

Promises Made, Promises Kept

*A Summary of Legislation Specifically Highlighting
the Protection of Freedom and Personal Liberties*



2015-2023

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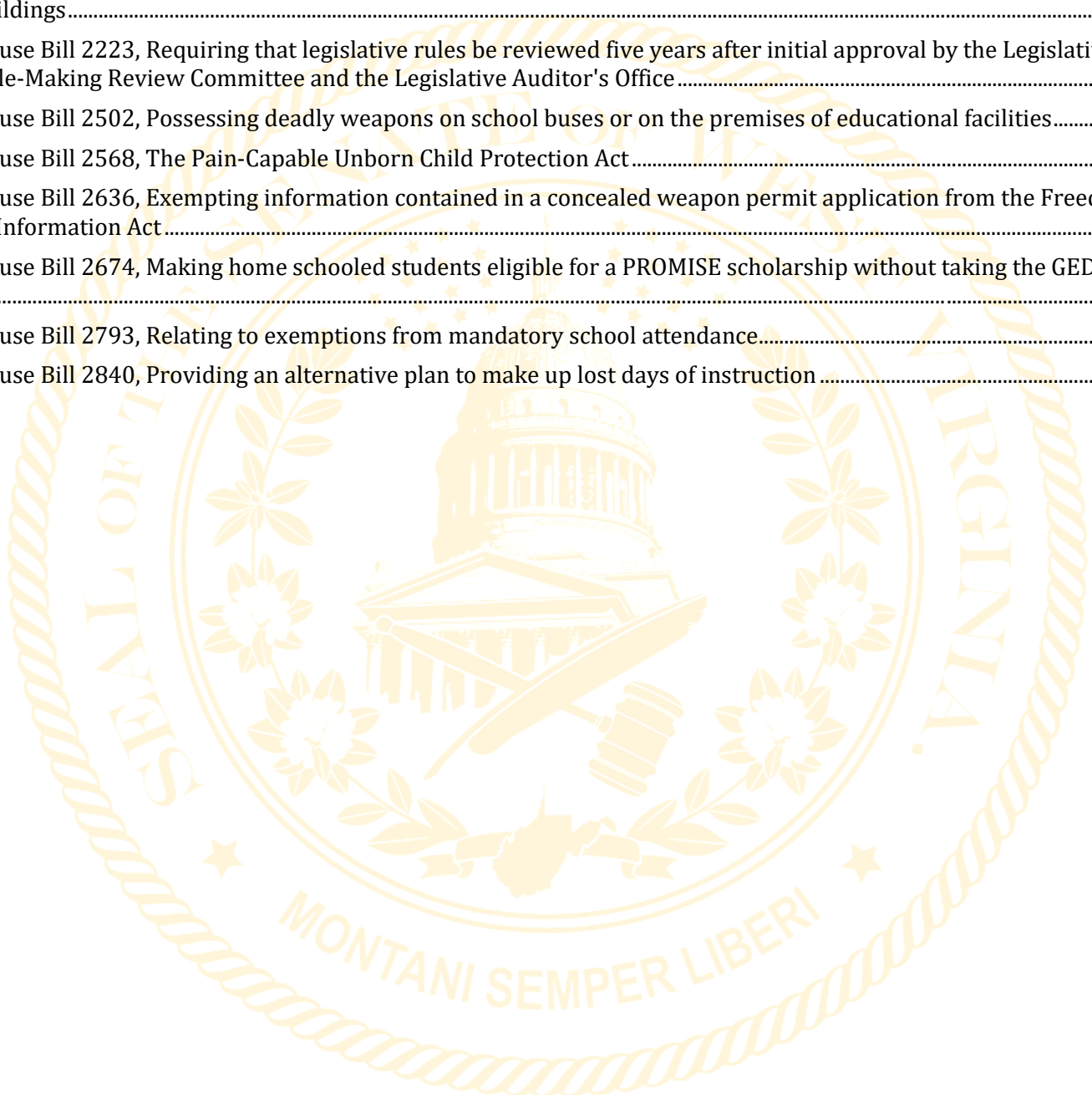
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2021-2023

Senate President Craig P. Blair

2023 Regular Session



Senate Bill 10

Campus Self-Defense Act

The general purpose of this bill is to allow persons who are holders of concealed handgun permits to carry same on the campuses of the state institutions of higher education.

- The bill creates an exception to any general prohibition a school might have regarding carrying a handgun on campus.
- The authorization extends to persons holding a current and valid WV provisional (age 18-21) license, standard license (21 and older) and persons from other states holding a current and valid license per W. Va. Code §61-7-6a including reciprocity city and recognition of out of state licenses.

The amended sections all contain the same language, stating that on and after July 1, 2024, the governing entities of the various types of higher education programs may only restrict or regulate license holders consistent with the new §18B-4-5b.

Subsection (a) of the new section authorizes license holders to carry concealed on campus per limitations in subsection 5.

Subsection (b) allows colleges to continue to regulate and restrict carrying in the following campus locations in compliance with §61-7-14 of this code:

- At an organized event taking place at a stadium or arena with a capacity of more than 1,000 spectators;
- At a daycare facility located on the property of the state institution of higher education;
- In the secure area of any building used by a law-enforcement agency on the property of the state institution for higher education;
- In an area of the property of the state institution of higher education that has adequate security measures in place to ensure that pistols or revolvers are not carried by the public into the area. As used in this section, "adequate security measures" means the use of electronic equipment and armed personnel at public entrances to detect and restrict the carrying of any pistols or revolvers into the area, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes to ensure that pistols or revolvers are not carried in those areas by members of the public;
- In an on-campus room or rooms in which a student or employee disciplinary proceeding is being held;
- In sole occupancy offices on the campus and in the buildings of the state institution of higher education. "Sole occupancy office" means a room with at least one door and walls that extend to the ceiling that is assigned to a single person as his or her workspace. This subdivision does not authorize a state institution of higher education to prohibit, regulate, or restrict faculty or staff members who hold a current and valid license to carry a concealed deadly weapon from carrying a concealed pistol or revolver in his or her assigned office;
- At a primary or secondary education school-sponsored function being held in a specific location on the property of the state institution of higher education that is rented, leased, or under the exclusive use of the West Virginia Department of Education, the West Virginia Secondary Schools Activities

Commission, a county school board, or local public school for the actual period of time the function is occurring;

- At a private function that is being held in a specific location on the property of the state institution of higher education that is rented, leased, or under the exclusive use of an entity that is not affiliated with the state institution of higher education for the actual period of time the function is occurring;
- In any area on the property of the state institution of higher education where possession of a firearm is prohibited by state or federal law;
- In specifically designated areas in which patient-care or mental health counseling is being provided;
- In high hazardous and animal laboratories, defined as laboratories with:
 - Greater than 55 gallons of Class I flammable liquids and/or significant quantities of acids, bases, organics, pyrophorics, peroxides, bio-hazardous materials, extremely toxic materials or pyrophoric or toxic gases classified NFPA 704 Category 3 or higher;
 - Hazardous gases with K-size or larger cylinders containing corrosive, reactive, flammable, toxic, and/or oxidizer gases classified NFPA 704 Category 2 or higher;
 - MRI and/or NMR equipment capable of generating significant magnetic fields with field strength of at least 5 gauss is measured outside the equipment or 5 gauss line typically at least 3 feet and as much as 20 feet from equipment;
 - Large cylinders of acetylene; or,
 - Animal research laboratory spaces in locations not accessible to the public or generally accessible to students and staff; or
- In on-campus residence halls, except common areas such as lounges, dining areas, and study areas.

