governing body, an administrator, an advisory council, and a quality improvement committee. The duties and responsibilities of each are set forth in the rule. This section also provides for contractual relationships with vendors, professionals, contractors and clinical services. This section details required contract terms, specifics about contracting for clinical and professional services, and record keeping requirements.

There is a fairly standard section regarding the physical facility. This provides for construction and renovation standards, security requirements, requirements for the service environment, laundry and linen requirements, housekeeping and maintenance, storage of supplies, site characteristics, infection control, waste disposal, water supply, sewage disposal, and fire safety, disaster and emergency preparedness.

The rights and responsibilities of the patient, his or her parent and/or legal representative are spelled out in the rule. These include required policy and procedures regarding their rights and responsibilities and availability of these. There are civil rights requirements set forth, a section regarding abuse, neglect and misappropriation of property, a section specific to legal representatives, a staff duties section, specifics regarding informed consent, requirements for confidentiality and access of records and information, visitation standards and requirements, a section pertaining to refusal of treatment and experimental research, a complaint and grievance procedure and a final section dealing with parental participation.

The manner in which a center responds, reacts and resolves incidents and indecent reporting is included. This section provides specificity regarding critical incidents which are those with potential for harm or death to a patient. It also sets forth how they are reported and investigated.

There is a section setting forth the required staff of the center. This requires a medical director who is a physician. His or her responsibilities and duties are set forth. There is a required director of nursing and his or her responsibilities and duties are set forth. There is a necessity for the centers to hire registered professional nurses, social workers, personal care assistants and volunteers. The educational and background requirements of all of these staff functions is set forth in the rule. The rule also specifies necessary staffing ratios, staff training and development requirements, necessary personnel record keeping requirements and required criminal background checks.

Criteria for admission and discharge of patients at the facility is set out in the rule. This section also deals with transfer of a patient to another facility.

There is a section that pertains to the plan of care. This sets forth necessary examination, testing standards, standing medical orders, comprehensive assessments, medical and physical assessments, a comprehensive summary of findings, and detail on what is required to be included in the plan of care. It also sets forth the means for development of the plan of care, who is included in its development, timelines and necessary reviews of the plan.

The standards for pharmacological interventions are set out in the rule. This section pertains to proper handling of medications— including storage and disposal, dosage, documentation, labeling and notice requirements to use medications in treatment. Staffing responsibilities are set forth and there is a section dealing with medication errors. There are standards for diversion, theft and loss. There are also requirements for administration of narcotic medications.

Similarly there is a section on non-pharmacological interventions. This pertains to low stimulus environment as patients experience withdrawal. There is a section on therapeutic handling and requirements for feeding, transportation and physician services. A section that requires parental education and counseling is also included. This sets forth minimum requirements for parental counseling.

A final section that sets forth standards for medical records and retention is set forth. This section contains the necessary elements to include in a medical record. These standards are substantially similar to other medical record requirements in similar rules. The elements that are necessary to be included in a medical record are set out in the rule.

SB 196**Agency:** Department of Health and Human Resources**Subject:** Child Care Licensing Requirements. (78CSR1)

This is an amendment to an existing rule which sets forth the minimum licensing requirements for operation of child care centers. The amendments delete the statutorily unsupported provision that allowed parents to provide written documentation exempting their children from immunization requirements for religious reasons. This was made necessary by the passage of S.B. 286 which clarified that any state regulated child care center could not allow any such exemption.

The rule also updated statutory references made necessary with the passage of H.B. 2200 which recodified all of the existing child welfare laws.

SB 197**Agency:** Department of Health and Human Resources**Subject:** Family Child Care Facility Licensing Requirements. (78 CSR 18)

This is an amendment to an existing rule which sets forth the minimum licensing requirements for operation of a Family Child Care Facility. There were three substantive changes to the rule.

1. The amendments would require that any applicant for a license to operate a family child care facility is required to comply with the federal Department of Agricultural Pest Management. This is a provision that is specifically required by West Virginia Code §49-2-121.
2. The amendments delete the statutorily unsupported provision that allowed parents to provide written documentation exempting their children from immunization requirements. This was made necessary by the passage of S.B. 286 which clarified that any state regulated child care center could not allow any such exemption.
3. The final change would bring the state into compliance with newly enacted federal regulations within the Consumer Product Safety Commission Standards which preclude the use of any pack and play yard manufactured prior to February 19, 2014.

The rule also updated statutory references made necessary with the passage of House Bill 2200 which recodified all of the existing child welfare laws.

SB 198**Agency:** Department of Health and Human Resources**Subject:** Family Childcare Home Registration Requirements. (78 CSR 19)

This is an amendment to an existing rule which sets forth the minimum licensing requirements for operation of a family child care facility. There were three substantive changes to the rule.

The amendments would bring the state into compliance with newly enacted federal regulations within the Consumer Product Safety Commission Standards which preclude the use of any pack and play yard manufactured prior to February 19, 2014.

The rule also updated statutory references made necessary with the passage of H.B. 2200 which recodified all of the existing child welfare laws.

SB 199

Agency: Department of Health and Human Resources

Subject: W.Va. Works Program Sanctions. (78 CSR 23)

This is a new rule from the Department of Health and Human Resources, Bureau for Children and Families. It establishes the sanctions for violations of provisions of West Virginia Works. It was made necessary by the passage of S.B. 274 during the course of the Regular Session of the 2015 Legislature.

The rule contains the standard general section which include scope, authority and necessary dates. It also defines key terms.

The substance of the rule deals with a breach of the personal responsibility contract, commission of fraud, deception, any code or rule violation or a violation of Department policy. It provides for termination of benefits for the commission of any of these acts.

The rule also provides for the imposition of sanctions on a sliding scale depending on whether the breach is the first, second, third or fourth offense. There are notice requirements and the rule sets forth that the beneficiary carries the burden of proof.

SB 200

Agency: Department of Health and Human Resources

Subject: Qualifications for a Restricted Provisional License to Practice as a Social Worker within the Department. (78 CSR 24)

This is a new rule from the Bureau of Children and Families within the Department of Health and Human Resources. The rule was made necessary with the passage of S.B. 559 during the course of the 2015 Regular Session of the Legislature. The bill sets forth the provisions for granting a provisional license to practice as a social worker within the Department of Health and Human Resources.

The rule contains standard introductory provisions such as scope and purpose. It also defines key terms. Many of the defined terms were structured to conform to Social Work Examiners Rule 25 CSR 1. Other terms were based upon common usage.

The rule sets out hiring of individuals who are eligible for a Restricted Provisional Social Work License and for completing and documenting initial and ongoing training. There is also a section which sets out the requirements for maintaining the license. These include keeping a license current and active.

The final section of the rule pertains to the development of a Comprehensive Training Program. The authorizing statute required the Department of Health and Human Resources to consult with Higher Education Policy Commission and the West Virginia University and Marshall University Schools of Social Work in development of the rule. Section 6.3 of the rule would expand upon this and also require consultation in the development of the Comprehensive Training Program. The content of the training curriculum will include content similar to that necessary for a regular Social Work Provisional License. It is also required to include basic and advance social work content and specific content related to the position for which an individual is employed.

SB 201**Agency:** Department of Health and Human Resources**Subject:** Goals for Foster Children. (78 CSR 25)

This is a new rule which was made necessary with the passage of H.B. 2527 during the course of the 2015 Regular Session of the Legislature. The rule pertains to goals for children who are in the foster care system. The rule contains the standard Scope and Purpose sections and sets out important dates and statutory authority for the rule.

Key terms are defined in the rule. The rule also sets forth goals that should be attained for a child in the foster care system. These include: protection by the family, nurturing by foster parents, a safe foster home, communication with a person assigned responsibility for the case, permission to remain in school and participation in school activities, communication with biological parents, bank and savings accounts, proper identification documents, contact with siblings and meaningful participation in their transition plan.

There is included in the rule a section related to communication between a foster child and his or her case worker to provide an adequate means for the child to be heard. This provides for immediate attention should the foster child need an issue resolved. This section would require notification to the Circuit Court upon resolution of the issue.

The rule concludes with a section on the burden of proof for ensuring that the goals were met.

SB 216**Agency:** Human Rights Commission**Subject:** Pregnant Workers' Fairness Act. (77 CSR 10)

This Legislative Rule-Making Review Committee recommend this rule with amendments be authorized to the full Legislature. However, the rule exceeded the scope of its statutory authority and was re-written by the Senate Committee on the Judiciary.

The Judiciary Committee reported out a proposed committee substitute that addressed provisions in the rule that conflicted with or exceeded the scope of the Pregnant Workers' Fairness Act. The proposed committee substitute provided definitions for terms that complied with the PWFA under section two. The committee substitute specifically added a definition for the term "affected by pregnancy," which is defined as "a woman who is pregnant or is experiencing medical conditions related to her pregnancy which has ended."

In addition, examples of reasonable accommodations are provided under section three. The committee substitute provided for a non-exhaustive list of reasonable accommodations that may be made by a covered entity.

This bill also directs the Department to repeal the following rules:

Agency: Department of Health and Human Resources**Subject:** Preliminary Requirement for Approval by the West Virginia Department of Health of a Laboratory for a Specified Technique. (64 CSR 26)

Agency: Department of Health and Human Resources
Subject: Ice Cream and Frozen Milk. (64 CSR 28)

Agency: Department of Health and Human Resources
Subject: Establishment of a Controlled Substances Therapeutic Research Program and the Certification of Patients, Practitioners and Hospital Pharmacies. (64 CSR 33)

Agency: Department of Health and Human Resources
Subject: Instillation of Medication in the Eyes of the Newborn and the Dissemination of Advice and Information Concerning the Dangers of Inflammation of the Eyes of the Newborn. (64 CSR 35)

Agency: Department of Health and Human Resources
Subject: Hazardous Materials Treatment Information Repository. (64 CSR 53)

Agency: Department of Health and Human Resources
Subject: Immunization Criteria for Transfer Students. (64 CSR 58)

Agency: Department of Health and Human Resources
Subject: Specialized Health Procedures in Public Schools. (64 CSR 66)

Agency: Department of Health and Human Resources
Subject: Incorporation of the Handicapped Children Services Manual. (78 CSR 9)

Agency: Department of Health and Human Resources
Subject: Termination of Income Withholding. (78 CSR 11)

Agency: Department of Health and Human Resources
Subject: Obtaining Support from Federal and State Income Tax Refunds. (78 CSR 12)

Agency: Department of Health and Human Resources
Subject: Interstate Income Withholding. (78 CSR 13)

Agency: Department of Health and Human Resources
Subject: Providing Information to Credit Reporting Agencies. (78 CSR 14)

Agency: Department of Health and Human Resources
Subject: Health Facilities Plan for the Fiscal Years 1985-89. (64 CSR 37)

Agency: Department of Health and Human Resources
Subject: Design, Information and Procedural Manual for Mobile Home Parks. (64 CSR 41)

Agency: Department of Health and Human Resources
Subject: Pertussis Guidelines. (64 CSR 52)

Agency: Department of Health and Human Resources
Subject: Procedural Rules for the Advisory Committee for the Omnibus Health Care Act. (69 CSR 4)

Agency: Health Care Authority

Subject: Freeze on Hospital Rates and Granting of Temporary Rate Increases. (65 CSR 2)

Agency: Health Care Authority

Subject: Utilization Review and Quality Assurance Program – Phase 1. (65 CSR 4)

Agency: Health Care Authority

Subject: Limitation on Hospital Gross Patient Revenue. (65 CSR 8)

Agency: Health Care Authority

Subject: Exemption for Rural Primary Care Hospitals. (65 CSR 25)

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: March 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

**Committee Substitute for
Senate Bill 202**

SHORT TITLE: Authorizing Department of Commerce promulgate legislative rules

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

SUMMARY:

This bill authorizes the Department of Commerce to promulgate the following rules:

SB 202

Agency: Division of Natural Resources

Subject: Wildlife Resources Section, Prohibitions when Hunting and Trapping. (58 CSR 47)

The Division of Natural Resources has promulgated this rule in response to the elimination in Code of “official game checking stations.” The amendment simply strikes two words referring to official game checking stations and now only requires that a hunter/trapper provide the “game tag number” instead of the “official game checking tag number.”

SB 203

Agency: Division of Natural Resources

Subject: Wildlife Resources Section, General Hunting Rules. (58 CSR 49)

The Division of Natural Resources has promulgated this rule in order to add language relating to the electronic registration of deer and turkey, the addition of crossbows to the weapons permitted at Green Bottom and Fox Forest Wildlife Management Areas, and the requirement of mandatory bear tooth submission by successful bear hunters.

SB 204

Agency: Division of Natural Resources

Subject: Wildlife Resources Section, Deer Hunting Rules. (58 CSR 50)

The Division of Natural Resources has promulgated this rule in order to add language which addresses the use of crossbows for deer hunting as well as license requirements, modifications to language regarding the permit procedures for limited antlerless deer permits and state park deer season permits, and minor technical changes relating to the electronic registration of deer.

SB 205

Agency: Division of Natural Resources

Subject: Wildlife Resources Section, Wild Boar Hunting Rule. (58 CSR 52)

The Division of Natural Resources has promulgated this rule in order to make revisions that include the addition of crossbows to the weapons permitted during the boar firearms season and a technical change relating to the electronic registration of wild boars.

SB 206

Agency: Division of Natural Resources

Subject: Wildlife Resources Section, Elk Restoration and Management Rule. (58 CSR 74)

The Division of Natural Resources has promulgated this Rule in order to establish the West Virginia Elk Management Program. The intent of this program is to promote the repopulation of elk in West Virginia.

The House of Delegates amended the rule on page one, section three, by inserting language to clarify an "Elk Management Plan".

SB 217

Agency: West Virginia Division of Labor

Subject: Wage Payment and Collection. (42 CSR 5)

Senate Bills 12 and 318, both passed during the 2015 Legislative Session, amended the Wage Payment and Collection Act. Senate Bill 12 standardized the law concerning the time by which employers must pay employees their final wages, regardless of the reason for the separation. Senate Bill 318 modified the Code to permit employers to pay employees twice monthly without having to seek a variance from DOL, so long as the bi-monthly settlements are no more than nineteen days apart. DOL now proposes several modifications to the current rules implementing that Act.

The House of Delegates amended the rule on page seven, subsection 10.4 and subdivisions 10.4.1 and 10.4.2, by inserting language to clarify that an employer or a claimant may submit evidence for consideration by the Division of Labor.

SB 218

Agency: Division of Labor

Subject: Minimum Wage and Maximum Hours. (42 CSR 8)

The Division of Labor has promulgated this rule pursuant to passage of House Bill 4283 during the 2014 Regular Session and House Bill 201 during the Second Extraordinary Session. The rule sets forth criteria for employer and employee exemptions, determination of compensable time, employer credits and other matters relating to minimum wages, maximum hours and overtime compensation.

The Senate amended the rule on page one, section two, by adding a new subsection to clarify the enforceability of the provisions of the rule.

SB 219

Agency: West Virginia Division of Labor

Subject: Elevator Safety Act. (42 CSR 21)

The Department of Labor modified two sections of the current legislative rule. First, DOL amended the references to the applicable codes, all produced by the American Society of Mechanical Engineers (ASME) related to elevators, escalators, moving walks, platform lifts and stairway chairlifts. Second, the DOL increased the fee to be charged to individuals seeking to be issued a certificate of competency as an elevator inspector from \$10 to \$90.

SB 220

Agency: West Virginia Division of Labor

Subject: Licensing of Elevator Mechanics and Technicians and Registration of Apprentices. (42 CSR 21A)

The modifications to this legislative rule offered by the Department of Labor amend the references produced by the American Society of Mechanical Engineers (ASME) to the applicable codes related to elevators, escalators, moving walks, platform lifts and stairway chairlifts.

SB 222

Agency: WorkForce West Virginia

Subject: West Virginia Prevailing Wage Act. (96 CSR 4)

The rule series 96CSR4 is a new series offered by WorkForce WV pursuant to W.Va. Code §21-5A-12.

The rule defines the regions of the state that will be used to calculate the prevailing hourly rate of wages. Also, the rule provides the process for addressing written objections to the methodology to calculate the wages.

Any public authority or political subdivision contemplating the construction of a public improvement project exceeding \$500,000 in public money must obtain the prevailing hourly rate of wages from WorkForce. Such rates shall be incorporated into the contract specifications. The subdivision also provides that any affected person may object to the methodology for determining the prevailing hourly rate of ways or the rate of wages by filing a written objection with the Executive Director in accordance with the process provided for in the rule.

SB 224

Agency: Office of Miners' Health, Safety and Training

Subject: Substance Abuse Screening Standards and Procedures. (56 CSR 19)

The Office of Miners' Health, Safety and Training, in response to S.B. 357 (The Coal Jobs and Safety Act of 2015), has amended its current rules to bring them into conformity with the provision in S.B. 357 which states that if a miner refuses or fails a drug test, the agency may immediately suspend the miner's certification instead of waiting, in the case of union miner, for the outcome of the arbitration. The rule is also amended to include sections from S.B. 357 which states that a certified employee may not rely on a prescription that is dated one year prior to the date of the drug test result.

Agency: Contractor Licensing Board

Subject: WV Contractor Licensing Act. (28 CSR 2)

This rule was added to the Commerce Rules Bundle by the House of Delegates. The House amended the definition of "Remodeling and Repair Contractor" on page seven, subsection 3.29, by increasing the cost of the undertaking from "\$15,000.00" to "\$40,000.00".

Agency: West Virginia Division of Tourism

Subject: Direct Advertising Grants Program. (144 CSR 1)

The Division of Tourism (DOT) proposed a number of amendments to the current legislative rule governing the awarding of Direct Advertising Grants. The Division withdrew the proposed rule at LRMRC's request because they did not have the authority to promulgate the proposed rule. The Tourism Commission is the body with the authority to promulgate the rule.

The Committee Substitute contains language directing the Tourism Commission to promulgate the Division's current legislative rule with amendments.

In response to the enactment of SB 273, the phrase "craft breweries, distilleries, and mini-distilleries" is added to the definition of "Attraction" (section 2.4) and "Destination" (section 2.7).