Subsection (c) allows an employee who holds a license whose job requires being in residence halls to carry therein.

Subsections (d) and (e) require colleges to provide a secure location for guns in residence halls or make safes available for residence hall rooms. It also requires the institutions to develop a policy to coordinate having sufficient resident rooms for license holders in residence halls with a storage room. A reasonable fee may be charged for storage room use or safes. Subsection (f) allows for school discipline for license holders who violate restrictions. Subsection (g) prohibits license holders and anyone else from carrying when the gun is visible or threatening a breach of the peace. Subsection (h) states the legislatures intent and limits the liability of schools. Subsection (i) defines license to carry as previously explained. Subsection (j) names the 2023 amendments the “Campus Self-defense Act.” Subsection (k) adopts July 1, 2024, as the effective date.

CODE REFERENCE: West Virginia Code §18B-1-16, §18B-1B-4, §18B-2A-4, and §18B-B-6 – amended; §18B-4-5b – new

DATE OF PASSAGE: February 21, 2023

EFFECTIVE DATE: February 21, 2023, with internal effective date of July 1, 2024

ACTION BY GOVERNOR: Signed March 1, 2023

Senate Bill 47

Creating Charter Schools Stimulus Fund

This bill would create a special revenue account known as the “Charter Schools Stimulus Fund”. The purpose of the fund is to provide financial support to charter schools for startup costs. The fund shall consist of legislative appropriation, grants, gifts, devises, and donations. The fund is administered by the West Virginia Professional Charter School Board. At the end of any fiscal year any remaining amounts in the fund to not revert to General Revenue.

The State Board of Education is granted mandatory rulemaking authority. The rules are required to include:

- An application
- Notification from the W.Va. Professional Charter School Board to potential applicants; and
- An applicant attestation that the applicant:
 - Would not otherwise have the financial capacity without money from the Charter Schools Stimulus Fund to:
 - Successfully apply to an authorizer.
 - Start a public charter school.
 - Is not working with or financed by any organization that has started or financed other charter schools to the degree that facilitating and starting charter schools is a significant portion of the organization’s purpose.

The bill sets out the process for distribution of funds. Funds are to be distributed as follows:

Each qualifying charter school applicant or charter school is to be awarded an initial grant of up to \$300,000 during or before the first two years of the charter school’s operation. If an applicant for a charter school receives an initial grant and fails to begin operating a charter school within the next 30 months, the applicant must reimburse the West Virginia Professional Charter School Board for the initial grant plus interest calculated at a prorated rate of 10 percent a year. The bill also allows the West Virginia Professional Charter School Board to lengthen this 30-month time period in extenuating circumstances.

Applicants for charter schools and charter schools that received initial grants also can apply to the West Virginia Professional Charter School Board for an additional grant of up to \$100,000. If an applicant for a charter school receives an additional grant and fails to begin operating a charter school within the next 30 months, the applicant is required to reimburse the West Virginia Professional Charter School Board for the additional grant plus interest calculated at a prorated rate of 10 percent a year. The bill also allows the West Virginia Professional Charter School Board to lengthen this 30-month time period too in extenuating circumstances.

CODE REFERENCE: West Virginia Code §11-3-25B and §11-10A-19 – new

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 83

Authorizing tactical medical professionals to carry firearms

The bill permits EMS personnel, a nurse, a physician assistant, or a physician who is trained and certified in a nationally recognized tactical medical training program that is equivalent to tactical casualty and who functions in the tactical environment while attached to a law enforcement agency to carry a gun. The bill required the Law enforcement professional standards subcommittee to propose a legislative rule to promulgate standards governing the training. The bill provides liability protection.

CODE REFERENCE: West Virginia Code §30-29-3 – amended; §30-43-1 through §30-43-3 – new

DATE OF PASSAGE: February 2, 2023

EFFECTIVE DATE: May 3, 2023

ACTION BY GOVERNOR: Signed February 9, 2023

Senate Bill 128

Clarifying authority of Governor and Legislature to proclaim and declare state of emergency and preparedness

The bill clarifies the authority of the Governor and the Legislature to proclaim or declare states of emergency and preparedness; creates two classes of states of preparedness and establishing the criteria therefor; establishes the initial duration of gubernatorially proclaimed states of emergency and preparedness and the requirements for extending same; expands and clarifies the powers of the Governor as to what he or she may order under proclamations of states of emergency and preparedness; expressly limits the Governor's authority to order certain actions in an executive order issued pursuant to a proclamation or declaration of a state of emergency or preparedness; clarifies that the declaration of a state of preparedness has the same effect as a declaration of a state of emergency for the purposes of the Emergency Management Assistance Compact and the Statewide Mutual Aid System; and states that the powers granted as to orders issued under states of emergency do not include the authority to limit the lawful possession and use of firearms and ammunitions.

CODE REFERENCE: West Virginia Code §15-5-2 and §15-5-6 – amended

DATE OF PASSAGE: February 23, 2023

EFFECTIVE DATE: February 23, 2023

ACTION BY GOVERNOR: Became law without Governor's signature on March 4, 2023

Senate Bill 131

Allowing municipal fire marshals to receive service weapon upon retirement

The purpose of this bill is to allow municipal fire departments to award service weapons to municipal fire marshals. Currently, state Code does not provide for this. This bill allows municipal fire departments to award service weapons to municipal fire marshals and deputy fire marshals upon retirement after 20 years, or under if leaving on disability. The authority is discretionary and prohibits awarding a weapon to prohibited persons; mentally incapacitated or dangerous retirees. The departments are also authorized to offer out of service weapons to active or retired fire marshals. The bill seeks to allow additional persons to receive service weapons.

CODE REFERENCE: West Virginia Code §8-15-28 – new

DATE OF PASSAGE: March 4, 2023

EFFECTIVE DATE: June 2, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 149

Exempting property used exclusively for divine worship and the certain operations from property taxation

The bill exempts the following property from ad valorem taxation:

“Property . . . used exclusively for divine worship and the operation of a pre-K school, primary school, middle school, secondary school, daycare center, or church camp for children, which school, daycare center, or church camp is operated by the church which owns the property or is operated by another not-for-profit organization or entity.”

Note: Article X, § 1 of the West Virginia Constitution imposes ad valorem taxes on all property in the state, and simultaneously subjects that general rule to exceptions:

“Subject to the exceptions in this section contained, taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value . . .” (emphasis added). That section of constitutional law goes on to create an exception by providing that “property used for religious purposes may by law be exempted from taxation.” The Legislature has already by law exempted from ad valorem taxation “[p]roperty used exclusively for divine worship” in §11-3-9. This bill would expand upon that exemption.

CODE REFERENCE: West Virginia Code §11-3-9 – amended

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

Senate Bill 220

Industrial Hemp Development Act

This bill is to regulate the processing, distribution and sale of kratom and certain hemp-derived cannabinoids for human consumption (delta-8, delta-10 tetrahydrocannabinols) under the Commissioner of Agriculture.

This bill does the following:

- Hemp-derived cannabinoids are regulated by the new section §19-12E-12, and Kratom by the new article 19-12E-1 et seq. This section does not apply to naturally occurring plant-based derivative products not containing tetrahydrocannabinol content.
- The bill limits sales of kratom and hemp-derived cannabinoids to persons 21 years of age and older.
- Sets up a regulatory scheme for both products designed to limit physical availability of the products.
- Authorizes the Alcohol Beverage Control Administration Commission (ABCA) to assist in enforcing regulations on the products at the retail level.
- Imposes an excise tax of 11% on the sale of the products, the proceeds of which are divided between the Commissioner of Agriculture, the anti-drug fund, and the ABCA enforcement fund.
- Declares products not approved by the Commissioner to be contraband and subject to seizure, forfeiture, and destruction.
- Creates new criminal offenses for unlawful possession, distribution, and sale of unapproved products and distributing to persons under 21.
- Grants ABCA enforcement authority in the new article §60-10-1 et seq.

CODE REFERENCE: West Virginia Code §19-12E-12, §19-12F-1 et seq., and 60-10-1 et seq. – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

Senate Bill 422

Requiring public schools to publish curriculum online at beginning of each new school year

This bill requires that each public school ensure that the adopted, up-to-date, county-adopted class curriculum is posted on the school's internet website at the beginning of each school year or no later than 30 business days after new or revised curriculum is adopted; and provides that only students, parent, or guardians of the students can be provided with the login information to gain access to the online curriculum.

The bill also provides that these provisions apply to curriculum created pursuant to §18-5A-6 (the section of code requiring the creation of a school curriculum team at each school); that the county board can provide access, or authorize access, to the county-adopted class curriculum; and that if a public school has no accessible website, the information is to be posted on the website of the appropriate county board of education or website authorized by the West Virginia Board of Education.

CODE REFERENCE: West Virginia Code §18-5-27 – amended

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 21, 2023

Senate Bill 552

Relating to abortion

The bill revises the severability clauses contained within West Virginia's existing abortion statutes.

CODE REFERENCE: West Virginia Code §16-2R-9 – amended

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: March 11, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

Senate Bill 609

Obtaining approval for decommissioning or deconstructing of existing power plant

This bill creates new law to provide that no existing coal, oil, or natural gas fueled power plant may be decommissioned without prior approval of the Public Energy Authority, but such approval may not be unreasonably withheld.

Under the bill, the authority may approve the decommissioning or deconstructing of an existing power plant upon the submission of a petition containing:

- An analysis by an approved third party that evaluates the social, environmental, and economic impact at a local and statewide level of such decommissioning and deconstruction; and
- Potential alternatives to the decommissioning and deconstruction, including the reconstruction making use of other technologies, including novel technologies and green technologies as alternative fuel sources.

The authority shall propose rules for legislative approval and promulgate emergency rules including an exemption for power plants that have been non-producing for at least five years prior to the effective date.

CODE REFERENCE: West Virginia Code §5D-1-5c – new

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: March 6, 2023

ACTION BY GOVERNOR: Signed March 7, 2023

Senate Bill 613

Relating generally to certificates of need

This bill exempts hospitals providing defined hospital services from certificate of need requirements. The bill removes birth centers from health services required to obtain a certificate of need. It modifies the definition of campus to mean the physical area immediately adjacent to the hospital's main buildings, other areas, and structures that are not strictly contiguous to the main buildings but are located within 250 yards of the main buildings.

The bill modifies the definition of expenditure minimum by increasing the expenditure from \$5 million to \$100 million dollars. The bill defines hospital services as services provided primarily to an inpatient to include but not be limited to preventative, diagnostic, treatment, or rehabilitative services provides in various departments on a hospital campus.

The bill defines inpatient. It cleans up language regarding certificate of need exemptions, allowing a private office practice owned and operated by health professionals which has at least seven office practice locations may acquire and utilize one MRI scanner, regardless of the cost associated with the proposal. To qualify for the exemption, 75% of the MRI scans are to be for patients of the private office practice.

CODE REFERENCE: West Virginia Code §16-2D-2, §16-2D-8, §16-2D-10, and §16-2D-11 – amended

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: March 10, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

Senate Bill 625

Requiring certain transcripts to be accepted as record of student's performance for placement in micro school programs

This Act adds microschool programs to the list of programs whose transcripts or other credential must be accepted by a public school as a record of a student's previous academic performance.

CODE REFERENCE: West Virginia Code §18-8-1a – amended

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 23, 2023

House Bill 2002

Relating to providing support for families

The bill increases the non-family tax credit from \$4000 to \$5000. The bill creates new code sections regarding early intervention for adopted children, support for mom and babies, and establishing the mothers and babies' pregnancy support program, and sets forth the actions of the management agency.

With respect to the early intervention services the section is effective July 1, 2023 and provides a child or children whose adoptive parents are residents of WV are eligible for any early intervention services provided for families which may be offered by the DHHR and shall include but not be limited to Right from the Start, Drug Free Moms and Babies, and Birth to Three. The bill states if there is a federally approved mandated eligibility requirement required for receipt of federal funds, then the child or children may be required to meet those federally mandated requirements. The bill directed DHHR to recruit additional sites for its programs. The bill states that nothing in the sections requires adoptive parents to use the services.

There is a section for definitions. It defines an abortion industry organization as any organization that performs, prescribes, refers for, encourages, or promotes abortion as an option for a pregnant woman or owns, operates, or manages a facility where abortions are performed and prescribed.

The bill defines a pregnancy help organization as an organization that seeks to provide a range of services to pregnant women. Pregnancy helps organizations do not perform, prescribe, refer for or encourage abortion, nor do they affiliate with any organizations that perform, prescribe refer or encourage abortion.

The bill defines management agency as an organization that contracts with the Bureau for Public Health or department to manages the WV Mothers and Babies Pregnancy Support Program.

The bill establishes the WV Mothers and Babies support program under the Bureau for Public Health. A pregnancy help organization is eligible to receive funding from the program subject to the standards of the managing agency.

The bureau shall contract with a management agency that exclusively supports childbirth and is knowledgeable and supportive or childbirth. There are other directives.

CODE REFERENCE: West Virginia Code §11-21-10a – amended; §16-5K-7, §16-66-1, §16-66-2, and §16-66-3 – new

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 2004

Prevent the use of payment card processing systems for surveillance of Second Amendment activity and discriminatory conduct

The bill creates the Second Amendment Financial Privacy Act (“Act”) in response to Visa, Mastercard, and American Express adopting a unique Merchant Category Code for firearms and ammunition retailers (“firearms code”). The bill provides that the legislative intent is to “prohibit the misuse of payment card processing systems to surveil, report, or otherwise discourage constitutionally protected firearm, firearm accessories or components, and ammunition purchases and sales within West Virginia’s jurisdiction.”

The bill defines “protected financial information” as a customer’s payment card transactional records that are “based on the assignment of a firearms code” and prohibits any financial institution involved in facilitating or processing a payment card transaction from disclosing a customer’s protected financial information unless the disclosure is expressly permitted by law and the information is not disclosed based upon the assignment of a firearms code; made pursuant to a valid warrant issued in a criminal investigation, subpoena, or a customer’s written authorization; or only stating that the financial institution does not possess the information. A financial institution may not require a customer to provide written authorization for disclosure of protected financial information as a condition of doing business with the financial institution.