Section six discusses the permissible expenditures of state funds. Subsection 6.2, which addresses the directing of these advertising funds, requires seventy-five percent (75%) to be directed outside of the local market, with certain exceptions. This constitutes a change from the current eighty percent (80%) standard. An additional provision gives the Tourism Commission authority to permit, on a case-by-case basis, a grant recipient to spend more than 25% of their grant monies in the local market, so long as that money "cost effectively researches a well-researched target market."

Section seven contains modifications to the grant levels. Currently, applicants can receive up to two small grants per fiscal year, and the total of all small grants awarded cannot exceed \$2,000,000 per year. The rule limits applicants to receiving one grant per fiscal year. Additionally, the \$2,000,000 maximum on small grants is eliminated. Relatedly, a proviso is eliminated that allows a non-profit grant recipient to apply for and receive small grants, even when it has received a larger grant in the same fiscal year. With respect to the Fairs and Festivals grants program, the amendments allow an applicant to receive only \$5,000 per year, rather than \$5,000 per quarter. Likewise, the \$1,000,000 maximum for total grants awarded under this program is eliminated. In both cases the amendment makes modifications to the deadline for applying for these – currently, applications must be received forty-five days in advance of the start of the project, while under the new rule applications would need to be received by "established deadlines."

This bill also directs the Department to repeal the following rules:

Agency: Division of Natural Resources

Subject: Shoreline Camping Of Government Owned Reservoir Areas in West Virginia. (58 CSR 30)

Agency: Division of Natural Resources

Subject: Special Bear Hunting. (58 CSR 48)

Agency: Division of Natural Resources

Subject: Rules for Open Government Proceedings. (58 CSR 1)

Agency: Division of Labor

Subject: West Virginia Safety Code for Aerial Passenger Tramways, Lifts and Tows. (42 CSR 2)

Agency: Division of Labor

Subject: West Virginia Prevailing Wage Act. (42 CSR 7)

Agency: Commercial Whitewater Advisory Board

Subject: Commercial Whitewater Outfitters. (182 CSR 1)

Agency: Commercial Whitewater Advisory Board

Subject: Regulations for Open Governmental Proceedings. (182 CSR 2)

Agency: Commissioner of Employment Security

Subject: Regulations of the Commissioner of Employment Security. (83 CSR 1)

Agency: Commissioner of Employment Security

Subject: Implementation of a Pilot Employment Supplemental Matching Program. (84 CSR 2)

Agency: Division of Forestry

Subject: Freedom of Information Act requests. (22 CSR 4)

Agency: Minimum Wage Rate Board

Subject: West Virginia Prevailing Wage Act. (43 CSR 1)

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: March 11, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

**Committee Substitute for
Committee Substitute for
Senate Bill 259**

SHORT TITLE: Amending Unfair Trade Practices Act

CODE REFERENCE: §47-11A-1, §47-11A-2, §47-11A-5, §47-11A-6, §47-11A-8, §47-11A-9, §47-11A-14 (Amends); §47-11A-10, §47-11A-12 and §47-11A-13 (Repeals)

SUMMARY:

Senate Bill 259 amended the Unfair Trade Practices Act. The Act prohibits retailers and wholesalers from selling goods at prices less than cost. It also prohibits the use of rebates, refunds, commissions or unearned discounts not extended to all purchasers from being extended to certain purchasers for the purpose of injuring competition. In addition to possible civil injunctions and damage suits, a violation of the Act constitutes a misdemeanor, and upon conviction is subject to a \$100 to a \$1,000 fine, or up to 90 days of jail, or both.

First of all, the bill repealed §47-11A-10, §47-11A-12 and §47-11A-13. Section ten provided that the Attorney General, upon a party's third conviction for violation of the Act, may seek to forfeit the party's right to do business in the state. Section twelve provided that contracts violating the provisions of the Act are unenforceable. Section thirteen provided that proof of an advertisement, offer to sell, or the sale of any product for a below-cost price is prima facie evidence of a violation of the Act.

The bill amended the elements for what constitutes an unlawful below-cost sale. It provides that it's unlawful for any retailer or wholesaler to sell, offer for sale, or advertise to sell any product at a price less than the cost thereof with the intent to destroy or the effect of destroying competition.

The bill amended the methodology for determining cost by exempting federal and state fuel taxes from the determination of mandatory markups. Under current law, "cost" means the invoice or replacement cost plus freight charges and a markup to cover the cost of doing business, which in the absence of proof of a lesser cost, shall be 4% of the invoice or replacement cost for wholesalers and 7% of the invoice or replacement cost for retailers. The bill retained the aforementioned language but provided that the markup to cover the cost of doing business shall be exclusive of any federal and state motor fuel taxes.

The bill also amended the sales exempt from the provisions of the Act. Previous law only exempted sales, but the exemptions now apply to sales, offers to sell and advertisements to sell. An exemption is added for sales made to meet the prices of a competitor. It exempts sales involving a discount or rebate earned by purchases or the redemption of credits, discounts or rebates through a bonus, and loyalty or rewards program. It also adds an exemption for sales made within fifteen days of a businesses' grand opening.

The bill significantly amended the section of the Act addressing injunctions and damage suits. It provides that any person or entity injured by a violation of the Act may maintain an action for an injunction and/or damages. If damages are alleged and proven, the plaintiff is only entitled

to actual damages sustained and proven to be a result of the violation. It also provides that it shall be an absolute defense to an action that the sale price of any product alleged to be in violation of the Act is equal to, or greater than, the sale price of the same product being sold by a competitor. Under previous law, any entity could maintain a proceeding to enjoin continuance of any practice violating the provisions of the Act, regardless of whether or not there was an injury. If there was an injury proven, the plaintiff was entitled to treble (3x) damages.

Lastly, the bill provided that the purposes of the Act are as follows: (1) to safeguard consumers from the creation of monopolies by prohibiting predatory pricing; (2) to foster market efficiency; and (3) to protect market competition.

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

**Strike and Insert for
Committee Substitute for
Senate Bill 262**

SHORT TITLE: Eliminating need for law enforcement to obtain court order prior to having access to inmate mail and phone recordings

CODE REFERENCE: §25-1-17 & §25-1-18 (Amends)

SUMMARY:

This bill:

- 1) Eliminates the need for a court administrative order as a means to supply law enforcement the content of inmate telephone conversations and mail for investigative purposes;
- 2) Eliminates the requirement for promulgation of legislative rules relating to inspection of inmate telephone conversations and mail;
- 3) Allows attorneys of inmates charged with crimes related to their telephone calls or mail access to the inmate's mail or phone conversations in the commissioner's custody;
- 4) Requires issuance of a policy directive preserving records for 3 years; and
- 5) Clarifies that the records fall under the law enforcement records exception to FOIA and clarifies that the bill only applies to inmates in the physical custody of the Department of Corrections.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

**Committee Substitute for
Senate Bill 265**

SHORT TITLE: Allowing library volunteers necessary access to user records

CODE REFERENCE: §10-1-22 (Amends)

SUMMARY:

Senate Bill 265 allows members of a library staff, including paid employees and un-paid volunteers, to have access to confidential public records of the public library which identify the user of library materials. It provides that unpaid volunteers may have access to library records upon completing a confidentiality agreement which shall prevent disclosure of circulation records, personal information, and similar records of any public library. Volunteers must also obtain permission from the library director for the library system which maintains the records

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 21, 2016

**Committee Substitute for
Senate Bill 270**

SHORT TITLE: Repealing code relating to insurance policies

CODE REFERENCE: §19-25-7 (Repeals)

SUMMARY:

This bill repeals the last section of Article 25, Chapter 19 relating to limiting liability of landowners. Under current code, the liability of landowners who open property for recreational wildlife propagation or certain governmental purposes is limited to situations where a deliberate, willful or malicious intent to injure exists or where the land owner charges in excess of the amounts permitted under the article. Otherwise, the land owner is immune from liability. However, if the land owner has liability insurance, then that insurance policy is, by operation of statute, read to expressly waive the immunity otherwise provided to land owners unless rejected in writing by the named insured. The bill repeals that section (W. Va. Code §19-25-7) relating to insurance policies. It does not alter, in any other way, the Chapter relating to limiting liability of landowners.

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 271

SHORT TITLE: Regulating practice of accountancy

CODE REFERENCE: §30-9-2, §30-9-3, & §30-9-7 (Amends); §30-9-33 & §30-9-34
(New)

SUMMARY:

This bill makes the following changes to the regulation of the profession of Accountancy: 1) it changes the definition of “Attest Services” to conform to the Uniform Accountancy Act; 2) it provides an exemption from civil liability for members of the Board of Accountancy arising from the good faith discharge of their duties; 3) it revises the requirements for the issuance of certificates as certified public accountants to include a listing of all states in which the applicant has applied for, or holds, an out-of-state certificate and any past denial, revocation or suspension of an out-of-state certificate, submitted to a criminal history check, provides for the privacy of information revealed in a criminal history check of an applicant; and 4) provides rulemaking authority to the Board of Accountancy for implementation of the provisions of the application provisions.

This bill also adds two new sections to the same article designated §30-9-33 and 34. The bill requires Mandatory Training in federal antitrust law and state action immunity for members of the Board of Accountancy and their representatives from the Attorney General’s office. Lastly, the bill provides for indemnification for board members and current and former employees for expenses reasonably incurred in connection with judicial or administrative proceedings to which they are, or may become, parties by reason of the performance of their official duties.

DATE OF PASSAGE: March 7, 2016

EFFECTIVE DATE: June 5, 2016

ACTION BY GOVERNOR: Signed March 15, 2016

**Strike and Insert for
Committee Substitute for
Senate Bill 272**

SHORT TITLE: Allowing investigators from Attorney General's office to carry concealed weapons

CODE REFERENCE: §5-3-6 and §60-3-24a (New)

SUMMARY:

This bill allows investigators of the Attorney General's office, the Fire Marshal's office and the Alcohol Beverage Control Administration's enforcement investigators to carry firearms in the course of their duties, if designated to do so by the respective agency head. They must be trained and certified to the level of WV State Police and possess a valid concealed weapons license.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: N/A

ACTION BY GOVERNOR: Vetoed April 1, 2016

**Committee Substitute for
Senate Bill 274**

SHORT TITLE: Relating to increasing civil jurisdictional amount in magistrate courts

CODE REFERENCE: §50-2-1 (Amends)

SUMMARY:

The purpose of this bill is to increase the monetary jurisdictional amount for Magistrate Courts from \$5,000 or less to \$10,000 or less.

DATE OF PASSAGE: March 7, 2016

EFFECTIVE DATE: June 5, 2016

ACTION BY GOVERNOR: Signed March 15, 2016

**Committee Substitute for
Senate Bill 278**

SHORT TITLE: Clarifying physicians' mutual insurance company is not state or quasi-state actor

CODE REFERENCE: §33-20F-2 & §33-20F-4 (Amends)

SUMMARY:

This bill clarifies that the Physicians' Mutual Insurance Company is not a state actor, or a quasi-state actor, or a quasi-public entity for any purpose.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

**Strike and Insert for
Committee Substitute for
Senate Bill 283**

SHORT TITLE: Creating crime when fire is caused by operation of a clandestine drug laboratory

CODE REFERENCE: §60A-4-411 (Amends)

SUMMARY:

The purpose of this bill is to create the offense of operating a clandestine drug laboratory which results in a fire with a penalty of 1-5 years and/or a fine of \$1000 to \$5000. The bill also declares that operating a laboratory is not a lesser included offense of the new crime. The location in the code of the offense also triggers the application of the felony murder statute if a death occurs.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 25, 2016

Senate Bill 323

SHORT TITLE: Correcting statute subsection designations regarding trespassing on property

CODE REFERENCE: §61-3B-3 (Amends)

SUMMARY:

This bill corrects the lettering of subsections in the section of West Virginia Code that creates the offense of “trespass on property other than structure or conveyance.” In its current form, this section of code contains two subsections lettered (c) and two subsections lettered (d). The second of each of these occurrences have been replaced with (f) and (g), respectively.

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: June 6, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

**Strike and Insert for
Committee Substitute for
Senate Bill 326**

SHORT TITLE: Repeal and recodify law relating to contributing to delinquency of minor child

CODE REFERENCE: §49-4-901 (Repeals); §61-8D-10 (New)

SUMMARY:

This bill moves provisions regarding contributing to the delinquency of a minor to the criminal code. The bill also removes language relating to neglect by parents, custodians and guardians which is now covered by other code provisions. Lastly, the bill provides for a simple contribution to the delinquency law and also defines "delinquency."

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

**Committee Substitute for
Senate Bill 339**

SHORT TITLE: Establishing Judicial Compensation Commission

CODE REFERENCE: §4-2A-1, §4-2A-2, & §4-2A-3 (New)

SUMMARY:

This bill creates a new article of Code, wherein a new legislative commission is established. The Judicial Compensation Commission is established as an advisory commission to the West Virginia Legislature and is tasked with “studying the compensation structure for justices of the Supreme Court of Appeals, circuit court judges, family court judges, magistrates and any other judicial officer subject to election and which office requires the judge to hold a professional license to serve in that position.” The commission is composed of two representatives appointed by the Speaker of the House, two representatives appointed by the President of the State Senate, and the Dean of the West Virginia University College of Law. Appointed representatives may not be public employees, elected public officials, recipients of state pensions, members of political party executive committees, or members of the West Virginia State Bar.

The commission is to meet in Charleston, West Virginia and to conduct a thorough review of judicial compensation for the purpose of making a recommendation to the West Virginia Legislature concerning changes to be made. The commission is to consider a number of specific criteria in evaluating judicial compensation, but may also consider other information that the commission may find relevant. The first report by the commission is to be completed by September 1, 2017. If the Legislature enacts the commission’s salary recommendations in the following year, then the commission adjourns for three years. If the Legislature fails to enact the recommendations or enacts some reduced salary increase, then the commission continues to meet and prepare an annual report to the Legislature.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

**Strike and Insert for
Committee Substitute for
Senate Bill 361**

SHORT TITLE: Prohibiting persons who have committed crimes against elderly from performing community service involving elderly

CODE REFERENCE: §61-2-10a (Amends)

SUMMARY:

This bill prohibits a person who has committed crimes against an elderly person from performing community service with elderly persons.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

**Committee Substitute for
Senate Bill 376**

SHORT TITLE: Expanding authority of Secretary of State and State Police

CODE REFERENCE: §30-18-10 (Amends)

SUMMARY:

This bill modifies the requirements concerning background checks performed by the State Police, on behalf of the Secretary of State, during the licensing of private investigators. A new subsection is added to codify the requirement for an applicant to submit to a state and national criminal history record check to be based on fingerprints submitted to the State Police or other designated agent. The State Police will then run the fingerprints through the state's Criminal Identification Bureau and forward them to the Federal Bureau of Investigation. Fingerprints submitted pursuant to this provision are held confidential and may be obtained only pursuant to the individual's written identification or court order. The applicant for private investigator or security guard license is responsible for the costs of running this criminal history record check.

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 379

SHORT TITLE: Relating to candidate filing fees

CODE REFERENCE: §3-5-8, §3-8-5b (Amends)

SUMMARY:

This bill changes where candidates for circuit and family court judge are to file their campaign finance statements, and to whom their filing fees are to be paid, to correspond with the location where they file their candidacy paperwork. Following passage of House Bill 2010 in 2015, candidates for judicial offices (excluding magistrates) are required to fill their candidacy papers with the Secretary of State's Office. This bill requires all candidates running for those offices to file their financial statements and pay for filing fees with the Secretary of State.

DATE OF PASSAGE: March 4, 2016

EFFECTIVE DATE: March 4, 2016

ACTION BY GOVERNOR: Signed March 10, 2016

**Committee Substitute for
Committee Substitute for
Senate Bill 387**

SHORT TITLE: Shared animal ownership agreements to consume raw milk

CODE REFERENCE: §19-1-7 (New)

SUMMARY:

This bill creates a new section of code that permits a herd seller and a responsible party to enter into a “written shared animal ownership agreement to consume raw milk.” Certain terms of these agreements are required, including that (1) the responsible party must acquire a percentage ownership interest in the animal, (2) the responsible party pay for a portion of the animal’s care and boarding, (3) the responsible party is then entitled to receive a “fair share” of the raw milk produced by the animal, and (4) the responsible party must agree not to distribute or resell raw milk received from the agreement.

The bill requires a written agreement acknowledging the inherent dangers of consuming raw milk. Once executed, the agreement must be filed with the Commissioner of Agriculture by the herd seller, and must include names, addresses and phone numbers for the herd seller and any party who has executed an agreement with the herd seller. This is provided so that all parties may be contacted in the event of an illness.

Certain requirements are imposed on the herd seller with respect to the health of the herd. In order to provide milk for consumption, the herd must test negative in the prior twelve months for “brucellosis, tuberculosis and other diseases as required by the state veterinarian.” Any new animal added to the herd must test negative for those diseases for the thirty days immediately preceding. Additionally, any animals producing “bloody, stringy or abnormal milk” are to be excluded from the milking herd until the milk returns to normal.

Any party to a shared animal ownership agreement or any physician who becomes aware of an illness “directly related to consuming raw milk” is required to report the illness to his/her local health department and the Commissioner of Agriculture. The Commissioner is then required to contact and warn others who have herd sharing agreements for animals in the same herd.

Violations of this section are punishable by an administrative penalty, imposed by the Commissioner of Agriculture, of not more than \$100. Lastly, the Commissioner of Agriculture, in consultation with the Department of Health and Human Resources, is given rulemaking authority to propose rules “in compliance with raw milk dairy industry standards.”

DATE OF PASSAGE: February 23, 2016

EFFECTIVE DATE: May 23, 2016

ACTION BY GOVERNOR: Signed March 3, 2016

**Committee Substitute for
Committee Substitute for
Senate Bill 454**

SHORT TITLE: Licensing and regulating medication-assisted treatment programs for substance use disorders

CODE REFERENCE: §16-5X-1 et seq. (New); §16-1-4, §60A-9-4, §60A-9-5, §60A-9-5a, §60A-9-7 & §60A-9-8 (Amends)

SUMMARY:

This bill regulates medication assisted treatment programs for substance abuse.