The bill also prohibits a financial institution from utilizing a firearms code to engage in discriminatory conduct, such as declining a lawful payment card transaction based on the assignment of a firearms code; limiting or declining to do business with a customer or potential customer based on the assignment of a firearms code to previous lawful transactions involving the customer; charging a higher transaction or interchange fee to a merchant compared to the fee charged for similarly situated merchants based upon the assignment of a firearms code; or taking any action against a customer or merchant intended to suppress lawful commerce involving firearms or ammunition.

With respect to enforcement, the bill creates a civil action for liquidated or compensatory damages against any financial institution or government entity that violates the Act. A successful plaintiff can also obtain injunctive relief and reasonable attorney’s fees. Prior to filing a civil action, an aggrieved party must give a financial institution the right to cure a violation, incorporating by reference the right to cure procedures in the West Virginia Consumer Credit and Protection Act.

Finally, the bill authorizes the Attorney General to conduct investigations and enforce the requirements of the Act by seeking injunctive relief in the courts. The bill also authorizes the Commissioner of Banking to administer requirements of the article and permits the State Treasurer to disqualify an offending financial institution from the competitive bidding process or from any other official selection process.

CODE REFERENCE: West Virginia Code §31A-2A-4 – amended; §31A-2B-1 through §31A-2B-10 – new

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2007

Prohibiting certain medical practices

The bill applies the to both the medical practice act and to osteopathic physicians. The bill defines terms such as biological sex, gender, gender altering medication, gender transition, and irreversible gender reassignment surgery.

The purpose of the bill is to prevent a physician from providing irreversible gender reassignment surgery or gender altering medication to a person who is under 18 years of age. The bill provides a physician may provide any of the following a person who is under 18:

- Services provided to an individual born with a medically verifiable disorder of sex development, including but not limited to a person with external biological sex characteristics that are irresolvably ambiguous such as an indivial born with forty-six xx chromosomes or having both ovarian and testicular tissue;
- Services provided to an individual when a physician has otherwise diagnosed a disorder of sexual development and in which the physician has determined through genetic or biochemical testing that the individual does not have normal chromosome structure, sex steroid production or sex steroid action;
- The treatment of any infection, injury, disease, or disorder, that has been caused by or exacerbated by the performance of gender transition procedure, whether or not these procedures were performed in accordance with state and federal law;
- Any procedure undertaken because the individual suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician place the person in imminent danger of death, or impairment of a major bodily function unless surgery is performed; and
- Limited use of gender-transforming medication for adolescents diagnosed with severe gender dysphoria.

CODE REFERENCE: West Virginia Code §30-3-20 and §30-14-17 – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2008

Requiring local entities to enforce immigration laws

This bill establishes a new article concerning federal immigration law enforcement in Chapter 15 of the state code. The bill prevents state and local entities, including but not limited to law enforcement agencies, from adopting “sanctuary city” policies—that is, procedures, ordinances, directives, or any other rule or regulation that prohibits cooperation with federal immigration authorities or materially interferes with the enforcement of federal immigration law.

The bill contains a non-exhaustive list of policies such entities cannot adopt. Thus, the bill prevents covered entities from establishing policies that restrict or prohibit:

- Inquiries into the immigration status of any person;
- Transmitting, requesting, and/or receiving information regarding immigration status to or from a federal immigration enforcement agency;
- Maintaining, archiving, or otherwise storing for subsequent use information relating to immigration status;
- Exchanging information relating to immigration status with another local entity, state entity, or federal immigration agency;
- Complying with an immigration detainer;
- Complying with a request from a federal immigration agency seeking to be notified prior to the release of an inmate subject to an immigration detainer;
- Providing a federal immigration agency with an inmate’s incarceration status or release date;
- Assisting or cooperating with a federal immigration agency;
- Participating in an intergovernmental cooperative program authorized by the federal Immigration and Nationality Act;
- Permitting a federal immigration officer to conduct immigration law enforcement activity at a municipal jail, county jail, or Division of Corrections and Rehabilitation facility.

The bill also imposes several mandatory duties on specific covered entities. A law enforcement agency that takes initial custody of an individual subject to an immigration detainer is required to record the individual’s status in their case file, notify the court which has jurisdiction to release the individual on bail or bond, and comply with a valid detainer to the extent required by law. A court which receives notice under the auspices of this section is obliged to record that fact in the individual’s case file. And any local jails, as well as the state Division of Corrections, is obliged to enter into an arrangement with the federal government to temporarily house individuals who are subject to immigration detainers.

The bill also contains procedural mechanisms designed to ensure compliance with its substantive components. Most notably, the bill declares that any elected official who takes official action allowing a sanctuary city policy (one violative of this article) to come into or continue in effect has engaged in malfeasance in office and acted in neglect of his or her duty, and thus can be removed from office. The bill also permits any person, expressly including federal immigration authorities, to file a complaint with the West Virginia Attorney General alleging the existence of such a policy and authorizing the Attorney General to investigate. If the Attorney General determines there is sufficient evidence, he or she can file suit seeking

to enjoin the violation. The bill also extends the protections of West Virginia’s Whistle-Blower law to individuals who report violations or suspected violations of the article to the Attorney General.