The bill creates a new article which sets out licensing requirements. This article defines terms. It requires a license to be issued by the Secretary of the Department of Health and Human Resources and sets out licensing requirements. There are two types of licenses – A registration for office based medication assisted treatment and a license for opioid treatment programs. There are three types of licensing categories – initial, provisional and renewal. There are requirements for applying and renewal licenses including non-transferability of a license and mandated application data.

The bill sets out specific operational requirements.

There is a requirement for patient protocols, treatment plans and profiles and guidelines regarding what is to be included are set forth. There are reporting requirements and a requirements for a physical exam upon initially prescribing a medication assisted treatment as well as a required mental status examination. There is also a preclusion for prescribing and dispensing liquid methadone. Individuals who are permitted to counsel patients include masters level social workers and psychiatrist, psychologist, marriage and family therapist and persons with prescribed bachelor's degrees who are directly supervised by someone with a masters degree.

Restriction on the operation of these facilities is set out in the bill. These include no co-location where patients with chronic pain are being treated – including a pain clinic, a preclusion against recruitment of new patients and a distance requirement of ½ mile in relation to a school. There is also a means to allow the Secretary to grant a variance and a procedure for granting a variance. The bill also provides for annual and unannounced inspections.

The Secretary is given the authority to order a limitation on patients should an inspection reveal inadequate care. Additionally the Secretary may deny, suspend or revoke a license for a violation of the article or any rules adopted under the article. Notice is required in both cases. Any applicant or licensee may request an administrative hearing and if they are unhappy with the results seek redress in the Circuit Court of Kanawha County. A revocation, suspension or denial requires that they clinic cease to operate and an administrative appeal shall not stay the denial, revocation or suspension.

Violation of the newly created article can result in civil penalty levied by the Secretary. Each day of a violation is considered a separate offense. There are penalties for intentional misrepresentation with a civil penalty of \$10,000. There is also a penalty of \$5000 for failure to

operate a facility with a valid license and for failure to apply for a new license upon a change of ownership. Unlicensed dispensing of medication assisted treatment can result in a fine of \$20,000. The Secretary is also given authority to file for an injunction. Factors for the Secretary to consider in fixing the amount of the penalty are set out in the bill. Finally, the Secretary may notify the appropriate licensing board if the he or she finds that a physician violated the provisions of the new article.

The moratorium on additional opioid treatment centers remains.

Rulemaking authority is set out in the bill. Mandated rule provisions are set forth with respect to patient care, staff qualifications, the application process, record keeping, procedures for inspection, general operating standards; which drugs may be used, supervision and control of employees, data collection and other standards deemed necessary by the Secretary. The Secretary also is given emergency rulemaking authority.

This bill would add to the list of what must be reported to the Controlled Substance Monitoring Database an opioid antagonist.

The bill would also require all practitioners to register and have online access to the database. Current law only requires that they have online access. Additionally, the bill make licensing of practitioners contingent upon registering with the Controlled Substances Monitoring Program. In addition, it creates a fine to be levied by the appropriate board for failure to register in the amount of \$1,000. There is also a \$500 fine created for failure to properly access the database as required.

There bill also performs clean-up of the Fight Substance Abuse Fund. New language allows the fund to be administered by the Bureau for Public Health.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

**Committee Substitute for
Senate Bill 465**

SHORT TITLE: Allowing professional employer insure certain risks through pure insurance captive

CODE REFERENCE: §33-31-2 & §33-46A-9 (Amends)

SUMMARY:

This bill revises existing code relating to Captive Insurance in West Virginia by including Professional Employer Organizations, licensed pursuant to W. Va. Code 33-46A-1 et seq., and permits PEOs to insure its risk for insurance coverage for accident and sickness for all employees and covered employees through a captive insurance company as defined under current code. The bill also revises current code to permit PEOs to offer a health benefit plan which is not fully insured by an authorized insurer only if the benefit plan complies with W. Va. Code 33-31-1 et seq. The bill also establishes that PEOs that sponsor health benefit plans shall be considered the employer of all covered employees. For purposes of state law, such health benefit plans shall be treated as a singular employer welfare benefit plan. Lastly, the bill authorizes the Insurance Commissioner to promulgate and adopt rules with respect to PEO-sponsored benefit plans.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

**Committee Substitute for
Senate Bill 468**

SHORT TITLE: Allowing lender charge and receive interest on rescindable loan during rescission period

CODE REFERENCE: §46A-6K-3 (Amends)

SUMMARY:

Under current state law, a lender may not receive or charge interest on a loan subject to a rescission period (i.e., the three-day cooling off period provided under the federal Truth in Lending Act and Regulation Z, its implementing regulation) until the loan is closed and loan funds are disbursed. This bill amends state law to bring it into conformity with Regulation Z by allowing a lender to charge and receive interest during the rescission period.

The Committee Substitute disallows a lender from collecting interest when the loan subject to the rescission period will be used to pay off a prior loan from the lender in full.

Language was also added clarifying that if the loan is rescinded by the customer, the lender receives no interest.

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 469

SHORT TITLE: Clarifying what personal funds are exempt from levy following judgment

CODE REFERENCE: §38-5A-3 & §38-8-1 (Amends)

SUMMARY:

This bill revises current code addressing exemptions from execution or other process. The bill amends and reenacts W.Va. Code §38-5A-3 by amending the amounts set forth to mirror the changes made by House Judiciary to W.Va. Code §46A-2-130 as contained in House Bill 4417 regarding wages protected from garnishment. The bill eliminates wages or salary from the list of exemptions under W. Va. Code 38-8-1 as well as eliminates the threshold tied to the federal poverty level. The bill revises the subsection of exemptions so that funds deposited in a federally insured financial institution up to \$1,100 are exempt. The bill also provides that wages and salary are automatically exempt from execution or other process as set forth in W. Va. Code 38-5A-3 which sets the exemption level at thirty (30) times the then-current federal minimum wage. Lastly, the bill makes clear that no person may file for an exemption of wages or salary in an amount above that set forth in W. Va. Code 38-5A-3.

DATE OF PASSAGE: March 9, 2016

EFFECTIVE DATE: June 7, 2016

ACTION BY GOVERNOR: Signed March 16, 2016

Senate Bill 476

SHORT TITLE: Relating to driving restrictions in school zones

CODE REFERENCE: §17C-6-1 (Amends)

SUMMARY:

This bill amends one section of code to permit a county board of education to request the expansion of a school zone to a road adjacent to the school property. Current law provides for a 15 mph speed limit in a school zone during school recess or while children are leaving school during opening or closing hours. A school zone is all school property, including school grounds and any street or highway abutting the school grounds and extending 125 feet along the street or highway from school grounds.

The bill requires the Division of Highways to erect signs indicating the place of entry and exit of each school zone in the State. The bill further allows for expansion of the school zone to a road that is adjacent to school property upon a formal vote and written request by a county board of education to the West Virginia Division of Highways. The requested expansion is automatic if it expands the school zone only one hundred twenty-five feet along an adjacent road. If the requested expansion is longer, then the Division of Highways would need to approve the request. Within ninety days of receiving the county board's request, DOH would be required to expand the zone by erecting new signage indicating the expanded school zone's location and speed limit.

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 21, 2016

**Committee Substitute for
Committee Substitute for
Senate Bill 484**

SHORT TITLE: Creating Service Member's Employment Protection Act

CODE REFERENCE: §15-1F-8 (Amends)

SUMMARY:

This bill expands the reemployment protections afforded to members of the organized militia by West Virginia Code, and expands those protections to individuals who are members of the organized militia in the active service of West Virginia or of another state. The bill also clarifies that the rights protected under West Virginia law, which are to be the same as those protected under federal law, include the reemployment rights protected by the Uniformed Services Employment and Reemployment Rights Act of 1994, or USERRA, 38 U.S.C. §§ 4301-4334.

DATE OF PASSAGE: March 9, 2016

EFFECTIVE DATE: June 7, 2016

ACTION BY GOVERNOR: March 23, 2016

**Committee Substitute for
Senate Bill 493**

SHORT TITLE: Allowing creation of self-settled spendthrift trusts

CODE REFERENCE: §44D-5-503a (New); §44D-5-503b (New); §44D-5-503c (New);
§44D-5-505 (Amends)

SUMMARY:

This bill allows the creation of self-settled spendthrift trusts in West Virginia. First, §44D-5-503a establishes self-settled spendthrift trusts as a permissible trust form under West Virginia law. Subsection (a) provides that a grantor may transfer assets to such a trust, and certain trust provisions are not applicable, including provisions that would otherwise allow the grantor's creditors to reach the assets of the trust. Subsection (b) permits the creation of a partially spendthrift trust, and provides that the provisions related to self-settled spendthrift trusts apply to the portion of the trust that is spendthrift. Subsection (c) provides that an intent to "delay, hinder or defraud creditors" will not be implied simply because the beneficiary of the trust provided the funds for the trust. However, a transfer from a grantor to the trust may be set aside on certain grounds, including if it violates West Virginia's Uniform Fraudulent Transfers Act, found at §§40-1A-1 *et seq.*, or if the qualified affidavit contains a material misstatement of fact. If a transfer is set aside based on the Uniform Fraudulent Transfers Act, that the amount in the trust shall first pay the costs, expenses and attorney's fees incurred by the trustee in the defense of action or proceeding.

The bill permits a creditor to challenge, by means of the Uniform Fraudulent Transfers Act, a transfer of funds into a self-settled spendthrift trust. They may challenge the transfer to enforce a claim that existed on the date of the transfer (not one that has arisen after that date), and that transfer must be challenged "within four years after the date of the grantor's transfer." Subsection (e) limits the recovery rights of the creditor to the trust assets, and specifically prohibits causes of action against "any trustee, trust adviser, trust director, or any person involved in the counseling, drafting, preparation or execution of, or transfers to, a qualified self-settled spendthrift trust."

Subsection (f) addresses how to treat multiple transfers by the grantor into the self-settled spendthrift trust. The later transfer is to be disregarded when considering any claim made by a creditor as to a prior transfer. Additionally, the four-year statute of limitations for creditors to challenge transfers will apply with respect to each transfer. Pursuant to subsection (g), any self-settled spendthrift trust that is moved to this state shall be treated as having been created on the date of the move to West Virginia, and the four-year date to challenge the transfer under the Uniform Fraudulent Transfers Act will begin to run on that date.

In §44D-5-503b, a number of terms are defined, including qualified trustee, independent qualified trustee, qualified interest, qualified self-settled spendthrift trust, and qualified affidavit. To be considered a qualified self-settled spendthrift trust, the trust must have certain characteristics. It must be (1) irrevocable and (2) created during the grantor's lifetime. There must be (3) another beneficiary whose interest in the trust is equal to that of the original grantor. The trust must have (4) at least one qualified trustee, and the trust documents must (5) expressly incorporate the laws of West Virginia "to govern the validity, construction and administration of the trust." There must be (6) a spendthrift provision in the trust documents, the (7) grantor does not have a right to disapprove of distributions from the trust, and (8) the grantor must execute a

qualified affidavit. A qualified affidavit must be duly executed by the grantor under oath and must contain a number of sworn statements. The grantor must affirm that: (1) the transferred property was not derived from unlawful activities, (2) he or she has full right to the property and the right to transfer the property, (3) he or she will not be rendered insolvent immediately after the transfer, (4) he or she does not intend to defraud creditors by making the transfer, (5) there are no pending or threatened court actions against the grantor, (6) the grantor is involved in no administrative proceedings at the time of the transfer, and (7) he or she does not contemplate filing for bankruptcy. With respect to court actions and administrative proceedings, the affidavit may include a list of any disputes that are pending or threatened at the time of making the transfer to the trust. If these elements are not materially addressed in the affidavit, it is not qualified. However, the affidavit is not invalid if it contains only “nonsubstantive variances” or if it contains “technical errors” that are not the fault of the affiant.

In §44D-5-503c, a number of technical and procedural matters are addressed. First, the manner of addressing vacancies in the office of qualified trustee is addressed in subsections (a) and (b), which requires that a trustee be replaced with an individual satisfying the same qualifications of the prior trustee be appointed by, in descending order of priority, designation pursuant to the terms of the trust, by unanimous agreement of the qualified beneficiaries, or by the court. Subsection (c) sets forth a number of provisions that can be included in the terms of the trust without making the trust revocable. These include: (1) a power of appointment upon the grantor’s death, (2) the grantor maintaining a qualified interest in the trust, (3) the grantor’s right to receive income or principal “pursuant to an ascertainable standard,” (4) the grantor’s receipt of income from a charitable remainder trust or the grantor’s right to release his own interest in the trust; (5) the grantor’s right to receive a fixed percentage of up to 5% of the trust assets, (6) the grantor’s right to remove a trustee and appoint a qualified replacement, (7) the grantor’s use of real property held by the trust; (8) the grantor’s receipt of a qualified annuity interest; (9) the trustee’s ability to pay any of the grantor’s debts upon his or her death, the expenses of administering the grantor’s estate, or the inheritance or death taxes imposed on the estate, and (10) the grantor’s receipt of income to pay taxes due on the trust property. Lastly, subsection (d) provides that if any beneficiary has the right to withdraw his or her beneficial interest from the trust, that beneficiary shall be treated as a grantor, once such withdrawal right has “lapsed, been released, or otherwise expired.”

DATE OF PASSAGE: March 10, 2016
EFFECTIVE DATE: June 8, 2016
ACTION BY GOVERNOR: Signed March 23, 2016

**Committee Substitute for
Senate Bill 504**

SHORT TITLE: Relating to confidentiality of juvenile records

CODE REFERENCE: §49-5-101 and §62-6B-2 (Amends); §62-6B-6 (New)

SUMMARY:

The purpose of this bill is to limit access to recorded interviews of minor children in criminal and abuse and neglect cases. In addition, the bill provides access to the contents of the recording to avoid harassment or embarrassment to the child. The bill (1) requests the WV Supreme Court to promulgate rules for disclosure; and (2) limits disclosure before judicial or administrative actions to investigations.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

**Committee Substitute for
Senate Bill 520**

SHORT TITLE: Allowing PEIA ability to recover benefits or claims obtained through fraud

CODE REFERENCE: §5-16-12 & §5-16-12a (Amends)

SUMMARY:

This bill clarifies and enhances the Public Employees Insurance Agency's ability to recover monies paid as a result of fraud. The bill establishes that it shall be a violation of the article for any person to (1) knowingly secure or attempt to secure benefits payable under this article to which they are not entitled; (2) knowingly secure or attempt to secure greater benefits than those to which the person is entitled; (3) willfully misrepresent the presence or extent of benefits to which the person is entitled under a collateral insurance source; (4) willfully misrepresent any material fact relating to any other information requested by the director; (5) willfully overcharge for services provided; or (6) willfully misrepresent a diagnosis or nature of the service provided. If it is determined the person has committed any of these violations, after notice and an administrative proceeding, then that person is liable for any overpayment received. The PEIA Director shall withhold and set-off any payment of any benefits or other payment due until the overpayment is recovered.

In addition to this civil liability, the bill makes it a felony for any person who knowingly secures or attempts to secure benefits or greater benefits to which the person is entitled under this article by willfully misrepresenting or aiding in the misrepresentation of any material fact related to employment, diagnosis or services. Upon conviction of that felony, the person shall be fined not more than \$1,000, imprisoned for no less than one nor more than five years. The bill makes clear that billing code errors shall not be considered a violation of this felony subsection absent other evidence of willful wrongdoing.

This bill makes it a misdemeanor for any person who violates any provision of this article which results in a loss to or overpayment from the plan or to the State of West Virginia of less than \$1,000 for which no other penalty is provided. Upon conviction, that person is subject to a fine of not less than \$100 but not more than \$500, imprisonment for not less than 24-hours or more than 15 days, or both. This bill makes the same conduct a felony if the loss is greater than \$1,000 to either the plan or the State of West Virginia. The penalties for such a felony would be a fine of not less than \$1,000 or more than \$5,000, imprisonment for a period of not less than one nor more than five years, or both.

The bill also requires employees to provide information to PEIA upon request related to employment or eligibility. The bill also provides certain authority to PEIA to conduct investigations via administrative proceedings and to recover funds due from an employer that knowingly allowed or provided benefits to be paid to an employee or dependents fraudulently. The PEIA Director or designee may administer oaths or affirmations, issue administrative subpoenas, take evidence and require production of documents. The bill also outlines service of such subpoenas including fees to be paid and procedure for failure to comply. The bill provides that only authorized employees or agents may have access to confidential data or systems and applications containing confidential data within PEIA.

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

**Committee Substitute for
Senate Bill 545**

SHORT TITLE: Relating to asbestos abatement on oil and gas pipelines

CODE REFERENCE: §16-32-2, §16-32-11 (Amends)

SUMMARY:

This bill addresses asbestos abatement on oil and gas pipelines. The bill defines certain terms and revises certain definitions already in code. Specifically, it states that an asbestos abatement project does not include removal, repair and maintenance of intact oil and gas pipeline asphaltic wrap which contains asbestos fibers encapsulated or coated by bituminous or resinous compounds as described in subsection (d), section eleven of this article. Removal, repair and maintenance of oil and gas pipeline asphaltic wrap which contains asbestos fibers is not subject to the requirements of this article if (1) the wrap is not friable prior to disturbance along the length of the pipeline being removed, repaired or maintained, (2) the area disturbed in preparing the pipeline for cutting does not extend 260 linear feet of removed friable asbestos, (3) before and as needed during the job, a competent person conducts an inspection of the worksite and determines the material is intact and will likely remain intact, (4) all employees performing work covered are trained in accordance with OSHA standards and all other workers must remain at a safe distance, (5) the material is not sanded abraded or ground – manual methods which do not render the material non-intact must be used, (6) all removal or disturbance of the pipeline wrap is performed using wet methods, and (7) all pipeline and asbestos removed is disposed of in a lawful manner.

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

**Committee Substitute for
Senate Bill 567**

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

CODE REFERENCE: §61-3-29 (Amends)

SUMMARY:

Current law provides that it is a crime to destroy certain commercial and industrial property. This bill adds oil, timber and timber processing facilities to the list. It creates the offense of knowingly and willfully damaging or destroying property of protected entities and hindering, impairing or disrupting directly or indirectly the normal operation, with a penalty of \$5,000 - \$10,000, plus the cost to repair, or 1-5 years incarceration, or both.