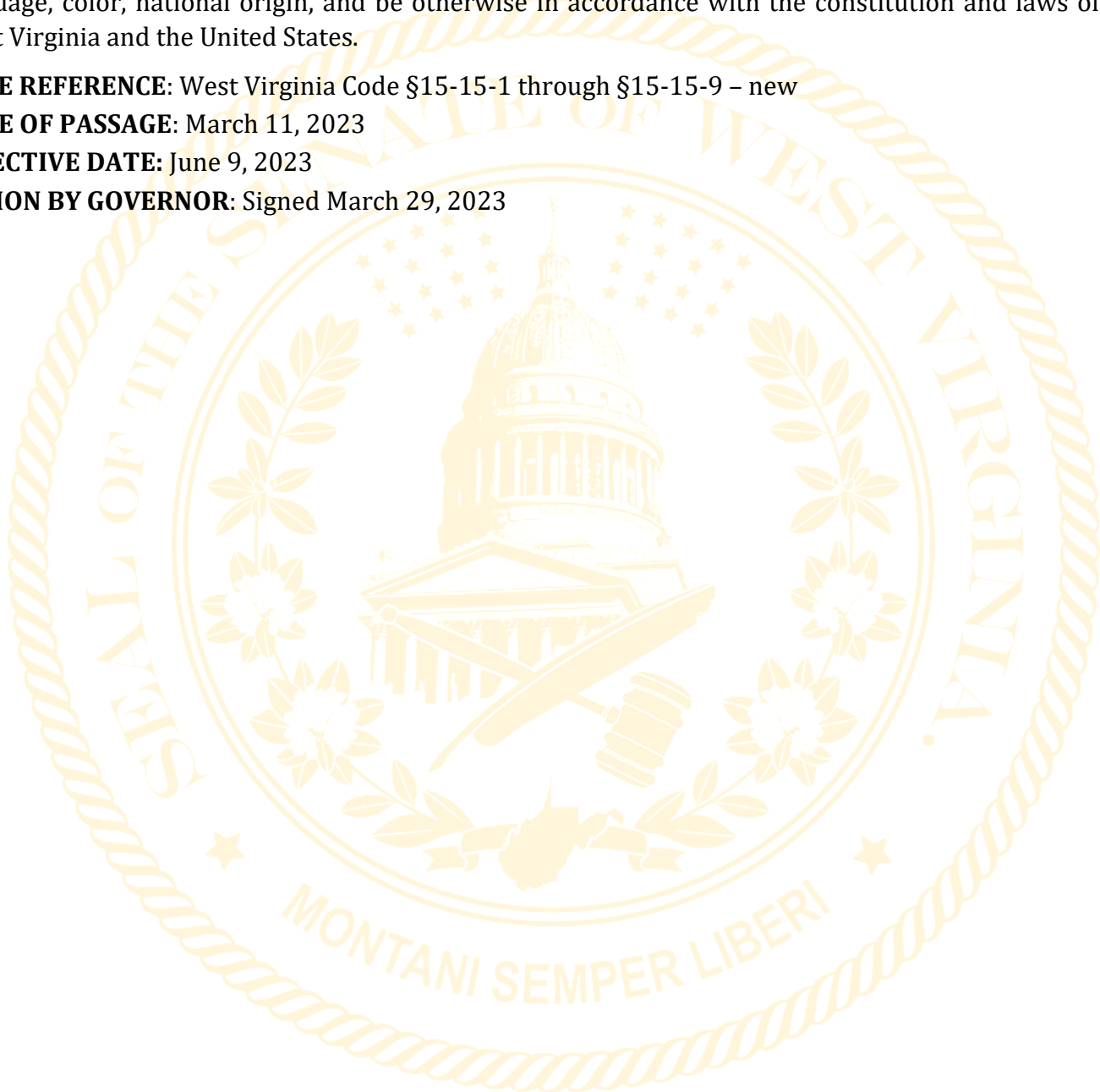
Finally, the bill authorizes the Attorney General to defend local entities who have sought to comply with the provisions of this article in good faith against a suit brought under this section and directs the implementation of this article be accomplished without discrimination on the basis of race, religion, language, color, national origin, and be otherwise in accordance with the constitution and laws of both West Virginia and the United States.

CODE REFERENCE: West Virginia Code §15-15-1 through §15-15-9 – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 29, 2023



House Bill 2526

Relating to reducing the personal income tax

This bill would reduce the personal income tax across all brackets by 21.25% effective retroactively to January 1, 2023. The reduction applies across all tax brackets.

There is also a provision that would trigger future personal income tax reductions. This would occur when the total general revenue collections of the immediately preceding fiscal year minus severance tax collection are in excess of the inflation adjusted base year revenues. The base year is the 2019 fiscal year. Collections were \$4,293,884,754 when adjusted to remove severance tax collections. The reduction would be determined by dividing the excess of the fiscal year general revenue fund collections (commonly referred to as Surplus) by the preceding fiscal year's total personal income tax collections from all funds. There is proviso that in no instance may the reduction be greater than 10% at any one time. The Secretary of Revenue and the State Auditor are required to certify any rate change and notification is required to taxpayers. An annual report is also required to the Joint Committee on Government and Finance.

The bill also creates a 100% refundable tax credit for ad valorem personal property taxes paid for a motor vehicle. This credit may be claimed against personal income tax and corporation net tax. Disabled veterans may also receive a refundable tax credit against his or her personal income taxes for real property taxes on a homestead used for residential purposes.

A small business credit was added to allow a 50% refundable tax credit against personal income tax or corporation net income tax for ad valorem property tax due and owing and timely paid. A small business is defined as a business with personal property located in West Virginia with an aggregate appraised value of \$1,000,000 or less. There is an exclusion that a small business does not include a person holding an interest in any oil, natural gas, or natural gas liquid

The Tax Commissioner is required to report annually to the Joint Committee on Government and Finance on the use of these tax credits.

The effective date of all of these tax credits is January 1, 2024.

CODE REFERENCE: West Virginia Code §11-13MM-1 through §11-13MM-10, §11-21-4g, §11-24h, and §11-21-4i – new

DATE OF PASSAGE: February 1, 2023

EFFECTIVE DATE: February 1, 2023

ACTION BY GOVERNOR: Signed March 7, 2023

House Bill 2820

To provide HOPE Scholarship recipients with the ability to play sports

This Act adds participants in the Hope Scholarship Program, microschoools and learning pods to the students who are eligible to participate in Secondary School Activities Commission (SSAC) events or activities. The requirement that students be enrolled in at least on virtual instructional course per semester is removed.

The Act provides that students enrolled in a private school shall be eligible to participate in extracurricular activities at the public secondary school serving the attendance zone in which the student lives if the extracurricular activity is not offered at the student's private school, provided that the student complies with SSAC rules.

The Act adds a new section of code that requires the SSAC to modify its rule to allow students in grades 9 through 12 to transfer one time without losing athletic eligibility. The SSAC may promulgate an emergency rule. This section does not limit or restrict a student transferring more than one time as permitted by SSAC rules.

CODE REFERENCE: West Virginia Code §18-2-25 – amended; §18-2-25 – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Became law without Governor's signature on March 29, 2023

House Bill 2827

Make public charter schools eligible for Safe Schools Funds

This bill adds charter schools to the entities that are required to annually assess the safety and security of each of the school facilities for which they are responsible; required to upgrade safety and security measures of each facility to ensure safety of students; and required to report annually the safety and security measures it has put in place to the WV Department of Education.

The bill also adds multicounty vocational center administrative councils to the entities required to upgrade safety and security measures of each facility to ensure safety of students and required to report annually the safety and security measures it has put in place to the WV Department of Education.

The bill also explicitly includes public charter schools in with the other entities that are to receive funds from the Safe Schools Fund; and provides that moneys distributed from the fund cannot be used to make permanently affixed improvements, alterations, or additions to a physical facility that a county board of education, public charter school, or multicounty vocational center does not own. The bill also provides that after all public-school facilities have been provided sufficient funds to meet the special education video camera requirements, funds from the Safe Schools Fund are to be distributed by the WV Department of Education to meet the needs of school facilities to have safe school entry ways. After safe school entry way needs have been met, the funds are to be distributed based on a determination of need.

The bill also requires the WV Board of Education to promulgate rules to establish a process by which county boards of education, public charter school governing boards, and multicounty vocational center administrative councils can submit requests to obtain needs-based funding from the Safe Schools Fund; and sets forth specifics as to what the rules are to address.

CODE REFERENCE: West Virginia Code §18-5-48 – amended

DATE OF PASSAGE: March 6, 2023

EFFECTIVE DATE: June 4, 2023

ACTION BY GOVERNOR: Signed March 29, 2023

House Bill 2862

Relating generally to requirements for shareholder voting by the West Virginia Investment Management Board and the Board of Treasury Investments

The bill establishes a standard of care for shareholder voting which applies to both the West Virginia Board of Treasury Investments (“BTI”) and the West Virginia Investment Management Board (“IMB”), to be effective July 1, 2024. The bill requires that all shareholder votes that BTI and IMB (collectively “the Boards”) are authorized to cast, or entrust to a fiduciary, are cast solely in the pecuniary interests of the underlying fund’s beneficiaries. The Boards are expressly prohibited from casting, or permitting a fiduciary to cast, any shareholder vote for the purpose of furthering non-pecuniary interests.