In addition, the bill contains a new subsection to allow a railroad company, public utility, business or owner of the property that is damaged or disrupted to seek restitution, if ordered by the court.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

Senate Bill 578

SHORT TITLE: Protecting utility workers from crimes against person

CODE REFERENCE: §61-2-10b (Amends)

SUMMARY:

The bill adds “utility workers” and “law-enforcement officers” to the list of persons against whom certain crimes of violence (malicious wounding, unlawful wounding, battery and assault) have a higher penalty. The definition of “law-enforcement officer” includes those individuals defined as “chief executive” in W.Va. Code §30-29-1.

Penalties:

Malicious Wounding: 3-15 years

Unlawful Wounding: 2-5 years

Battery: 1 month-1 year; 2nd offense - felony

Assault: 24 hours - 6 months

The bill also adds the following language to §61-2-10b(c) and (d) to be in conformity with the provisions of subsections (a) and (b) of the same article: “the person committing the [crime of violence] knows or has reason to know that the victim is acting in his or her official capacity.”

This bill is the same as last year’s Senate Bill 350 which passed the Senate in 2015.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

**Committee Substitute for
Senate Bill 581**

SHORT TITLE: Eliminating sunset provision terminating pilot domestic violence court program

CODE REFERENCE: §48-27-301, §51-2A-2 (Amends)

SUMMARY:

This bill makes permanent what was a pilot program for domestic violence courts. In 2012, §48-27-301 was amended to permit one pilot domestic violence court, which is presently located in Kanawha County. This bill makes the pilot program permanent, and would permit up to five domestic violence courts to be established “in any jurisdiction chosen by the Supreme Court of Appeals.” The bill also eliminates language that provided for the termination of the program December 1, 2016, as well as language that requested that the Supreme Court of Appeals provide a report “regarding the program’s efficacy” before the 2015 and 2016 legislative sessions. Judicial officers serving in these courts are prohibited from presiding over any felony crimes unless he or she is a circuit court judge. Lastly, the bill eliminates reference to a “pilot” domestic violence court from §51-2A-2.

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: June 6, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Originating Senate Bill 588

SHORT TITLE: Repealing certain obsolete legislative rules by Department of Transportation

CODE REFERENCE: §64-8-4 (Amends)

SUMMARY:

This bill repeals certain obsolete legislative, procedural, and interpretive rules promulgated by the Division of Motor Vehicles under the Department of Transportation:

Agency: Division of Motor Vehicles

Subject: Rules and Regulations. (91 CSR 2)

Agency: Division of Motor Vehicles

Subject: Special Permits. (91 CSR 7)

Agency: Division of Motor Vehicles

Subject: Safety and Treatment Program. (91 CSR 15)

Agency: Division of Motor Vehicles

Subject: Dealer and Financial Institution Applicant or Licensee Administrative Hearings. (91 CSR 17)

Agency: Division of Motor Vehicles

Subject: Seizure of Driver's License, Issuance of the Temporary Driver's License. (91 CSR 20)

Agency: Division of Motor Vehicles

Subject: Federal Safety Standards Inspection Program. (91 CSR 21)

Agency: Division of Motor Vehicles

Subject: Dealer Issuance of Temporary Registration Plates. (91 CSR 18)

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

**Committee Substitute for
Senate Bill 591**

SHORT TITLE: Relating to voter registration list maintenance and combined voter registration and driver licensing fund

CODE REFERENCE: §3-2-3, §3-2-4a, & §3-2-12 (Amends)

SUMMARY:

This bill modifies three sections of the current West Virginia election code to permit the Secretary of State to enter into an agreement with the Division of Motor Vehicles for the DMV to provide certain information to the Secretary of State. That information would then be used by the Secretary of State “for the purpose of voter registration list maintenance comparison through an interstate data-sharing agreement as designated by the Secretary of State.” A number of particular pieces of information are required, including (1) all name fields, (2) residence and mailing address fields, (3) driver’s license or state identification number, (4) last four digits of the Social Security number, (5) date of birth, (6) license or identification issuance and expiration dates, and (7) current record status of individuals eligible to register to vote.

Additional changes are proposed to section twelve, which establishes and governs the Combined Voter Registration and Driver Licensing Fund. The list of permissible uses is amended to include payment of dues or fees associated with an interstate agreement to match and transfer data, and for “resources related to voter registration and list maintenance.”

A new subsection (c) is added, which provides that, beginning June 30, 2016, any amount in the fund over \$100,000 shall be transferred to the General Revenue fund. The same will happen at the end of each fiscal year thereafter.

The bill also expands the authority of the Secretary of State to assist county commissions with voter registration record maintenance, if the clerk fails to perform the required maintenance. The Secretary of State is required to first give notice to the county clerk of his or her failure to conduct the required maintenance, and then must wait ninety days before the Secretary of State may make changes to the voter registration database necessary to comply with the requirements of the West Virginia Code. The action by the Secretary of State is permissive.

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: March 11, 2016

ACTION BY GOVERNOR: Signed March 21, 2016

**Committee Substitute for
Senate Bill 599**

SHORT TITLE: Relating generally to Uniform Unclaimed Property Act

CODE REFERENCE: §36-8-2 (Amends)

SUMMARY:

The bill provides that obligations of insurance companies with respect to life or endowment insurance policies or annuities are guided by policies, requirements and interpretations of the Insurance Commissioner. The Unclaimed Property Act and its provisions remain unchanged.

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: N/A

ACTION BY GOVERNOR: Vetoed April 1, 2016

**Strike and Insert for
Committee Substitute for
Senate Bill 601**

SHORT TITLE: Relating to exception from jurisdiction of PSC for materials recovery facilities or mixed waste processing facilities

CODE REFERENCE: §22-15-10 (Amends); §24-2-11 (New)

SUMMARY:

This bill removes materials recovery facilities and mixed waste processing facilities from the jurisdiction of the Public Service Commission. It provides for an exception for facilities that have received a certificate of need from the Public Service Commission as of July 1, 2016, and are located within a 35 mile radius of a facility in a county that is, in whole or in part, within a karst region. These remain under the jurisdiction of the PSC. There is also language that clarifies that motor carriers remain within the jurisdiction of the Public Service Commission.

DATE OF PASSAGE: March 12, 2016; Repassed after technical veto March 15, 2016

EFFECTIVE DATE: March 15, 2016

ACTION BY GOVERNOR: Vetoed March 14, 2016; Signed April 1, 2016

**Committee Substitute for
Senate Bill 602**

SHORT TITLE: Relating to Patient Injury Compensation Fund

CODE REFERENCE: §29-12B-10, §29-12D-1 (Amends), §29-12D-1a (New), §29-12D-3, §55-7B-9, §55-7B-9c, §59-1-11, §59-1-28a (Amends)

SUMMARY:

This bill eliminates the Patient Injury Compensation Fund. The fund was created in 2004 “for the purpose of providing fair and reasonable compensation to claimants in medical malpractice actions for any portion of economic damages awarded that is uncollectible as a result of limitations on economic damage awards for trauma care, or as a result of the operation of the joint and several liability principles and standards set forth in article seven-b, chapter fifty-five of this code.” To effectuate the purpose of eliminating the fund, the bill accomplishes two primary objectives: it provides for the funding of claims that have accrued or will accrue with the Patient Injury Compensation Fund before its closure on July 1, 2016, and it modifies the limitation on liability for treatment of emergency conditions when a patient’s injury arises from treatment at a designated trauma center.

With respect to the limitation of trauma center liability, current law provides that there is an inflation-adjusted cap of \$500,000, inclusive of both economic and non-economic damages. If a patient’s economic damages exceed \$500,000, then the patient may apply to the Patient Injury Compensation Fund to be compensated for economic damages of up to \$1 million. The bill modifies this cap by permitting a patient who would otherwise be eligible for moneys from the Patient Injury Compensation Fund to obtain those moneys from the defendants, but only for economic damages, and only up to an additional \$1 million.

The liability of the Patient Injury Compensation Fund is provided from four primary revenue streams. First, moneys from the Medial Liability Fund are to be transferred to the Patient Injury Compensation Fund. Second, there will be a biennial assessment on physicians (both M.D. and D.O.) in the amount of \$125. Third, there will be an assessment on trauma centers of \$25 for each trauma patient treated. Fourth, there will be a one percent assessment on the gross amount of any settlement or judgment in a claim brought against a trauma center, whether taken to verdict or settled. The assessments run for a period of four years, from July 1, 2016, through July 1, 2020. However, reports are to be submitted by the Board of Risk and Insurance Management to the Joint Committee on Government and Finance beginning January 1, 2018, to update the Legislature on the amount of remaining liability, so that the Legislature can take action, if appropriate, to shorten the length of time the assessments remain in effect.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: July 1, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

**Committee Substitute for
Senate Bill 614**

SHORT TITLE: Conforming statute with court interpretation by replacing "unconscionable" with "fraudulent" when referring to conduct

CODE REFERENCE: §46A-1-105, §46A-2-115 & §46A-2-121 (Amends)

SUMMARY:

This bill revises multiple sections of the West Virginia Consumer Credit Protection Act. Initially, the bill excludes homeowners' associations and planned communities of their efforts to collect dues, assessments costs or fees of any kind to a property owners association or homeowners association. The bill also clarifies the definition of "consumer loan" and the charges that can be assessed in cases of default. The bill also clarifies that nothing in the consumer loan default subsection limits the expenses incidental to a trustee's sale of real property recoverable pursuant to W.Va. Code §38-1-7. The bill also provides examples of unconscionable conduct, such as affirmative misrepresentations, active deceit or concealment of a material fact.

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

**Committee Substitute for
Senate Bill 621**

SHORT TITLE: Exempting taxicab companies with independent contract drivers from providing workers' compensation coverage

CODE REFERENCE: §23-2-1 (Amends)

SUMMARY:

This bill provides that a taxicab driver of a taxicab company who provide taxicab service pursuant to a written or electronic agreement that identifies the taxicab driver as an independent contractor consistent with the United States Internal Revenue code requirements for persons acting as independent contractors is not eligible for workers' compensation benefits as an employee of the taxicab company.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

**Committee Substitute for
Senate Bill 625**

SHORT TITLE: Revising exceptions from FOIA provided for in Aboveground Storage Tank Act

CODE REFERENCE: §16-1-9c (Amends)

SUMMARY:

This bill clarifies what information the public has access to with respect to above ground storage tanks. Current law provides a great deal of public access unless, the information has been designated as restricted by the Division of Homeland Security and Emergency Management or is a trade secret or proprietary. Current law also provides that a list of potential sources of significant contamination may only be disclosed to the extent consistent with protection of trade secrets and proprietary information. This bill carves out an exception and provides that disclosure is permitted on any location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern to the extent they are in the public domain through a state or federal agency.

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

Senate Bill 627

SHORT TITLE: Permitting physician to decline prescribing controlled substance

CODE REFERENCE: §30-3A-2 & §55-7-23 (Amends)

SUMMARY:

This bill allows a health care provider with prescriptive authority to decline to prescribe any controlled substance to a patient to whom they are providing care, if the health care provider with prescriptive authority, in the exercise of reasonable prudent judgment, believes the patient is misusing the controlled substance in an abusive manner or unlawfully diverting a controlled substance legally prescribed for his or her use without being subject to disciplinary action from his or her licensing board or making him or her liable to a patient or third party for declining to prescribe, or declining to continue to prescribe, any controlled substance.

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

**Strike and Insert for
Committee Substitute for
Senate Bill 634**

SHORT TITLE: Creating William R. Laird IV Second Chance Driver's License Act

CODE REFERENCE: §17B-7-1 et seq. (New)

SUMMARY:

This bill creates a program to assist individuals whose driver's licenses have been suspended or revoked due to unpaid court costs. Under the program, an eligible individual obtains a stay on the suspension or revocation of his or her license by the Division of Motor Vehicles, conditioned upon acceptance into the Second Chance Driver's License Program, which is administered by the Division of Justice and Community Services. A person's participation in the program is conditioned upon agreement to a consolidated repayment schedule. That consolidated repayment schedule covers the amount of all court costs the individual currently has outstanding at the time of his or her enrollment in the program. The bill sets certain parameters for the repayment of these unpaid court costs, providing for a minimum payment of \$50 each month and a maximum repayment timetable of one year.

A licensee can have the stay on revocation of his or her driver's license revoked for various actions, including failure to timely remit payment or conviction of another criminal offense during the individual's participation in the program.

Moneys are remitted to the Director of the Division of Justice and Community Services, who then remits moneys to the court or courts where the moneys are owed. An account is created for the purpose of administration of the fund. The Division of Justice and Community Services may retain five percent of the amount of the payment for any amount that does not constitute a forfeiture, fine or penalty to offset administrative costs of overseeing the program. Rulemaking authority is also given to both the Division of Justice and Community Services and the Division of Motor Vehicles.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

**Committee Substitute for
Senate Bill 686**

SHORT TITLE: Authorizing local governing authorities hold sanctioned motor vehicle races on roads, streets or airports under their jurisdiction

CODE REFERENCE: §7-1-3qq & §8-12-5g (New)

SUMMARY:

This bill allows county commissions and municipalities to hold a motor vehicle racing event on public roads, municipal streets or airport runways under their jurisdiction when 1) the event is sanctioned by a nationally or internationally recognized racing organization, 2) permitted by the local governing authority and 3) the public road, street or airport runway is temporarily closed to vehicular and pedestrian traffic. The bill provides that the decision to issue a permit for any airport pursuant to W.Va. Code 8-29-1 et seq. shall be made by the governing body of the Regional Airport Authority. The bill defines “public road” and “municipal streets” in a manner that excludes them from roadways classified and managed in the state road system.

The bill establishes that a county commission and a municipality shall provide written notice to the W.Va. Department of Transportation – Trafficking Engineering Division no less than 60 days prior to a scheduled racing event. The written notice shall include the following: (1) the time, date and location of the event; (2) the nationally or internationally recognized racing organization sponsoring the event; (3) a road closure plan specifying the public roads, municipal streets, alleys, sidewalks and airport runways that will be temporarily closed or obstructed during the event; (4) a traffic control plan; and (5) the names and phone numbers of emergency and law-enforcement contacts overseeing the event. This bill authorizes local governing authorities to declare that a racing event is not a public nuisance. This bill exempts a locally authorized motor vehicle racing event from the speed restrictions set forth in W.Va. Code 17C-6-1 et seq.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

**Committee Substitute for
Senate Bill 691**

SHORT TITLE: Modifying certain air pollution standards

CODE REFERENCE: §22-5-20 (Amends)

SUMMARY:

This bill makes technical clean-ups to one section of code that was modified substantially during the 2015 legislative session by passage of House Bill 2004, and requires the Department of Environmental Protection to submit its proposed plan to comply with the EPA's Clean Power Plan to the Legislature for approval prior to its submission. In subsection (c), the bill changes the word "shall" to "may" in two places – first to permit, rather than require, the plan to be on a "unit-specific performance basis," and secondly, to permit either a rate-based or mass-based model to be utilized. The term "meter-based" is also modified to "mass-based."

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: March 10, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

**Strike and Insert for
Committee Substitute for
Senate Bill 702**

SHORT TITLE: Relating to distribution of real estate within five years of the death of the testator

CODE REFERENCE: §44-8-1 (Amends)

SUMMARY:

The purpose of this bill is to deal with estate real property assets not distributed by the executor. If assets are not distributed, distribution occurs five years after the testator's death whether or not the estate has closed.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

Senate Concurrent Resolution 1

SHORT TITLE: Urging Congress propose regulation freedom amendment

CODE REFERENCE: N/A

SUMMARY:

This concurrent resolution has as its stated purpose urging Congress to propose and adopt the Regulation Freedom Amendment to the United States Constitution. The resolution seeks to address “The growth and abuse of federal regulatory authority” “imposed upon West Virginia and other states” without proper legislative oversight. The resolution asserts that such regulations threaten the “constitutional liberties” of West Virginians guaranteed by the Bill of Rights of the U.S. Constitution, specifically, the first, second, fourth, and fifth amendments.

In its adverbial clauses, the concurrent resolution references federal regulations implemented by federal agencies, such as the U.S. Environmental Protection Agency (EPA), which have “crippled coal production” and been “extremely detrimental to the continuation of normal mining activities” in the state of West Virginia. The resolution states that the production of coal is extremely important to the economy of West Virginia and the United States of America, and to the livelihood and well-being of the inhabitants of West Virginia, the U.S., and the world.

The resolution urges Congress to pass an amendment seeking oversight authority over major new federal regulations by requiring that whenever “One quarter of the Members of the U. S. House of Representatives or the U.S. Senate transmit to the President their written declaration of opposition to a proposed federal regulation, it shall require a majority vote of the House and Senate to adopt that regulation”; fifteen states have adopted similar resolutions with the support of the American Farm Bureau Federation and the Southern States Energy Board. The resolution further states that the U.S. House of Representatives “has passed with bipartisan support” the Regulations from the Executive in Need of Scrutiny Act (REINS ACT) “to require that Congress approve major new federal regulations before they can take effect.”

The concurrent resolution contains two actions; first, it “urges the United States Congress to propose and adopt The Regulation Freedom Amendment;” and second, it directs the Clerk of the Senate “to forward a copy of this resolution to the representatives and senators elected by the citizens of West Virginia serving the citizens of West Virginia in the Congress of the United States in Washington, D.C.”

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: March 12, 2016

ACTION BY GOVERNOR: N/A

**Strike and Insert for
Committee Substitute for
House Bill 2122**

SHORT TITLE: Making it illegal for first responders to photograph a corpse;
Jonathan's Law

CODE REFERENCE: §61-12-16 (New)

SUMMARY:

This bill creates two crimes. The first would be the photographing or filming of a human corpse or person receiving medical attention by a first responder when the photograph or filming is not for legitimate reasons. These reasons include law enforcement, public safety, health care, insurance and investigative purposes or pursuant to a court order. The second crime would be disclosure without prior consent from the person, his or her family or personal representative.