The bill defines pecuniary factors as those factors having a direct and material effect on the financial risk or return to beneficiaries based on an investment pool’s objectives and funding policy. The bill clarifies that environmental, social, corporate governance, or other similar considerations are not pecuniary factors, unless a prudent investor would determine that such a consideration directly and materially affects the financial risk or return to beneficiaries. Any factor that does not meet the definition of pecuniary factor is considered a non-pecuniary factor under the bill.

Additionally, the bill prohibits the Boards from adopting a policy of casting shareholder votes, or permitting a fiduciary to cast shareholder votes, according to the recommendations of a proxy advisor firm unless such firm commits, in writing, to make all shareholder voting recommendations to the Boards according to the standard of care. A fiduciary must provide the Boards with advance notice of any shareholder vote concerning non-pecuniary interests to provide the Boards with a reasonable opportunity to instruct the fiduciary how the vote must be cast.

The bill allows the Boards to waive requirements of the bill related to money managers, if those requirements could cause significant loss to the funds under management or significantly limit investment options. To adopt a waiver, the Boards would have to make a finding that reasonable and good faith efforts have been made to find a fiduciary meeting the requirements of the bill.

The bill makes clear that the Boards are not required to divest from any private market funds or from indirect holdings in actively or passively managed investment funds. However, if the manager of such a fund offers “proxy voting choice options,” the Boards must exercise those options according to the standard of care. “Proxy voting choice options” refers to a set of features that some fund managers now offer institutional clients, in which the clients may participate in proxy voting decisions when legally and operationally viable.

Finally, the bill requires each Board to publish an annual report on its website, tabulating and describing all shareholder votes cast by the Board or its fiduciaries.

CODE REFERENCE: West Virginia Code §12-6C-13 – amended; §12-6-11a – new

DATE OF PASSAGE: March 10, 2023

EFFECTIVE DATE: June 8, 2023

ACTION BY GOVERNOR: Signed March 28, 2023

House Bill 3042

Relating to forbidding excessive government limitations on exercise of religion

The purpose of this bill is to establish the strict scrutiny legal test in court actions where a person believes his or her exercise of religion is or will be infringed upon by governmental action. Specifically, the bill authorizes injunctive action or declaratory relief when a person believes a government action substantially burdens his or her exercise of religion or is likely to do so.

A reviewing court's standard of review is strict scrutiny which means if the court finds that the government action does substantially burden the petitioner's exercise of his or her religion, before the governmental action may be approved, the court must find that the government action serves a compelling governmental purpose and as to the petitioner it is the least restrictive means of achieving the compelling state interest and does not treat the petitioner's religious conduct more restrictively than other reasonably comparable conduct as to risk and alleged economic need or benefit.

A successful petitioner is entitled to reimbursement of costs and reasonable attorney fees.

The bill states that the legislation does not create a cause of action by an employee against a non-governmental employer nor does it create a defense to an action for failure to provide medical treatment as required by the Emergency Medical Treatment and Active Labor Act (42 U.S.C. §1395dd).

The bill also expressly states that nothing in the new section may be construed to create a defense to protect actions to end the life of born or unborn persons in cases under:

- §16-2F-1 Parental Notification of Abortion Act
- §16-2I-1 Woman's Right to Know Act
- §16-2M-1 Pain Capable Unborn Child Protection Act
- §16-2O-1 Unborn Child Protection from Dismemberment Act
- §16-2P-1 Pain Capable Unborn Child Protection Act
- §16-2Q-1 Unborn Child With Disability Protection Act
- §16-2R-1 Unborn Child Protection Act
- §16-5-22 Abortion Reporting Requirements
- §30-1-26 Telehealth Abortifacient Prohibition
- §33-42-8 Partial Birth Abortion Prohibition
- §61-62-8 Abortion Criminal Prohibition

In substance and form this bill mirrors the South Dakota RFRA law which went into effect in 2021 and no successful challenges to it have been found.

CODE REFERENCE: West Virginia Code §35-1A-1 – new

DATE OF PASSAGE: February 28, 2023

EFFECTIVE DATE: May 29, 2023

ACTION BY GOVERNOR: Signed March 9, 2023

House Bill 3084

Relating to revising provisions related to public charter schools

The purpose of this bill is to make changes to the education statutes of the state to primarily include charter schools where they have heretofore not been mentioned. There is language included that indicates it is the intent of the Legislature that public charter schools be considered as important as other schools.

Currently, there is special revenue account called the Safe Schools Fund. The fund is to be used for safety and security of school facilities. Presently, the fund apportions the money in equal amounts to county boards and multicounty vocational centers. In addition to adding charter schools to the list of recipients, the funds would now be distributed on a need basis. There is also a provision that prohibits modifications for a structure that is not owned by the county board of education. If any modifications are made, they must be done in such a way they may be removed with minimal effort. A preference is also listed in code for placement of video cameras in special education classrooms which have not yet met the requirements in code for video equipment. After the video equipment needs are met, funds may be expended on safe school entry ways. There is also rulemaking language for the West Virginia Department of Education.

There is new language added indicating that a state institution of higher education may organize a charter school. Additionally, there is a newly added prohibition against institutions of higher education from requiring more stringent of charter school students than non-charter school students.

The article regarding charter schools has been substantially amended. It would be amended to:

- Permit charter schools to add pre- and post-school activities as part of their education program without having to be regulated as a childcare facility.
- Permit students in a public charter school that does not offer extracurricular athletic or academic activities to participate on the same level as other public-school students in the attendance area where the student resides.
- Establish certification or licensure as a condition of employed by the public charter school.
- Allow students in a virtual charter school to be administered any required state assessment in a virtual setting if available in a virtual manner.
- Add the West Virginia Public Charter School Board to the requirements that the State Board of Education consult with nationally recognized charter school organizations to establish and maintain a catalogue of best practices for public charter schools.
- Provide that public charter and public non-charter schools cooperate for shared services, training and information and to facilitate prompt transfer of students between charter and non-charter schools.
- Modify the percentage of per pupil total basic foundation allowance from the current 90% to 99%.
- Provide a means to calculate the amount of money to be paid to the public charter school and require payment within 30 days of receipt of an invoice.
- Allow that when a public charter is operated by an institution of higher education the governing board of the public charter school may be an administrative arm of the institution of higher education.
- Permit the Professional Charter School Board to receive and expend gifts, grants, and donations from any public or private entity to carry out the purpose of the Charter School Act.

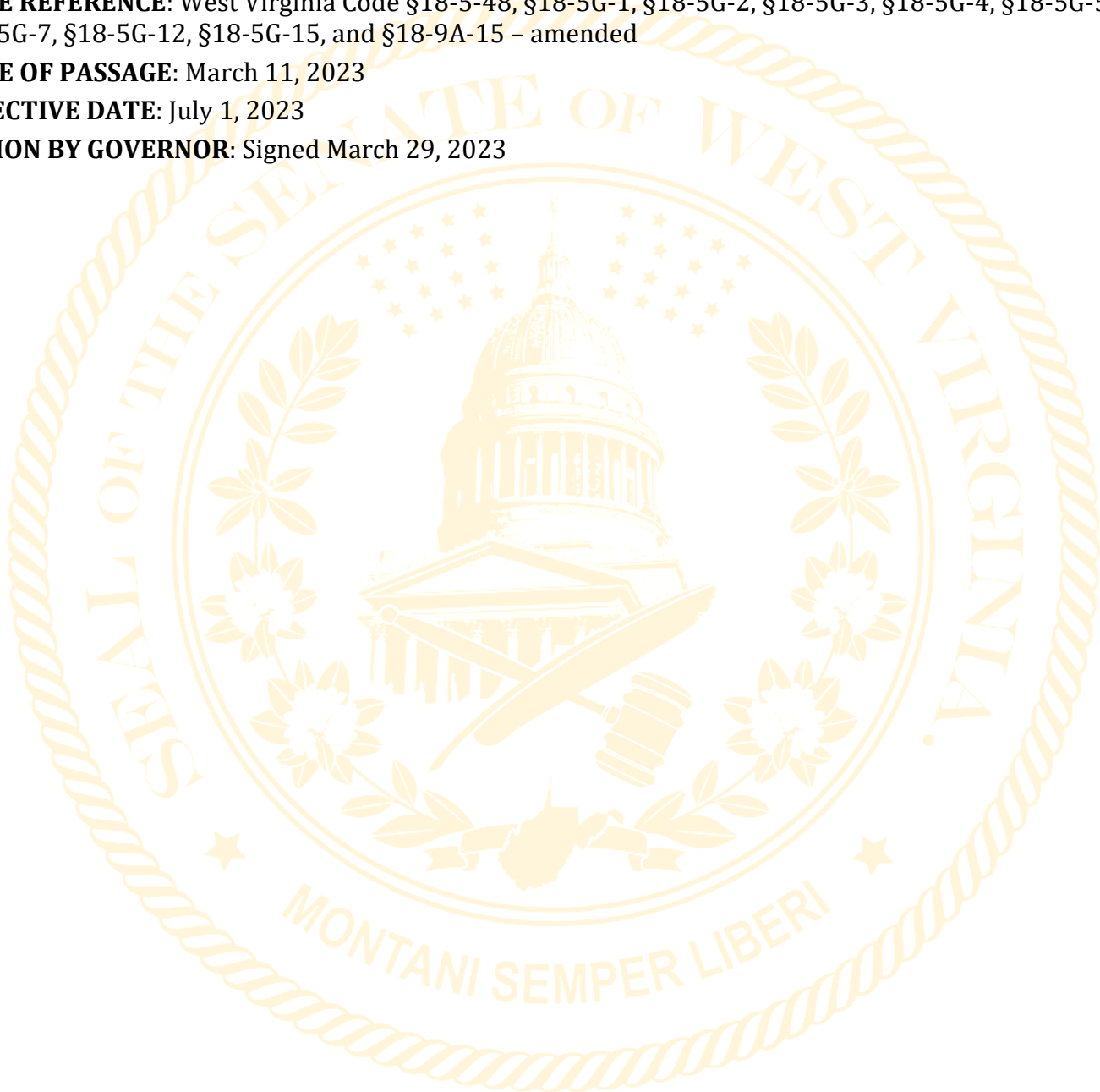
The bill would amend the school aid formula provisions to include public charter schools. The State Board of Education is granted rulemaking authority to establish an “objective method for calculating the increase in net enrollment for each public charger school based on the school’s net enrollment”. Payment to the public charter school by the Department of Education is required to occur no later than December 31 of each year.

CODE REFERENCE: West Virginia Code §18-5-48, §18-5G-1, §18-5G-2, §18-5G-3, §18-5G-4, §18-5G-5, §18-5G-7, §18-5G-12, §18-5G-15, and §18-9A-15 – amended

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: July 1, 2023

ACTION BY GOVERNOR: Signed March 29, 2023



House Bill 3122

Permitting certain types of rifles using an encapsulated propellant charge that loads from the breech

This bill amends a section of Code to provide that any person lawfully entitled to hunt with a rifle may use an encapsulated propellant charge that loads from the breech, with the projectile loaded from the muzzle, during any muzzleloader season except during the Mountaineer Heritage season.

CODE REFERENCE: West Virginia Code §20-2-51 – new

DATE OF PASSAGE: February 23, 2023

EFFECTIVE DATE: May 24, 2023

ACTION BY GOVERNOR: Signed March 4, 2023

House Bill 3482

To create the Coal Fired Grid Stabilization and Security Act of 2023

This bill creates the “Coal Fired Grid Stabilization and Security Act” (§5B-20-1 through §5B-20-4) and directs the Department of Economic Development (DED) to identify economically viable sites for the development of coal electric generation projects that are located near convenient and sufficient supplies of coal and are likely to create projects that provide economic benefits to local and state government and citizens of the state.

The Act contains legislative findings which, among other things, recognize the opportunity for the efficient development of coal in the state, the production of electricity using coal, the need to encourage and simplify the development of coal electric generation projects, the need to streamline the regulatory process governing approval of projects, and the responsibility of the DED to implement the Act and provide assistance to sustain projects.

§22B-1-7 is amended to require that administrative appeals of permitting decisions must be held within 60 days of the filing of an appeal, unless all parties to the appeal agree to a continuance, and a decision must be issued within 60 days of a final hearing.

CODE REFERENCE: West Virginia Code §22B-1-7 – amended; §5B-20-1 through §5B-20-4 and §22-5-11c – new

DATE OF PASSAGE: March 11, 2023

EFFECTIVE DATE: June 9, 2023

ACTION BY GOVERNOR: Signed March 22, 2023

2022 Regular Session



Senate Bill 262

Relating generally to financial institutions engaged in boycotts of energy companies.

This legislation created a new code section which allows the State Treasurer to publish and maintain a list, known as the “Restricted Financial Institution List,” of all financial institutions that are engaged in boycotts of energy companies.

Subsection (a) of the bill is definitional and includes a definition for the term “boycott of energy companies.” The definition of “boycott” explicitly excludes actions taken for reasonable business purposes from its purview. A financial institution’s inclusion on the list may make it ineligible to enter banking contracts with the State of West Virginia. The Treasurer would be authorized to decide whether a financial institution’s actions meet the definition of a “boycott of energy companies.” There is also a definition of “reasonable business purpose.”

The Treasurer would be authorized to rely on publicly available information regarding financial institutions, including public statements by a company, information published or provided by nonprofit organizations, research firms, international organizations, and other state or federal government entities. The Treasurer may not solely rely on statements or complaints of an energy company or media reports as a basis for inclusion on the list.

If a financial institution as defined in subsection (a) of this new section is engaging in a boycott of energy companies, as that term is defined in subsection (a) of this new section, then the Treasurer may add it to the list of restricted financial institutions. The Treasurer is required to post the list on his office’s website and submit copies of the list to the Governor, the President of the Senate, and the Speaker of the House of Delegates. In addition, the Treasurer is required to update the list annually, or more often as the Treasurer deems necessary. The Treasurer must also send written notice 45 days in advance to any financial institution added to the list informing the entity of their restricted banking status and provide a mechanism for a financial institution to be removed from the list if the institution demonstrates that it is not engaged in a boycott of energy companies. The financial institution has 30 days following receipt to demonstrate they are not engaged in a boycott.