The penalties for a first, second and third offense for each crime would be as follows:

- First Offense: Misdemeanor - \$50 to \$500;
- Second Offense: Misdemeanor - \$100 to \$750 and 24 hours in jail; and
- Third Offense: Misdemeanor \$1000 to \$5000 and 24 hours to six months in jail.

The law is to be known as "Jonathan's Law."

DATE OF PASSAGE: March 7, 2016

EFFECTIVE DATE: June 5, 2016

ACTION BY GOVERNOR: Signed March 16, 2016

**Strike and Insert for
Committee Substitute for
House Bill 2205**

SHORT TITLE: Creating the crime of prohibited sexual contact by a psychotherapist

CODE REFERENCE: §61-8-30 (New)

SUMMARY:

This bill creates the felony crime of prohibited sexual contact by a psychotherapist by means of therapeutic deception. It provides for elements of the crime, definitions and criminal penalties for the offense of therapeutic deception. Those convicted may be fined not more than \$10,000.00, or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 28, 2016

**Strike and Insert for
Committee Substitute for
House Bill 2366**

SHORT TITLE: Relating generally to the solicitation of minors

CODE REFERENCE: §61-3C-14b & §61-8A-4 (Amends)

SUMMARY:

W.Va. Code §61-3C-14b makes it a crime for anyone who knowingly uses a computer to solicit, entice, seduce or lure, or attempt to solicit, entice, seduce or lure a minor known or believed to be at least four years younger than the person using the computer, or to commit any illegal act under articles 8, 8B, 8C, or 8D of Chapter 61. The offense is a felony and subject to a fine of not more than \$25,000, or imprisonment in a state correctional facility for a determinate sentence of not less than five nor more than fifteen years, or both fined and imprisoned.

W.Va. Code §61-8A-4 makes it a crime for any adult who knows or believes that a person is a minor at least four years younger than he or she and distributes, offers to distribute, or displays by any means any obscene matter to the minor for purposes of violating offenses under articles 8, 8B, 8C, or 8D of Chapter 61 with the minor. The offense is a felony and punishable by a fine of not more than \$25,000, or imprisonment in a state correctional facility for not more than five years, or both. For a second and each subsequent commission of such offense, the offense is a felony and, upon conviction, subject to a fine of not more than \$50,000, or confined imprisoned in a state correctional facility for not more than ten years, or both.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 28, 2016

**Strike and Insert for
Committee Substitute for
House Bill 2494**

SHORT TITLE: Creating a provisional plea process in criminal cases

CODE REFERENCE: §61-11-22a (New)

SUMMARY:

This bill codifies another type of diversion program known as a deferred adjudication. As structured, a criminal defendant who, after being apprised of his or her Constitutional, statutory and procedural rights, enters a plea of guilty to a misdemeanor or felony offense, the Court would then generally approve the plea, but defer acceptance of the plea and instead, impose upon the defendant terms and conditions of a bond and a period of deferral.

In the event the defendant complies with the court imposed terms and conditions of the bond and deferral, he or she may be permitted to withdraw the plea and the matter shall either be dismissed with prejudice or the defendant may plead to a lesser offense or some other offense as agreed upon by the parties and the court. In the event the court finds by clear and convincing evidence that the defendant has violated the terms and conditions of the bond imposed at the time the plea was entered, the court may accept the defendant's plea to the original offense and impose a sentence in the court's discretion and in accordance with the statutory penalty of the crime committed.

The deferral period for felonies is up to three years and two years for misdemeanors.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 25, 2016

**Strike and Insert for
Committee Substitute for
House Bill 2588**

SHORT TITLE: Relating to the filing of financial statements with the Secretary of State

CODE REFERENCE: §3-8-5b (Amends)

SUMMARY:

This bill expands the current requirement for candidates for statewide elected office (Governor, members of the Board of Public Works, and justices of the Supreme Court of Appeals) to file their financial statements electronically. Beginning January 1, 2018, all candidates who file their financial statements with the Secretary of State will be required to file those statements electronically, including candidates for State Senate, House of Delegates, circuit judge and family court judge. If a candidate is unable to file online “through or by no fault of the candidate,” he or she may file the statement in person, via fax or other electronic means of transmission, or by certified mail, “postmarked at the first reasonable opportunity.”

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 21, 2016

**Strike and Insert for
Committee Substitute for
House Bill 2605**

SHORT TITLE: Removing the limitation on actions against the perpetrator of sexual assault or sexual abuse upon a minor

CODE REFERENCE: §55-2-15 (Amends)

SUMMARY:

Under current law, an action for personal injuries must be brought within two years after the right to bring an action accrued. If the injured party is a minor (less than 18 years old), current law extends the applicable limitation period by two years following the age of majority, if the injured party is a minor at the time of accrual. Additionally, current law provides a 20 year cap from the time when the right accrues.

This bill set forth an exception to the delay of the statute of limitations until an injured infant reaches the age of majority. Specifically, the amendment states that if the matter relates to a personal action resulting from sexual assault or sexual abuse of an infant, any civil action related the assault or abuse must be brought within four years of reaching the age of majority or within four years after discovery of the sexual abuse or sexual assault, whichever is later in time.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 25, 2016

**Strike and Insert for
Committee Substitute for
House Bill 2665**

SHORT TITLE: Relating to participation in Motor Vehicle Alcohol Test and Lock Program

CODE REFERENCE: §17C-5-2b (Amends)

SUMMARY:

This bill modifies the current DUI deferral program by closing certain loopholes. Currently, the program is available for an individual who is charged with simple (i.e., less than .15 blood alcohol content) DUI, so long as that individual does not have a previous DUI conviction and has not had his or her driver's license revised via administrative proceeding. The bill makes an individual who refused the secondary chemical test requested after he or she was arrested ineligible for the program.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

**Strike and Insert for
Committee Substitute for
House Bill 2800**

SHORT TITLE: Adding law-enforcement officers' contact information and names of family members to the list of exemptions from public records requests

CODE REFERENCE: §29B-1-2 & §29B-1-4 (Amends)

SUMMARY:

This bill creates a Freedom of Information Act exemption for personal information of law enforcement officers, such as personal identity information and family member information maintained by the employer in the ordinary course of the employer-employee relationship.

DATE OF PASSAGE: March 3, 2016

EFFECTIVE DATE: March 3, 2016

ACTION BY GOVERNOR: Signed March 9, 2016

**Strike and Insert for
Committee Substitute for
House Bill 2852**

SHORT TITLE: Relating to legalizing and regulating the sale and use of fireworks

CODE REFERENCE: §29-3-23, §29-3-24, §29-3-25 & §29-3-26 (Repeals); §29-3E (New); §61-3E-1 & §61-3E-11 (Amends)

SUMMARY:

This bill permits and regulates the sale, possession and use of certain consumer fireworks in this state that were previously not available for sale. It repeals the current sparkler and novelty registration fee and the current prohibitions against fireworks and creates a new article §29-3E regulating the manufacture, distribution, sale, storage and use of all fireworks.

Under Section one, it is unlawful to manufacture, wholesale, distribute, import, sell or store, for the purpose of resale, consumer fireworks, sparkling devices, novelties or toy caps without a license, registration, certificate or permit from the State Fire Marshal.

Section two defines key terms.

Section three provides that a person may produce or transport a division 1.3 or division 1.4 explosive if the person meets federal requirements.

Section four states a retailer may not sell sparkling devices, novelties or toy caps without first being registered with the State Fire Marshal. This section also details the minimum application requirements and states that other information may be required by legislative rule. Registrations are non-transferrable.

Section five requires a retailer to obtain a certificate from the State Fire Marshal to sell consumer fireworks. The minimum application requirements are provided and the Fire Marshal may require additional information by legislative rule. This section further provides that the State Fire Marshal may, by legislative rule, add to the regulations established in NFPA 1124. Fees for retailers are set at \$500 for temporary retail facilities and \$1000 for permanent facilities. The fees go to the Fire Marshal to offset the cost of regulation.

Section six requires a permit issued by the State Fire Marshal for public fireworks displays. To receive a permit, application must be made to the Fire Marshal. The permittee is required to furnish proof of financial responsibility to satisfy claims for damages to property or personal injury in the amount, character and form as determined by the State Fire Marshal. In addition to the minimum requirements set forth in this section for the application, the Fire Marshal may require additional information by legislative rule. Fireworks displays must be handled by a competent operator licensed or certified by the State Fire Marshal. Displays must be located and discharged so as to be safe in the opinion of the chief of the fire department serving the area where the display is to be held.

Section seven provides that a safety fee of 12% of all sales, in addition to sales tax, shall be levied on retail sales of consumer fireworks in this state. 75% percent of the safety fee is to be

deposited into the WV Veterans Facility Support Fund and 25% is paid into the Fire Protection Fund to assist volunteer fire departments. The Tax Commissioner may make all rules and regulations necessary to carry out these provisions.

Section eight provides emergency and legislative rule-making authority to the State Fire Marshal.

Section nine provides for certain exemptions including: the use of fireworks by railroad and other transportation agencies; the use of agriculture and wildlife fireworks; sale or use of blank cartridges; and possession, sale or disposal by wholesalers.

Section ten states that this new article does not affect the right of a municipality to prohibit the use of consumer fireworks within its boundaries.

Sections eleven and twelve relate to individuals violating the provisions of this new article and set forth criminal penalties.

Section thirteen deals with seizures by the Fire Marshal.

Section fourteen requires reporting by agencies collecting and receiving funds under the article to measure effectiveness of the programs.

Finally, two sections of chapter sixty-one have been amended to be made consistent with the provisions of the new article.

This bill is effective from passage with internal effective date of June 1, 2016, for sales of consumer fireworks to begin and for the penalties to go into effect.

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: March 8, 2016, with an internal effective date of June 1, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

**Strike and Insert for
Committee Substitute for
House Bill 4007**

SHORT TITLE: Relating generally to appointment of attorneys to assist the Attorney General

CODE REFERENCE: §5-3-3 & §5-3-4 (Amends); §5-3-3a (New)

SUMMARY:

This bill codifies the process by which the Attorney General's office hires outside counsel in contingency or court-approved fee matters on behalf of the State of West Virginia. This bill substantially mirrors the policy adopted and followed by the Attorney General over the last three years. The bill authorizes the Attorney General to appoint Special Assistant Attorneys General and sets the criteria for such appointments. The bill establishes and describes the competitive bidding process for the use of private attorneys on a contingency fee basis by the Attorney General. The bill prohibits the state from entering into any contingency fee arrangement or contract with a private attorney unless the Attorney General makes a written determination, prior to entering into any such contract, that the legal representation is both cost effective and in the best interest of the public. Any such written determination shall include specific findings for four factors.

The bill sets fees for contingency fee legal arrangements or contracts between private attorneys and the Attorney General. Appointed private attorneys are to accept an award of attorney's fees in accordance with, and no greater than, the established fee limitations. Additionally, the bill sets forth supervision requirements for private lawyers representing the state on a contingency basis. Further, the bill requires the posting of certain documents relating to the Attorney General's retention of private attorneys to represent the state on a contingency fee basis. Upon appointment of a private attorney, he or she may thereafter be designated as a special assistant Attorney General and provide representation.

The bill requires the Attorney General to deliver reports on certain legal causes and matters to the Governor, President of the Senate and Speaker of the House. In addition, the bill outlines the contents of such reports. The bill also updates and removes obsolete provisions and defines several terms. Further, the bill clarifies that the appointment of a special Assistant Attorney General shall not be construed to alter, inhibit or expand the attorney-client relationship between the state in the control or conduct of a cause of action. Lastly, the bill maintains that the new provisions set forth in this article are not applicable to, and shall not impair, any contingency fee legal arrangement or contract awarded prior to the effective date.

DATE OF PASSAGE: March 3, 2016

EFFECTIVE DATE: June 1, 2016

ACTION BY GOVERNOR: Signed March 9, 2016

**Strike and Insert for
Committee Substitute for
House Bill 4009**

SHORT TITLE: Letting Our Counties Act Locally Act

CODE REFERENCE: §7-27-1 et seq. (New); §31-15-16c (New)

SUMMARY:

This bill gives each county commission authority to develop road construction project plans and to enter into agreements with the Commissioner of Highways for completion of the road and bridge construction projects included within that plan. Prior to finalizing its plan, the county commission is required to hold one or more public hearings and give an opportunity for the submission of written comments. Thereafter, the plans are submitted to the Commissioner of Highways for modification, if necessary, and approval. Once approved, the plan is submitted to the voters of that county via a county referendum, which will authorize the levying of county transportation sales and use taxes to fund the project, either directly or as financial backing for the issuance of special revenue bonds.

Once the plan is approved by both the county voters and the Commissioner of Highways, the bill authorizes county commissions to impose a county transportation sales and service tax and a county transportation use tax, at a rate not to exceed one percent, to finance the construction, in whole or in part, or to support the issuance of special revenue bonds, thereby accelerating the time for completion of those projects. If imposed, the taxes will be collected by the Tax Commissioner, at the same time and in the same manner as the state consumers sales and service tax and use tax are collected.

The bill directs the net county transportation sales and use taxes to be deposited in the County Road Improvement Account, a new account that would be created in the State Road Fund, to the credit of the county's subaccount in that account, which is created upon approval of the road construction project plans by the Commissioner of Highways. The funds in the subaccount can then be used to fund road and bridge construction projects on a cash basis, and special revenue bonds can then be issued, secured by the funds in the county's subaccount, to finance necessary road and bridge construction and repairs. The bill permits the Tax Commissioner to assess a service charge equal to the lesser of the actual cost or five percent. The bill provides procedures for amending the plan and terminating the taxes once the plan has been fully funded.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

**Strike and Insert for
Committee Substitute for
House Bill 4013**

SHORT TITLE: Requiring a person desiring to vote to present documentation identifying the voter

CODE REFERENCE: §3-1-34, §3-1-41, §3-2-11, §3-2-12 & §17B-2-1 (Amends); §3-1-51 (New)

SUMMARY:

This bill requires a voter to present some form of identification when he or she desires to vote. Beginning January 1, 2018, this bill requires an individual to provide a valid identifying document to the poll clerk prior to signing the poll book. Any document that has been issued by the State of West Virginia or the United State Government and contains the name of the person desiring to vote shall be considered a valid identifying document. A number of specific documents that also satisfy this requirement are also identified, including a driver's license issued in another state, a student identification card issued by a West Virginia high school or college (public or private), a birth certificate, a hunting or fishing license, an identification card issued for public assistance, a valid bank card or debit card or a utility bill. Additionally, a voter may be accompanied by an individual who can swear an affidavit confirming the person is the voter, or a poll worker can allow a person known to the worker to vote. If none of these methods are satisfied, then the voter may cast a provisional ballot.

The bill also provides for automatic voter registration when an individual is issued or renews his or her driver's license. The bill directs the Division of Motor Vehicles to collect certain information from an individual, and to register that individual to vote unless the person affirmatively opts out of being registered to vote. The provisions of this section are to be implemented by July 1, 2017.

Finally, the bill improves the ease in which a person can obtain a driver's license or photo identification document. With respect to a photo identification card, the \$2.50 annual fee for the license is waived for any individual who intends to use the identification card for voting purposes. For individuals fifty and over, the bill expands the list of permissible documents that can be provided to the Division of Motor Vehicles to verify identity for purposes of obtaining a West Virginia driver's license or photo identification card.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

**Strike and Insert for
House Bill 4033**

SHORT TITLE: Adding criminal penalties for the unauthorized practice of pharmacists care

CODE REFERENCE: §30-5-12b & §30-5-34 (Amends)

SUMMARY:

This bill clarifies the illegal practice of a pharmacists or a pharmacy technician. This would include practice with an expired, suspended or lapsed license, including licenses impacted by disciplinary action. The illegal practice would carry a fine of \$10,000.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

**Committee Substitute for
House Bill 4046**

SHORT TITLE: Relating to the promulgation of rules by the Department of Administration

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

SUMMARY:

This bill authorizes the Department of Administration to promulgate the following rules:

HB 4046

Agency: Department of Administration

Subject: Purchasing Division. (148 CSR 1)

During the 2015 Regular Session, the legislature passed amendments to 148 CSR 1, the Purchasing Division rule series. One of the amendments required that all change orders to contracts for spending units subject to purchasing rules must be approved by the Purchasing Division, then approved by the Attorney General as to form, before the commencement of work or the purchase of commodities. In the past, change orders were agreed to between the spending unit and the vendor, then the vendor may possibly commence work prior to completion of the approval process and the encumbrance of the funds for the purchase. In those instances, it was the vendor who risked not getting paid if the contract change order was not approved.

Construction contracts are also governed by certain documents that are unique to this type of work, including a change order form that must be approved by the owner (spending unit), the architect, and the contractor. These standard forms used in most construction projects contemplate that once the parties agree, the work may proceed.

After the amendment became effective, concerns arose about whether application of this amendment to construction contracts would slow down work and increase costs to the spending units. In response, the Purchasing Division filed an Emergency Rule to address this problem.

The amendment to this rule series adds language to subpart 6.8.f relating to the "Timing of Work" through a change order.

HB 4091

Agency: Consolidated Public Retirement Board

Subject: Benefit Determination and Appeal. (162 CSR 2)

This rule amends a current legislative rule by adding a new section 9, relating to reconsideration of a final order. It allows the Board to modify or rescind a final order for specified errors or omissions, if the final order has not been modified or reversed by a higher court. The Board may issue orders retroactively correcting clerical mistakes or omissions.

HB 4092**Agency:** Consolidated Public Retirement Board**Subject:** Teachers' Defined Contribution Retirement System. (162 CSR 3)

The rule amends a current legislative rule by adding a new subdivision 7.4.1., which relates to payment of moneys owed by employers. It allows the Board to permit or require an employer who owes outstanding employer contributions, delinquency fees or correction of error interest to the system to use irrevocably forfeited amounts from the employer's suspense account to offset the delinquent or owed amounts.

The rule was amended by adding language stating that using irrevocably forfeited amounts to offset delinquent or owed amounts reduces the employer contributions in future years as required by §18-7B-11.

HB 4093**Agency:** Consolidated Public Retirement Board**Subject:** Teachers' Retirement System. (162 CSR 4)

This rule amends a current legislative rule by adding a new Subsection 5.2., relating to effective retirement dates. It states that a retirant's effective retirement date is the first day of the month following termination of employment, retirement eligibility and the Retirement System's receipt of a completed retirement application. Any member who terminates employment has a break in service prior to retirement, and submits a retirement application at a date after meeting retirement eligibility, may have an effective date retroactive no more than 4 months following the Retirement System's receipt of the completed retirement application.

Subdivision 6.2.5. has been amended to clarify that a disability retirant may not return to the same occupation he or she occupied prior to his or her disability and continue to receive disability retirement benefits.

Subdivision 6.2.6. is new. It provides that a disability retirant who is able to perform an occupation other than the one upon which his or her disability retirement is based may not receive a prior service allowance during employment in another occupation by a participating public employer. The Board will discontinue the allowance on the first day of the month in which employment begins and resume payment on the first day of the month succeeding the month within which the employment ceases.

HB 4094**Agency:** Consolidated Public Retirement Board**Subject:** Refund, Reinstatement, Retroactive Service, Loan and Correction of Error Interest Factors. (162 CSR 7)

This rule amends a current legislative rule by adding 3 new Subsections, designated 7.6., 7.7. and 7.8. relating to the Judges' Retirement System, the State Police Retirement System and the Teachers' Defined Contribution Retirement System. The new sections provide that where error has resulted in underpayment to the applicable Retirement System, the member is entitled to receive retirement system service credit for the prior period of employment in which the error occurred. The credit is contingent upon the Board receiving employer and employee contributions, plus interest. The rate of interest is the actuarial interest rate assumption approved by the Board

for completing the Actuarial Valuation for the plan year immediately preceding the first day of the plan year in which the correction of error payment is made, compounded per annum.

The rule also adds a new Section 8, relating to the purchase of Service. It provides that the interest rate for the purchase of service in any retirement system administered by the Board, unless otherwise specified, is the actuarial interest rate assumption approved by the Board for completing the Actuarial Valuation for the plan year immediately preceding the first day of the plan year in which the correction of error payment is made, compounded per annum.

HB 4048

Agency: Consolidated Public Retirement Board

Subject: Service Credit for Accrued and Unused Sick and Annual Leave. (162 CSR 8)

This rule amends a current legislative rule to bring it into conformity with the statute which was amended by Senate Bill 529, which passed during the 2015 Regular Session. The amendments state that members of the Public Employees Retirement System, the Teachers' Retirement System and the State Police Retirement System (Plan B), who were not first hired by a participating public employee prior to July 1, 2015, may not convert unused sick and annual leave to additional retirement service credit.

HB 4095

Agency: Consolidated Public Retirement Board

Subject: West Virginia State Police. (162 CSR 9)

This rule amends a current legislative rule by adding a new Section 12, which relates to payment of moneys owed by employers. It allows the Board to permit or require an employer who owes outstanding employer contributions, delinquency fees or correction of error interest to the system to use irrevocably forfeited amounts from the employer's suspense account to offset the delinquent or owed amounts.

The rule also amends Section 15, relating to employer contributions. It provides that last fiscal year the rate was 13.5% and that the rate for this fiscal year is 12%.

HB 4090

Agency: Consolidated Public Retirement Board

Subject: Deputy Sheriff Retirement System. (162 CSR 10)

This rule amends a current legislative rule by adding a new section 12, relating to reconsideration of a final order. It allows the Board to modify or rescind a final order for specified errors or omissions, if the final order has not been modified or reversed by a higher court. The Board may issue orders retroactively correcting clerical mistakes or omissions.

HB 4072

Agency: Division of Personnel

Subject: Administrative Rule of the Division of Personnel. (143 CSR 1)

This rule extensively modifies the existing personnel rule which establishes general provisions regarding classification plans, pay plans, open competitive examinations, promotions, layoffs and recalls, appointment, dismissals, demotions and all other matters consistent with the

civil service system as overseen by the Division.

The changes to the rule clarify certain sections, improve the internal consistency of the Rule, address statutorily required revisions and, generally, improve the existing rule. Below is a summary of the more important revisions.

- 1) Definitional changes—numerous definitions were added and revised; principally to make them consistent with language found in statute or rule, or to provide definitions of terms not clearly defined by either, such as “affiliation” and “examination”.
- 2) Replaced the term “pay” with “compensation” throughout to make terminology consistent throughout the Rule.
- 3) In conjunction with CPRB, added language pertaining to worker’s compensation, and removed language pertaining to CPRB and Social Security which had allowed employees adjudicated approved for Social Security Disability to continue working.
- 4) Added clarifying language to address the change from bi-monthly to the new Enterprise Resource Planning two week pay period—this language may need revision, given additional developments. See 3.62, 14.3, 14.4, generally, for areas which may need revision.
- 5) In multiple places, replaced the term “pay grade” with “compensation range” to make terminology consistent throughout the rule.
- 6) Further defined the types of suspensions.
- 7) Extensively rearranged and edited the section of the rule dealing with classification plans.
- 8) Wrote a clarifying section on the reallocation of positions and its effects upon current employees.
- 9) Made extensive revisions to the sections dealing with pay plans to simplify language and replace outmoded terminology.
- 10) Clarified veteran’s preference points must be earned while on honorable service and clarified the meaning of “active duty”.
- 11) Extended the appeal response time for removals of persons from the register to accommodate meetings of the Personnel Board.
- 12) Rewrote the language on certification of employees to allow for removal of unqualified employees who pose undue risks.
- 13) Altered language to allow for longer hiring periods for temporary employees.
- 14) Established more stringent procedures for demotions and provided language allowing for non-disciplinary suspensions of employees.
- 15) Rewrote the language on leave to conform to existing statutes, including the Family and Medical Leave Act, to better conform to statutory guidance and current practices and remove the need for the Director of Personnel to authorize denial of an employee to return to duty with restrictions.

Nearly all of the comments received from the public on the rule do not apply to the rule before the Committee, as filed following the public comment period. The overwhelming majority of issues with the rule had to do with language relating to classified employees of local government agencies which would have primarily have affected employees of local health departments, many of whom had objections to the rule. This language, originally in 11.6.a, was dropped, as a result of the comment process and is not now in the rule before the Committee.

In addition, the rule was amended by restoring the provisions of 14.3.f.1 relating to payment to employees upon separation from employment, minus language regarding semi-monthly installments. The House also restored the language to 14.4.e.2 which allows an

employee to reinstate cancelled sick leave if he or she returns to eligible employment within one year of the date and time of separation.

This bill specifically provides that the following rule is not authorized:

Agency: Ethics Commission

Subject: Public Use of Names or Likenesses. (158 CSR 21)

This bill also directs the Department to repeal the following rules:

Agency: Department of Administration

Subject: Availability of State Surplus Buildings and Equipment to Charity Food Banks. (148 CSR 5)

Agency: State Building Commission

Subject: Procedural Rules for Meetings. (159 CSR 1)

Agency: Public Employees Insurance Agency

Subject: Procedural Rules for the Public Employees Insurance Agency Advisory Board. (151 CSR 5)

Agency: Board of Risk and Insurance Management

Subject: Discontinuation of Professional Malpractice Insurance. (115 CSR 4)

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: March 12, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

**Committee Substitute for
House Bill No. 4060**

SHORT TITLE: Relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety

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

SUMMARY:

This authorizes the Department of Military Affairs and Public Safety to promulgate the following legislative rules:

HB 4060

Agency: State Fire Commission

Subject: Fire Code. (87 CSR 1)

The State Fire Commission is amending the rule to adopt certain 2015 code standards (with some exceptions) published by the National Fire Protection Association. In total, there are 25 codes that are being updated.

The proposed rule includes adoption of the following updated standards:

- a. 2014 edition of NFPA 1123 (Code for Fireworks Display)
- b. 2013 edition of NFPA 1124 (Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles)
- c. 2012 edition of NFPA 1141 (Standard for Fire Protection Infrastructure for Land Development in Wildland, Rural, and Suburban Areas)

In addition, the rule adds reference to the WV Department of Labor requirements (and other related code references) relating to elevators (§2.2.d.14); updating the requirements for a storage facility for fireworks to the 2013 edition (§2.2.p.5); and requiring projects necessitating a certificate of occupancy to be designed by an Architect or Professional Engineer.

HB 4107

Agency: State Fire Commission

Subject: State Building Code. (87 CSR 4)

The State Fire Commission is amending the rule to adopt the 2015 editions (with some exceptions) of the following construction and building codes:

- a. International Building Code (IBC)
- b. International Plumbing Code (IPC)
- c. International Mechanical Code (IMC)
- d. International Fuel Gas Code (IFGC)
- e. International Property Maintenance Code (IPMC)
- f. International Residential Code for One or Two Family Dwellings
- g. International Existing Building Code

The proposed rule additionally adopts the following:

- h. 2014 edition of the National Electric Code
- i. 2015 edition of the International Swimming Pool and Spa Code

NOTE: This is the first adoption of this code by the State.

In addition, the rule makes clear that the state has adopted the National Fire Protection Association's fire code and not the International Fire Code (§4.1.a.1); clarifies that a Circuit Court Order is necessary for demolition (§4.1.e.1); requires documents to be designed by licensed Architects or professional engineer (§4.2); requires submission of annual reports to the Fire Commission (§7.1); defers all interpretation and enforcement to the local jurisdictions (§7.3.a); and specifies the make-up of local boards of appeal (§7.5.a).

Finally, consistent with the statute, the International Energy Conservation Code remains at the 2009 edition, and is not being updated (§4.1.f).

The House amended the rule by referencing the statute relating to the powers of municipalities and governing bodies regarding demolition of dwellings or buildings unfit for human habitation.

HB 4108

Agency: State Fire Commission

Subject: Standards for the Certification and Continuing Education of Municipal, County, and other Public Sector Building Code Officials, Building Code Inspectors and Plans Examiners. (87 CSR 7)

The State Fire Commission is amending the current rule series relating to the certification and continuing education requirements for code officials, inspectors, and planning examiners. The amendment is a complete re-write of the existing rule. While the rule retains information from the prior rule, the rule should be treated as a new rule for purposes of consideration.

The rule adds new definitions relating to the structure of local code departments (§2); creates new classifications for certification (§3); increases the certification fee from \$50.00 to \$75.00 for new applications (§3.5) and renewals (§5.3); clarifies that at least 0.5 CEU credits must be obtained annually during the 3 year reporting period (§4.1); clarifies the probationary employment process for those seeking to be employed in local code departments (§6); adds additional bases for denying, suspending, or revoking a certification (§7); establishing reporting requirements for local governments with code departments (§8); establishes the investigation and disposition process for complaints against certified individuals (§§9-11); and sets forth the appeal process for orders from the Fire Commission.

This bill also directs the Department to repeal the following rules:

Agency: Division of Corrections

Subject: Furlough Program for Adult Inmates. (90 CSR 3)

Agency: Division of Corrections

Subject: Employment of Displaced Correctional Employees. (90 CSR 4)

Agency: Division of Corrections

Subject: Parole Supervision. (90 CSR 2)

Agency: Division of Corrections
Subject: Recording of Inmate Phone Calls. (90 CSR 5)

Agency: Division of Corrections
Subject: Monitoring Inmate Mail. (90 CSR 7)

Agency: Division of Corrections
Subject: Charges Assessed Against Inmates for Services Provided By State Medical Co-Payment. (90 CSR 6)

Agency: Division of Corrections
Subject: Inmate Grievance Procedures. (90 CSR 9)

Agency: Jails and Prison Standards Commission
Subject: Minimum Standards for Construction, Operation and Management of Holding Facilities. (95 CSR 3)

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: March 12, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

**Committee Substitute for
House Bill No. 4080**

SHORT TITLE: Department of Veterans' Assistance, rule relating to VA headstones or markers

CODE REFERENCE: §64-11-1 et seq. (Amends)

SUMMARY:

This bill authorizes the Department of Veterans' Assistance to promulgate the following rules:

HB 4080

Agency: Department of Veterans Assistance

Subject: VA Headstones or Markers. (86 CSR 4)

The Department of Veterans Assistance is amending this existing rule to reflect the designation of Division of Veterans Affairs as the Department of Veterans Assistance, in compliance with the provisions of S.B. 238 passed in the 2011 Regular Session.

HB 4079

Agency: Department of Veterans Assistance

Subject: State Home for Veterans-Fiscal. (86 CSR 2)

The Department of Veterans Assistance is amending this existing rule to provide that transitional residents of the West Virginia Veterans Home are not required to pay a monthly resident's fee. In order to provide immediate shelter to eligible homeless veterans requiring housing in the state veterans' home, the Department of Veterans Assistance established a transitional unit in the home consisting of ten beds where homeless veterans are provided accommodations without cost, while completing the admissions process which may take up to sixty days to complete. The federal Department of Veterans Administration pays a per diem expense reimbursement to the state for all eligible veterans in the state veteran's home which offsets the cost of providing the transitional beds.

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: N/A

ACTION BY GOVERNOR: Vetoed April 1, 2016

**Committee Substitute for
House Bill 4145**

SHORT TITLE: Relating to carry or use of a handgun or deadly weapon

CODE REFERENCE: §20-2-6a (Repeals); §61-7-3, §61-7-4, §61-7-6, §61-7-7 & §61-7-11a (Amends); §61-7-4a, §61-7-15a & §61-7-17 (New)

SUMMARY:

House Bill 4145 provides that any person over the age of twenty-one may carry a concealed deadly weapon without a license if he or she is a U.S. citizen or legal resident and not otherwise prohibited from possessing a firearm. The bill also makes several amendments to the existing permit procedures. It creates a provisional license program for individuals between the ages of eighteen and twenty-one and amends numerous other provisions to the “Deadly Weapons” article of code.

The bill makes it a misdemeanor offense for anyone under twenty-one years of age and not otherwise prohibited from possessing firearms who carries a concealed deadly weapon without a permit. Under previous law, it was a misdemeanor for “any person” to do such an act.

The bill adds a requirement for a concealed weapon license applicant to be a United States citizen or legal resident thereof, in addition to being a resident of WV and of the county in which the application is being submitted. It also requires any training course completed pursuant to obtaining a license to include the actual live firing of ammunition by the applicant. Training certification submitted to acquire a license must now include the instructor’s name, signature and NRA or state instructor identification number.

The bill requires all duplicate license cards issued to be uniform across all fifty-five counties in size, appearance and information and feature a photograph of the licensee. This duplicate license card is to be designed and prepared in cooperation between the State Police and the West Virginia Sheriffs’ Bureau of Professional Standards.

The bill establishes a tax credit that entitles a person who pays fees for training or an initial application for a license to a tax credit equal to the amount actually paid for training, not to exceed \$50.

The bill establishes a provisional license to carry deadly weapons for individuals between eighteen and twenty-one years of age. The requirements and procedures for obtaining a provisional license are the same for obtaining a twenty-one and over license under current law, including training. The application fee for this provisional license is \$15.

The bill creates two new criminal offenses for people prohibited from possessing firearms who carry a concealed firearm. It provides that it is a felony to carry a concealed firearm if prohibited under §61-7-7(a), punishable by up to 3 years in prison and/or a fine of not more than \$5,000. It also provides that anyone prohibited under §61-7-7(b) who carries a concealed firearm is guilty of a felony, punishable by up to 10 years in prison and/or a fine of not more than \$10,000.

The bill also establishes a new felony offense for any person who uses or presents a firearm during the commission of a felony, which is punishable by up to 10 years in prison.

The bill provides that it's lawful to possess a firearm on a private primary or secondary education property if the private institution adopts written policies permitting possession of firearms. Under previous law, it was always unlawful for a person to possess a firearm on public or private school property and other educational facilities. The bill also adds probation officers to the list of exceptions to the prohibition of possessing firearms on school busses and educational facilities.

Lastly, the bill provides that nothing in the article should be construed to abrogate or modify statutory provisions and common law decisions related to defense of self or others.

DATE OF PASSAGE: February 24, 2016

EFFECTIVE DATE: May 24, 2016

ACTION BY GOVERNOR: Vetoed March 3, 2016; Overridden March 5, 2016

**Committee Substitute for
House Bill 4174**

SHORT TITLE: Exempting activity at indoor shooting ranges from the prohibition of shooting or discharging a firearm within five hundred feet of any church or dwelling house

CODE REFERENCE: §20-5-58 & §61-6-23 (Amends)

SUMMARY:

This bill exempts activity at indoor shooting ranges from the prohibition of shooting or discharging a firearm within five hundred feet of any church, dwelling house, park or other place where persons gather for pleasure, provided that the owner or operator of the shooting range has any applicable Federal Firearm licenses and the indoor range complies with federal, state and local laws governing the operation of the facilities.

The bill amends the definition of "shooting range" to include an indoor range. A compliant indoor shooting range would not constitute a nuisance. Nuisance actions against outdoor shooting ranges or non-compliant indoor ranges are limited to situations where there is a new range, where there has been a substantial change in the use of the range or where there has been a period of shooting inactivity in excess of one year.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

**Strike and Insert for
Committee Substitute for
House Bill 4176**

SHORT TITLE: Permitting the Regional Jail and Correctional Facility Authority to participate in the addiction treatment pilot program

CODE REFERENCE: §62-15A-1, §62-15A-2 & §62-15A-3 (Amends)

SUMMARY:

This bill allows the Regional Jail and Correctional Facility Authority to participate in the addiction treatment pilot program, developed and overseen by the Division of Health and Human Resources, in the same manner as the Division of Corrections.

Pursuant to the bill, the Regional Jail and Correctional Facility Authority would select persons in its custody whom they determine to be high risk by applying the LS/CMI assessment criteria. Those persons selected to participate must be either eligible for Medicaid, a state, federal or private grant, or other funding source that provides for the full payment of the treatment. Once accepted, the participant would receive coordinated treatment and care and participate in other types of related therapies.

In addition, the bill includes the following reduction in sentence for those individuals completing the treatment pilot program: For an individual incarcerated for a misdemeanor, up to five days off the sentence.

Finally, the bill places a reporting requirement upon the Authority.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

**Strike and Insert for
Committee Substitute for
House Bill 4201**

SHORT TITLE: Increasing the criminal penalties for participating in an animal fighting venture

CODE REFERENCE: §61-8-19a & §61-8-19b (Amends); §61-8-19c (New)

SUMMARY:

This Bill:

1) Modifies the definition of “animal fighting venture” to expressly exclude the lawful use of livestock, as defined in §19-10B-2, and exotic breeds of animals bred for exhibition purposes as long as those exhibition purposes do not include animal fighting;

2) Adds operating, financing or knowingly allowing one’s property to be used for animal fighting to what constitutes criminal conduct;

3) Criminalizes the possession of animals with the intent to engage them in fighting;

4) Retains the penalty with regard to mammals and non-indigenous wildlife, which would remain a felony with an increased penalty of two to five years incarceration and increased fines of \$2,500 to \$5,000. Any person convicted would also be divested of ownership in the animals and also be responsible for care and maintenance costs;

5) Criminalizes causing a minor to attend an animal fighting venture. The first offense of attending or causing a minor to attend may result in up to one year incarceration and/or a fine of \$300 to \$2000. Third or subsequent offenses are felonies that carry penalties of one to five years incarceration and/or \$2,500 to \$5,000 in fines; and

6) Creates the misdemeanor offense of wagering at an animal fighting venture with a misdemeanor penalty of up to one year incarceration and/or a fine of \$300 to \$2,000. Third and subsequent offenses are felonies subject to fines of \$2,500 to \$5,000 and/or incarceration for one to five years.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

**Committee Substitute for
House Bill 4218**

SHORT TITLE: Expanding the definition of “underground facility” in the One-Call System Act

CODE REFERENCE: §24C-1-2 (Amends)

SUMMARY:

This bill implements a formal recommendation offered by the West Virginia Commission on Oil and Natural Gas Industry Safety, which Governor Tomblin convened by executive order. Specifically, the bill expands the definition of “underground facility” in the One-Call System Act to include “any underground production or gathering pipeline for gas, oil, or any hazardous substance with a nominal inside diameter in excess of four inches and that is not otherwise subject to one-call reporting requirements under federal or state law.”

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

**Strike and Insert for
Committee Substitute for
House Bill 4228**

SHORT TITLE: Relating to transportation network companies

CODE REFERENCE: §17-29-1 et seq. (New)

SUMMARY:

This bill imposes conditions and duties on businesses known as transportation network companies that will operate in the state. A Transportation Network Company (TNC) is defined as “a corporation, partnership, sole proprietorship, or other entity that is licensed pursuant to this article and operating in West Virginia that uses a digital network to connect transportation network company riders to transportation network company drivers who provide prearranged rides. A transportation network company does not control, direct or manage the personal vehicles or transportation network company drivers that connect to its digital network, except where agreed to by written contract.” A TNC driver is defined as “an individual who: (A) Receives connections to potential passengers and related services from a transportation network company in exchange for payment of a fee to the transportation network company; and (B) Uses a personal vehicle to offer or provide a prearranged ride to transportation network company riders upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.” The bill provides definitions of terms and clarifies that TNCs or TNC drivers “are not common carriers by motor vehicle or contract carriers by motor vehicle, or motor carriers . . . nor do they provide taxicab or for-hire vehicle services.”

Provisions of the bill include: (1) Requirements to operate as a TNC, including a permit to be issued by the Division of Motor Vehicles; (2) Requiring an agent for service of process; (3) Fares that may be charged for providing services to riders; (4) The availability of identification of TNC vehicles and drivers; (5) Issuance of an electronic receipt to the rider on the behalf of the TNC; (6) Motor vehicle liability insurance requirements imposed upon TNCs and drivers. Minimum insurance coverage requirements are established for when the driver is merely logged on to the TNC’s digital network; those coverages are higher when the driver is driving to and transporting a rider. With respect to a person’s insurance policy, an insurance company is authorized to exclude coverage of activities performed as a driver for a TNC, unless the insurance company agrees to provide the coverage by contract with the driver; (7) Requirements of disclosure of financial responsibility to TNC drivers; (8) Defining the relationship between TNCs and its drivers; (9) Conditions upon which a driver is deemed to be an independent contractor rather than an employee of a TNC, and if those conditions are met, providing that the TNC is not required to provide Workers’ Compensation coverage for the drive; (10) Requirements that the TNC establish policies for “zero tolerance” for the use of drugs or alcohol and for “nondiscrimination with respect to riders and potential riders.”; (11) Requirements and qualifications for drivers; (12) Requirements for inspection of drivers’ vehicles; (13) Provisions requiring background checks and other requirements before drivers accept trip requests for TNCs; (14) Establishing criteria which disqualify persons from acting as TNC drivers; (15) Prohibitions of solicitation and cash payments; (16) Record keeping requirements; (17) Prohibiting additional charges for providing services to persons with disabilities; (18) Prescriptions of certain tax requirements and limitations and exemptions; (19) Prohibiting certain political subdivisions from imposition of licensure or other requirements or fees.

DATE OF PASSAGE: March 5, 2016

EFFECTIVE DATE: July 1, 2016

ACTION BY GOVERNOR: Signed March 15, 2016

House Bill 4235

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

CODE REFERENCE: §44-3A-4, §44-3A-4a & §44-3A-32 (Amends)

SUMMARY:

This bill modifies certain deadlines for filing claims against estates when a fiduciary supervisor is utilized to make those deadlines identical to those elsewhere for the administration of estates. The bill makes the deadline for submission of claims sixty days from the date of first publication of the required notice under §44-3A-4. After this sixty day period has elapsed, then the fiduciary supervisor may proceed with closing the estate (§44-3A-4) or with a short form settlement (§44-3A-4a). Further, the bill clarifies that claims that have not been presented to the fiduciary supervisor by the end of that sixty day period are barred from recovering, either by way of claim against the estate being settled by the fiduciary representative or from bringing a counterclaim, unless certain conditions are met.

DATE OF PASSAGE: March 5, 2016

EFFECTIVE DATE: June 3, 2016

ACTION BY GOVERNOR: Signed March 9, 2016

**Strike and Insert for
Committee Substitute for
House Bill 4237**

SHORT TITLE: Supporting and Strengthening Families Act

CODE REFERENCE: §49-8-1, §49-8-2, §49-8-3, §49-8-4, §49-8-5 & §49-8-6 (New)

SUMMARY:

This bill permits the temporary delegation of certain custodial powers by a parent or guardian with the assistance of a qualified nonprofit organization. In practice, this program functions as an early stage foster care diversion program, under which a parent or parents can voluntarily place one or more children with a family with the assistance of a qualified nonprofit organization, who facilitates the placement of a child. The delegation of authority is temporary and is intended to allow a parent to proactively address situations which might otherwise, if left unaddressed, result in the removal of the child and his or her placement in foster care.

The bill sets forth legislative findings and the purpose, which is to “ensure that a parent, guardian or legal guardian has the right to provide for the temporary care of his or her child with the assistance of a qualified nonprofit organization,” and defines the terms “child” and “qualified nonprofit organization.” The scope of any delegation of authority under this article may be broad or narrow in scope, but cannot include delegation of the power to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child or the termination of parental rights of the child. The delegation can be revoked at any time, in which case the child must be returned within forty-eight hours. Importantly, delegation under this provision cannot, absent other evidence, constitute abuse, neglect or abandonment, unless the parent fails to take action at the expiration of the one-year time period of the delegation. The bill requires the qualified nonprofit organization to conduct a criminal history and background check and limits the right of the designee family to move without the parent’s written approval. Any person accepting custody of a child under this article is considered to be a mandatory reporter of suspected abuse and neglect.

The terms of the form delegating parental rights are set forth in the article and the use of a substantially similar form is permitted. The qualified nonprofit organization is required to maintain copies of all power of attorney forms executed for a period of two years following the completion of the temporary placement and to make those forms available to the Division of Health and Human Resources upon request. Child protective services personnel who investigate a family, but do not remove the child, are required to inform the parent or custodian about the availability of these types of community services. The last section clarifies that neither a delegation under this article nor the qualified nonprofit organization are subject to certain requirements concerning child care facility licensing.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

**Strike and Insert
Committee Substitute for
House Bill 4307**

SHORT TITLE: Clarifying that a firearm may be carried for self-defense in state parks, state forests and state recreational areas

CODE REFERENCE: §20-2-5 (Amends)

SUMMARY:

This bill amends the relevant code section on unlawful methods of hunting and fishing to clarify that it is lawful for a person to carry an uncased or loaded firearm for self-defense in a state park, state forest or recreational areas in state wildlife management areas under the Division of Natural Resources, provided that the person is not otherwise prohibited from possessing firearms.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

**Strike and Insert for
Committee Substitute for
House Bill 4309**

SHORT TITLE: Increasing criminal penalties for conviction of certain offenses of financial exploitation of an elderly person

CODE REFERENCE: §55-71-1, §55-71-2, §55-71-3, §55-71-4, §55-71-5 & §55-71-6 (New); §61-2-29b (Amends)

SUMMARY:

Under current law, a person convicted of a crime for financial exploitation of an elderly person would be guilty of a larceny and subject to the penalties for petit and grand larceny.

The bill leaves the penalties the same for someone who financially exploits an elderly person in an amount less than \$1,000. The bill creates a new penalty for someone who financially exploits an elderly person in an amount of \$1,000 or more. A person convicted of felony financial exploitation of an elderly person would face imprisonment for 2-20 years and a fine of not more than \$10,000.

The Bill also establishes a cause of action against a person who commits an act of financial exploitation against an elderly person, protected person or incapacitated adult. The statute of limitations is two years from the act or within two years of discovery, whichever is later. The bill: defines certain terms; restricts certain defenses which, standing alone, are based on a legal relationship to an elderly person, protected person or incapacitated adult; provides for court authorized remedies; provides for attorneys' fees; provides that damage awards have priority; prescribes the burden of proof; authorizes the court to freeze assets while also providing options the court may exercise if a person violates an injunction; and, provides a penalty for violating an injunction.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 25, 2016

**Strike and Insert for
Committee Substitute for
House Bill 4314**

SHORT TITLE: Prohibiting the sale of powdered or crystalline alcohol

CODE REFERENCE: §60-1-5, §60-3-11, §61-6-7, and §61-6-8 (Amends)

SUMMARY:

This bill defines “powdered alcohol” to mean an alcohol manufactured in a powder or crystalline form for either direct use or reconstitution as an alcoholic liquor or food. It prohibits the Commissioner of the Alcohol Control Beverage Commission from listing or stocking powdered alcohol in inventory. It also sets forth a new criminal offense for anyone who manufactures, sells, aids or abets the manufacture of powdered alcohol or possesses, uses or in any other manner provides or furnishes powdered alcohol.

The bill creates a new criminal offense for any licensee who sells, possess, possesses for sale, furnishes or provides any powdered alcohol. It also creates a new criminal offense prohibiting the sale of pure caffeine products.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

**Committee Substitute for
House Bill 4317**

SHORT TITLE: Limiting factors in parenting plans

CODE REFERENCE: §48-9-209 (Amends)

SUMMARY:

This bill modifies one of the factors considered by courts in setting parenting plans. If a parent to whom responsibility for a child would ordinarily be given has engaged in one of a number of factors, the court shall “impose limits that are reasonably calculated to protect the child or child’s parent from harm.” The bill modifies the current law, which directs the court to modify a parenting plan if the parent has “repeatedly made fraudulent reports of domestic violence or child abuse,” by directing modification if the parent has “made one or more fraudulent report[s] of domestic violence or child abuse.” The bill also corrects a code reference within the same section.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

**Strike and Insert for
Committee Substitute for
House Bill 4323**

SHORT TITLE: Relating to the reporting of emergency incidents by well operators and pipeline operators

CODE REFERENCE: §15-5C-1 & §15-5C-2 (New)

SUMMARY:

This bill requires well and pipeline operators to report certain emergency incidents to the Division of Homeland Security and Emergency Management within fifteen minutes. A number of terms are defined, chief among them "incident," which includes (1) an injury that results in death or serious bodily injury or that has a reasonable potential to cause death, (2) an unintended confinement of an individual in an enclosed space for longer than fifteen minutes, (3) the unintended ignition or explosion of oil, natural gas or other substance, (4) an unintended fire in or about a well, well pad or pipeline facility not extinguished within fifteen minutes of discovery, and (5) an unintended release of poisonous or combustible substances with a reasonable potential to cause death.

This bill creates a new reporting requirement, under which pipeline operators and well operators are required to report to the Division of Homeland Security and Emergency Management within fifteen minutes of "ascertaining the occurrence of an incident at a well, well pad or pipeline facility." The requirements of this section are satisfied if the person contacts the local emergency telephone system and reports the incident orally. The information required to be reported includes: (1) the name and affiliation of the person making the report, (2) the location of the incident, and (3) a statement that an incident has occurred. Additional information shall be provided if available, including (A) the nature and extent of the incident, (B) information regarding the substance involved in a fire, and (C) information for the operator's designated contact.

A local emergency telephone system that receives notice is directed to forward that information to the Division of Homeland Security and Emergency Management. The bill calls for documentation of all calls received by the Division, including both recordings and transcripts of calls. Those records are accessible via a Freedom of Information Act request.

Lastly, the bill requires the Director of the Division of Homeland Security and Emergency Management to impose a civil penalty of between \$2,500 and \$50,000 on the operator for failure to comply. That penalty can be waived if the failure to report (1) was due to circumstances outside the operator's control, (2) was due to the operator's attempt to stabilize the incident, (3) was due to the operator's rendering of emergency assistance, or (4) was caused by the incident occurring in an area with little or no wireless communications coverage, so long as notice was provided within fifteen minutes of regaining such communication ability restored. Any civil penalty imposed may be appealed to the Director of the Division of Homeland Security and Emergency Management, and then to the Circuit Court of Kanawha County.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

House Bill 4345

SHORT TITLE: Repealing the West Virginia Permitting and Licensing Information Act

CODE REFERENCE: §5A-6A-1, §5A-6A-2, §5A-6A-3, §5A-6A-4, §5A-6A-5, §5A-6A-6, §5A-6A-7, §5A-6A-8 & §5A-6A-9 (Repeals)

SUMMARY:

This bill repeals the West Virginia Permitting and Licensing Act, which was created in 2008. The purpose of the Act was to facilitate and streamline the various permitting and licensing processes for business activities to be conducted in the State by creating a central repository of such information. The Act authorized the Office of Technology to facilitate and coordinate permitting and licensing processes for business activities in the State, and directed the Office of Technology to notify all agencies, who were then to submit licensing and permitting information to the Office of Technology. That Office was then to create an “information repository” to allow individuals to obtain necessary licenses and permits.

DATE OF PASSAGE: March 9, 2016

EFFECTIVE DATE: June 7, 2016

ACTION BY GOVERNOR: Signed March 16, 2016

**Strike and Insert for
Committee Substitute for
House Bill 4360**

SHORT TITLE: Increasing the criminal penalty for the unlawful practice of law

CODE REFERENCE: §30-2-4 (Amends)

SUMMARY:

Existing law provides that engaging in the unauthorized practice of law, in violation of the statute, is a misdemeanor that carries a penalty of only \$1,000.

The bill makes a first offense a misdemeanor with a fine of up to \$5,000, up to 90 days in jail, or both. It also makes a second offense a misdemeanor with a fine of up to \$10,000, up to one year in jail, or both.

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

**Strike and Insert for
House Bill 4362**

SHORT TITLE: Establishing a felony offense of strangulation

CODE REFERENCE: §61-2-9d (New)

SUMMARY:

This bill creates a separate felony offense for a person who strangles another person without that person's consent and thereby causes the other person bodily injury or loss of consciousness. Upon conviction, a person may be fined no more than \$2,500, imprisoned in a state correctional facility for not less than one year or more than five years, or both fined and imprisoned.

DATE OF PASSAGE: March 5, 2016

EFFECTIVE DATE: June 3, 2016

ACTION BY GOVERNOR: Signed March 9, 2016

**Strike and Insert for
House Bill 4364**

SHORT TITLE: Internet Privacy Protection Act

CODE REFERENCE: §21-5G-1 (New)

SUMMARY:

This bill creates a new article, designated §21-5G-1, Employee Personal Social Media. It prohibits an employer from requesting or requiring that an employee or potential employee:

- Disclose any user name, password or other authentication information for accessing a personal account.
- Access his or her personal account in the employer's presence.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

House Bill 4378

SHORT TITLE: Relating to access to and receipt of certain information regarding a protected person by certain relatives of the protected person

CODE REFERENCE: §44A-3-17 & §44A-3-18 (New)

SUMMARY:

This bill provides a procedure for a relative of a “protected person”– which is defined in code as “an adult found by the court because of his or her mental capacity to be unable to meet the essential requirements for his or her health and to manage property or financial affairs” – to apply to the court to have access to the protected person.

The procedure sets out an application to the court and a hearing which must be held within 60 days unless there are significant health issues which make the protected person’s death imminent, in which case the court may hold an emergency hearing as soon as practicable after the application is filed. There is also a procedure for providing adequate notice to the guardian of the protected person.

Following a hearing, the court may enter an order granting the access, if the guardian’s past acts have precluded that the protected person desires the contact and allows the court to set the parameters of the visit. There are also factors for the court to consider that include protective orders, prior findings of abuse of the protected person by the applicant, and the protected person’s best interest. The court may also consider how the visitation should be structured – should there be a third party present and whether visitation should be suspended or denied. There is also a provision for the awarding of attorney fees.

A second new section would require a guardian to notify relatives of the protected person’s:

- Death – including funeral arrangements;
- Admission to a medical facility for more than 3 days;
- Residence changes; or
- Stays at locations other than his or her usual residence for more than two weeks.

A relative may waive notice of any of these events.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: N/A

ACTION BY GOVERNOR: Vetoed April 1, 2016

**Strike and Insert for
House Bill 4411**

SHORT TITLE: Relating to penalty for illegally taking native brook trout

CODE REFERENCE: §20-2-5a (Amends)

SUMMARY:

This bill establishes a replacement penalty for illegally taking, killing or injuring a native brook trout upon conviction. Other species of fish are penalized at \$10 per pound. The replacement costs go into the "License Fund-Wildlife Management." After the creel limit of 6 native brook trout is exceeded, then the replacement penalty will be \$100 for the first five illegally taken and \$20 for each thereafter.

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: March 11, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

House Bill 4417

SHORT TITLE: Increasing wages protected from garnishment

CODE REFERENCE: 46A-2-130 (Amends)

SUMMARY:

This bill amends W.Va. Code §46A-2-130 by increasing wages that are protected from garnishment. The bill increases the amount of disposable earnings for a week that are protected from garnishment in section (2)(b). Specifically, the bill increases the amount of weekly disposable income that is exempt to garnishment. The bill increases the threshold of disposable income subject to garnishment to wages that exceed thirty times the federal minimum hourly wage to disposable earnings that exceed fifty times the federal minimum hourly wage. This bill ensures consistency with SB469 which changes the same threshold to the same amount in W. Va. Code §38-8-1.

DATE OF PASSAGE: March 9, 2016

EFFECTIVE DATE: June 7, 2016

ACTION BY GOVERNOR: Signed March 16, 2016

**Committee Substitute for
House Bill 4448**

SHORT TITLE: Clarifying that communication by a lender or debt collector which is allowed under the West Virginia Consumer Credit and Protection Act, likewise does not violate the provisions of the West Virginia Computer Crime and Abuse Act

CODE REFERENCE: §61-3C-14a (Amends)

SUMMARY:

This bill is a clarifying amendment to the West Virginia Computer Crime and Abuse Act (the "CCAA"), providing that a communication by a lender or debt collector that does not violate the West Virginia Consumer Credit and Protection Act (§46A-2-128), likewise does not violate the CCAA.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

**Committee Substitute for
House Bill 4502**

SHORT TITLE: Allowing reciprocity agreements with contiguous states to establish regulations, licensing requirements and taxes for small businesses

CODE REFERENCE: §5-1-29 (New)

SUMMARY:

This bill authorizes the Governor to engage agencies from contiguous states and the District of Columbia to secure reciprocal agreements to establish regulations, licensing requirements and taxation for small businesses headquartered in this state, contiguous states, or D.C., who conduct business in both.

In the discretion of the Governor, the Attorney General or secretary of an executive branch department may be delegated and empowered, in writing, to negotiate and enter into such reciprocity agreements on behalf of the Governor.

In addition, the bill requires legislative approval if taxation is involved in any such agreement.

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 25, 2016

**Committee Substitute for
House Bill 4505**

SHORT TITLE: Allowing powerball winners to remain anonymous

CODE REFERENCE: §29-22-15a (New); 29B-1-4 (Amends)

SUMMARY:

This bill provides for a procedure by which lottery winners, specifically powerball, mega millions, and hot lotto winners, may request to remain anonymous. The person entitled to collect proceeds must contact the State Lottery Director via mail or email. Thereafter, the director must contact the person making the request and schedule an appointment at a lottery office to confirm the winning number and to secure the anonymity of the requesting person. The bill also adds an exemption to the Freedom of Information Act, W. Va. Code §29B-1-4, exempting information provided by a person when he or she elects to avail themselves of the anonymity provisions of the State Lottery Act.

DATE OF PASSAGE: March 7, 2016

EFFECTIVE DATE: N/A

ACTION BY GOVERNOR: Vetoed April 1, 2016

**Committee Substitute for
House Bill No. 4517**

SHORT TITLE: Limiting the ability of an agent under a power of attorney to take self-benefiting actions

CODE REFERENCE: §39B-1-114 & §39B-2-101 (Amends)

SUMMARY:

This bill adds language to the section on an agent's duties. It states that if an agent benefits from an act to the substantial and direct detriment of an ancestor, spouse, heir or descendant of the principal, a presumption is created that the act was not within the scope of authority granted in the power of attorney, unless the authority to perform that specific act is expressed with particularity in identifying the existing property interest and provided in the power of attorney.

Current law does not allow an agent who is not an ancestor, spouse or decedent of the principal to create in the agent an interest in the principal's property by any means. This bill does not allow any agents to have an interest in the principal's property by any means, unless the power of attorney expresses the specific act in the grant of authority and identifies the existing property interest with particularity.

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

**Committee Substitute for
House Bill No. 4520**

SHORT TITLE: Clarifying that certain hospitals have only one governing body whose meetings shall be open to the public

CODE REFERENCE: §16-5G-2 & §16-5G-4 (Amends)

SUMMARY:

This bill sets forth what constitutes the governing body of a hospital operated by a nonprofit corporation, a hospital operated by a political subdivision of the State and a hospital operated by a nonprofit association. It specifies that the medical staff of the hospital, its executive committee or a subcommittee of the medical staff is not a governing body.

This bill states that a meeting of any subgroup of the governing body that makes recommendations to the governing body is not a meeting subject to the article which relates to open hospital proceedings, unless the subgroup is vested with and exercises independent decision-making authority at any convening.

Current law prohibits a governing body from taking official action while in executive session. This bill adds several exceptions, such as protecting the confidentiality of protected health information.

Current law also delineates the reasons for which a governing body may go into executive session, including to consider the work product of the hospital's attorney or hospital administration. The bill expands upon this purpose to include conducting privileged attorney client communications and to include materials prepared by an attorney or others in anticipation of litigation, litigation strategies and reports, confidential legal settlements and discussions, negotiations and alternative dispute resolution proceedings conducted in pursuit of a legal settlement.

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: June 6, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Strike and Insert for House Bill 4558

SHORT TITLE: Relating to victim notification and designation of additional individuals to receive notice of an offender's release

CODE REFERENCE: §61-11A-8 (Amends)

SUMMARY:

Under West Virginia law, victims of a crime are to be notified at various stages of the prosecution, as well as after the prosecution if they request it, of the alleged perpetrator or inmate's release. In particular, W.Va. Code §61-11A-8 requires the victim to be notified:

- (a) By the prosecutor anytime the accused is released from custody pending judicial proceedings;
- (b) By the prosecutor regarding sentencing; and
- (c) By the Commissioner of Department of Corrections, the Regional Jail Supervisor or the Sheriff after sentencing, if defendant is released prison, is going into a halfway house or other non-secure setting or has escaped.

The statute additionally requires that the victim or victim's family member, requesting to be notified provide a designated telephone number and address. If a family member requests notice, it is to be sent to the victim, unless he or she is incompetent or deceased. Further, the statute states that a voicemail is insufficient notification. Rather, the notifying entity must give notice directly to the designated person.

The bill also adds language to give a victim the ability to designate another adult to receive such notice.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 25, 2016

**Committee Substitute for
House Bill 4586**

SHORT TITLE: Ensuring that the interest of protected persons, incarcerated persons and unknown owners are protected in condemnation actions filed by the Division of Highways

CODE REFERENCE: §54-2-4 (Amends)

SUMMARY:

This bill clarifies procedures related to condemnation proceedings involving persons under a disability. The bill requires courts to protect the rights of individuals under a legal disability, either as a protected person under W. Va. Code §44a-1-2a or because the person is incarcerated, and whose ownership interest requires them to be a party in a condemnation action.

A protected person may be represented by a conservator, guardian or limited guardian appointed by the court to represent the protected person in the condemnation action. An incarcerated person who has an attorney or a committee shall be represented by the attorney or committee. An incarcerated person who is a party in a condemnation proceeding who is not represented by an attorney or a committee shall be represented by an attorney appointed by the court. Any unknown owners of property subject to condemnation shall be represented by a court-appointed guardian ad litem.

The court is permitted to direct payment of a limited guardian, attorney or guardian ad litem appointed in an amount to be fixed by the court or judge to be taxed as costs and paid by the applicant. The bill clarifies that the condemnation procedures in chapter fifty-four of the code shall be followed.

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

**Strike and Insert for
Committee Substitute for
House Bill 4587**

SHORT TITLE: Relating to violations associated with absent voters' ballots

CODE REFERENCE: §3-9-19 (Amends)

SUMMARY:

This bill makes a technical change concerning the criminal offense of absentee voter fraud. Subsection (b) makes certain officials guilty of a misdemeanor if they "refuse or neglect to perform any of the duties required of him or her by any of the provisions of articles three, five and six of this chapter relating to voting by absentees or shall disclose to any other person or persons how any absent voter voted." Current code makes reference to the "clerk of the circuit court" as one official who may be guilty of this misdemeanor, and the bill changes this to "the clerk of the county commission."

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 21, 2016

**Committee Substitute for
House Bill 4604**

SHORT TITLE: Relating to violations of the Ethics Act

CODE REFERENCE: §6B-2-4 (Amends)

SUMMARY:

This bill primarily makes three changes to the Ethics Act. First, it requires an investigation to be concluded and a determination to be made within eighteen (18) months of the filing of a complaint, unless agreed upon by the respondent and complainant or if good cause can be shown. Second, it alters the evidentiary standard from “beyond a reasonable doubt” (a criminal standard) to “clear and convincing”, which is more frequently the standard in civil matters. Finally, it sets a statute of limitations of five years for all violations after July 1, 2016.

EFFECTIVE DATE: June 10, 2016

DATE OF PASSAGE: March 12, 2016

ACTION BY GOVERNOR: Signed March 25, 2016

**Strike and Insert for
Originating
House Bill 4618**

SHORT TITLE: Relating to limitations on use of a public official's name or likeness

CODE REFERENCE: §6B-2-5c (Repeals); §6B-2B (New)

SUMMARY:

This bill repeals the current section in the Code relating to limitations on a public official's use of his or her name or likeness and replaces it with a new article with the same name.

Section one defines terms such as "advertising", "public official", "social media" and "trinkets".

Section two prohibits public officials and their agents from placing the public official's name or likeness on trinkets paid for with state funds, in advertising, on vehicles, and on educational materials. It allows the expenditure of a nominal amount on the purchase of pens to be used during ceremonial signings.

Section three allows a public official's name or likeness to appear on the public agency's website and social media, subject to specified restrictions.

Section four governs the use of public resources to display or distribute items with the public official's name or likeness.

Section five allows a public official to use his or her name or likeness on any official record or report, letterhead document or certificate or instructional material issued in the course of his or her duty as a public official. It allows the Division of Tourism to use a public officials' name or likeness on material used for tourism promotion.

Section six prohibits the use of existing items after the bill's effective date. Materials may be used if the public official's name or likeness has been permanently removed or covered, if the materials are used internally or if they are donated to surplus or charity.

Section seven allows a public agency to apply to the Ethics Commission for an exemption from the provisions of the article where the provisions of the article would create an undue hardship or have a significant financial impact on the public agency.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

House Bill No. 4655

SHORT TITLE: Prohibiting insurers, vision care plan or vision care discount plans from requiring vision care providers to provide discounts on noncovered services or materials

CODE REFERENCE: §33-25E-2 (Amends); §33-25E-5 (New)

SUMMARY:

This bill contains new provisions related to non-covered discounts. It prohibits an insurer from seeking or requiring an eye care provider to provide services or materials at a fee limited or set by the insurer, unless they are reimbursed as covered services or covered materials under the contract. An eye care provider may not charge more for non-covered services or materials than his or her usual and customary rate. Reimbursements paid by the insurer must be reasonable and clearly listed on a fee schedule that is made available before the signing of the contract.

The bill also prohibits insurers from falsely representing benefits to groups, employers or individual enrollees. An agreement may not require an eye care provider to participate with or be credentialed by any specific plan as a condition of participation in the health care network of the insurer. New health benefit plans, vision care plans or vision care discount plans issued or renewed which provides coverage for services rendered by an eye care provider must provide the same reimbursement for services to optometrists as allowed for those services rendered by physicians or osteopaths.

Finally, the bill prohibits an insurer from requiring an optometrist to meet terms and conditions that are not required of a physician or osteopath as a condition of participation in its provider network for the provision of services that are within the scope of practice of an optometrist.

The bill specifies the process for changing or altering an agreement. It allows a person or entity adversely affected by a violation of the law or the Insurance Commissioner to seek an injunction against the insurer and the person or entity may recover monetary damages of no more than \$1,000 for each instance found to be in violation of this section, plus attorney's fees and costs.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: July 1, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

**Strike and Insert for
Committee Substitute for
House Bill 4724**

SHORT TITLE: Relating to adding a requirement for the likelihood of imminent lawless action to the prerequisites for the crime of intimidation and retaliation

CODE REFERENCE: §61-5-27 (Amends)

SUMMARY:

This bill adds certain additional requirements to the State's criminal statute governing intimidation and retaliation against government officials and governmental action.

Under current law, it is unlawful for a person to use intimidation, physical force, harassment or a fraudulent legal process or official proceeding, or to threaten or attempt to do so, with the intent to: (1) impede or obstruct a public official from performing official duties, (2) impede or obstruct a juror or witness, (3) influence, delay or prevent the testimony of any person in an official proceeding, or (4) cause or induce a person to fail to perform certain duties, or to retaliate or threaten to do so against a person for the same.

The bill provides clarity in these situations, and incorporates the United States Supreme Court's test from *Brandenburg v. Ohio*, 395 U.S. 444 (1969), a First Amendment case wherein the Court held that government cannot punish inflammatory speech unless that speech is directed to inciting, and is likely to incite, imminent lawless action of a violent nature or that is likely to cause bodily harm.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

House Bill 4725

SHORT TITLE: Relating to providing the procedures for the filling of vacancies in the offices of justices of the Supreme Court of Appeals, circuit judge, family court judge or magistrate and making certain clarifications

CODE REFERENCE: §3-10-3 (Amends)

SUMMARY:

This bill modifies the statute relating to the filling of vacancies in the offices of justice of the Supreme Court of Appeals, circuit judge, and family court judge in order to avoid potentially unconstitutional applications. The West Virginia Constitution provides that an appointee to a judicial vacancy shall continue to hold the seat until the end of the term if the unexpired term is two years or less. This bill clarifies that an election will only be held to fill the remaining term “if the unexpired term be for a period of more than two years.” Although the language relating to the filling of magistrate vacancies is not constitutionally infirm, identical language is added to subsection (c) so that all magistrate appointees will also continue to serve until the end of the term if that term is for two years or less. Additional modifications to this section reflect situations in which the remaining term is more than two years from the date of the vacancy.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

House Bill 4735

SHORT TITLE: Relating to the definition of health care provider, and clarifying that speech-language pathologists and audiologists are two separate providers

CODE REFERENCE: §55-7B-2 (Amends)

SUMMARY:

This bill clarifies that speech-language pathologists and audiologists are two separate providers.

DATE OF PASSAGE: March 7, 2016

EFFECTIVE DATE: June 5, 2016

ACTION BY GOVERNOR: Signed March 10, 2016

House Bill 4738

SHORT TITLE: Relating to the offense of driving in an impaired state

CODE REFERENCE: §17C-5-2 (Amends)

SUMMARY:

This bill modifies the section of code which defines traffic offenses related to driving under the influence of alcohol, controlled substances or drugs. The bill expands the definition of "impaired state" to include situations when a person is under the influence of an "inhalant substance." Additionally, the bill clarifies that, for purposes of the offense of driving in an impaired state, an individual can be charged with and convicted of that offense even if he or she refuses the secondary chemical blood alcohol test.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 25, 2016

Strike and Insert for House Bill 4739

SHORT TITLE: Unclaimed Life Insurance Benefits Act

CODE REFERENCE: §33-13D-1 and §33-13D-2 (New)

SUMMARY:

The bill incorporates language from a model act regarding unclaimed life insurance benefits. The bill contains a section regarding definitions and a section regarding insurer conduct. With respect to insurer conduct, the bill provides the following: (1) An insurer shall perform a comparison of its insureds' policies, annuity contracts and account owners against a Death Master File on an annual basis; (2) The comparison, shall be conducted first to the extent that such records are available electronically and then using the most easily accessible records that are not available electronically; (3) The comparison shall not apply to policies or annuity contracts for which the insurer is receiving premiums within 18 months immediately preceding the Death Master File comparison; and (4) The insurer is not prohibited from requesting a valid death certificate. Policies in effect as of 1986 and issued there after must be part of this search.

The bill also requires the Insurance Commissioner to promulgate legislative rules with certain provisions. If a potential match is identified or if an insurer learns of the possible death of a person otherwise, the insurer shall do the following within ninety days of the match: (1) Make a good faith effort (that is documented) to confirm death; (2) Review records to determine if deceased person had purchased any other products with the insurer; and (3) Determine whether benefits may be due. The bill also requires the insurer, if the beneficiary or other representative has not communicated with the insurer within the ninety-day period, to take reasonable steps to locate and contact the beneficiary or authorized representative, including, but not limited to, sending the beneficiary information regarding the insurer's claim process, including the need to provide an official death certificate. The insurer must document its reasonable steps.

The bill also, to the extent permitted by law, requires the insurer to disclose the minimum necessary personal information about a person or beneficiary that the insurer reasonably believes may be able to assist the insurer in locating the beneficiary entitled to payment of the proceeds. Insurers must implement procedures to account for nicknames, maiden names and transposed social security numbers. No charges may be assessed to any beneficiary or authorized representative for any fees or costs associated with the Death Master File searches conducted pursuant to this section. Under the bill, the benefits from any policy plus any accrued contractual interest shall first be paid to any designated beneficiaries or, if they cannot be found, then shall be paid as unclaimed property pursuant to article eight, chapter thirty-six of the code. The bill also permits the Insurance Commissioner to make an order limiting an insurer's Death Master File comparisons to the insurer's electronic searchable files, exempting an insurer from the Death Master File comparisons required or permitting the insurer to perform such comparisons less frequently than annually upon a demonstration of hardship by the insurer or phasing-in compliance with this section according to a plan and timeline approved by the Insurance Commissioner.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

**Strike and Insert for
House Bill 4740**

SHORT TITLE: Permitting that current members of the National Guard or Reserves may be excused from jury duty

CODE REFERENCE: §52-1-11 (Amends)

SUMMARY:

This bill amends a single section of the code, the purpose of which is to permit individuals who are current members of the National Guard or military Reserves to be excused from jury duty.

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 24, 2016