Additionally, the Treasurer is authorized to disqualify restricted financial institutions from the competitive bidding process or from any other official selection process for state banking contracts. The Treasurer may also require, as a term of any banking contract, an agreement by the financial institution not to engage in a boycott of energy companies for the duration of the contract.

Financial institutions are not required to disclose anything confidential, privileged, or protected from disclosure from state or federal law.

Finally, the bill provides a limitation against liability for any agency, public official, public employee, or financial institution that acts in accordance with the new section.

CODE REFERENCE: West Virginia Code §12-1-15 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Became Law Without Governor’s Signature

Senate Bill 268

Creating exemption from compulsory school attendance for child who participates in learning pod or micro school

This bill creates a new compulsory school attendance exemption for children who participate in a learning pod or microschool.

The bill defines “learning pod” as a voluntary association of parents choosing to group their children together to participate in their elementary or secondary academic studies as an alternative to enrolling in a public school, private school, homeschool, or microschool, including participation in an activity or service provided to the children in exchange for payment.

The bill also defines “microschool” as a school initiated by one or more teachers or an entity created to operate a school that charges tuition for the students who enroll and is an alternative to enrolling in a public school, private school, homeschool, or learning pod.

The bill also includes provisions applicable to learning pods and microschools similar to the homeschool provisions relating to:

- Requiring the filing of a notice of intent with the county superintendent.
- Establishing the education related qualifications for the person providing instruction.
- Requiring an annual academic assessment of the child in one of four specified ways.
- Requiring copies of each student’s academic assessment be maintained for three years.
- Establishing requirements applicable when the annual assessment fails to show acceptable progress.
- Requiring county board, upon request, to notify the parents or legal guardian of services available to assist in the assessment of the child’s eligibility for special education services.
- Requiring submission of the results of the academic assessment which can include submission of the school composite results.
- Requiring county superintendent or a designee to offer assistance, including textbooks, other teaching materials and available resources, all subject to availability.
- Allowing the learning pod or microschool student to attend any class offered by a county board upon approval of the county board.

The bill further provides that no learning pod or microschool is subject to any other provision of law relating to education except for §18-20-11, relating to requiring video cameras in certain special education classrooms; and clarifies that making learning pods and microschools subject to the home instruction provisions and requirements does not make learning pods and microschools the same as homeschooling.

CODE REFERENCE: West Virginia Code §18-8-1 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 427

Permitting WV Board of Medicine investigators to carry concealed weapon

This bill allows investigators and contractors for the Board of Medicine to carry a concealed firearm in the performance of their duties and establishes the criteria and procedures for such carry. These criteria include obtaining approval by a majority vote of the board, not being prohibited from possessing a firearm under state or federal law, obtaining and maintaining a concealed handgun license, and successfully completing a firearms training and certification program equivalent to that provided to officers attending an entry level law-enforcement certification course provided at the West Virginia State Police Academy.

CODE REFERENCE: West Virginia Code §30-3-19 – new

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: June 6, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 435

Awarding service weapon to retiree from Division of Protective Services

This bill allows for retirees from the Division of Protective Services to be awarded their service weapon under certain conditions. In order to qualify, a retiree must be retiring honorably with a minimum of 10 years of service or be retiring due to being totally physically disabled as a result as his or her service.

No member of the Division of Protective Services may be awarded a weapon if they are prohibited from possessing a firearm by state or federal law, if the Division of Protective Services member is believed to be mentally incapacity, or if the Division of Protective Services believes the retiring member constitutes a danger to any person of the community.

The bill also allows for service weapons taken out of service due to routine wear to be purchased at fair market value by active or retired members of the Division of Protective Services. The proceeds of such sales may be used to offset the costs of new service weapons.

CODE REFERENCE: West Virginia Code §15-2D-8 – new

DATE OF PASSAGE: February 7, 2022

EFFECTIVE DATE: February 7, 2022

ACTION BY GOVERNOR: Signed February 16, 2022

Senate Bill 463

Best Interests of Child Protection Act of 2022

The bill creates the “2022 Best Interest of the Child Act” to address perceived deficiencies in the current methods of legal custody and parenting time in the family court system. The bill establishes collaborative parenting or a goal of the process.

It creates a rebuttable presumption in the absence of parental agreement, that equal (“50-50”) custodial time is in a child’s best interest. The bill requires the court to undertake an analysis as to the viability of “50-50” parenting and have specific findings if “50-50” parenting is not ordered. It authorizes interlocutory appeals where a parent seeks “50-50” parenting and is not granted it at the temporary hearing. The bill sets forth factors to be considered in the making of a temporary parenting plan.

Additionally, the bill ensures permanent parenting plans include provisions for financial support of the child or children. It adds the allocation of “significant decision-making responsibility” to one or both parents in accordance with the child’s best interest and, in light of the ability or inability of the parents, based on the evidence before the court, to work collaboratively and in cooperation with each other in decision-making on behalf of the child.

The bill also allows the court to designate which parent is entitled to tax deductions and exemptions year-to-year on an equitable basis. It also makes clear that the provisions are prospective in nature and prior orders remain in full force and effect.

CODE REFERENCE: West Virginia Code §48-9-102, §48-9-203, §48-9-204, §48-9-205, §48-9-206, §48-9-207, §48-9-208, §48-9-209, §48-9-401, §48-9-402, §48-9-602, and §48-9-603 – amended; §48-9-102a – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 468

Creating Unborn Child with Down Syndrome Protection and Education Act

The bill provides that except in a medical emergency or a nonmedically viable fetus, a licensed medical professional may not perform or attempt to perform or induce an abortion, unless the patient acknowledges that the abortion is not being sought because of a disability.

The bill provides that if a licensed medical professional performs or induces an abortion on a fetus, licensed medical professional shall, within 15 days of the procedure, cause to be filed with the commissioner, on a form supplied by the commissioner, a report detailing the following:

- Date the abortion the abortion was performed;
- Specific method of the abortion;
- A statement from the patient confirming that the reason for the abortion was not because of the disability;
- Probable health consequences of the abortion to the patient;
- Whether a medical emergency existed; and

The licensed medical professional shall sign the form as his or her attestation under oath.

The bill provides for penalties.

CODE REFERENCE: West Virginia Code §16-2Q-1 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 21, 2022

Senate Bill 704

Allowing parents, grandparents, and guardians to inspect instructional materials in classroom

This bill requires each classroom teacher to comply with the request of any parent, custodian, or guardian to inspect instructional materials and books in the classroom that are available for students to read, subject to the following:

- Only the parent, custodian, or guardian of a child enrolled in the class can make the request.
- The classroom teacher can require that the parent, custodian, or guardian schedule an appointment in order to inspect the instructional materials. If the classroom teacher requires an appointment, the teacher is required to schedule the appointment within 10 business days.
- As part of the inspection and upon request of the parent, custodian, or guardian, the classroom teacher must demonstrate how the instructional material relates to the content standards adopted by the state board.

For any class in which reading a book or books is required, the classroom teacher is required to include the book or books on a class syllabus; and required to make the syllabus available to any parent, custodian, or guardian of a child enrolled in the class upon request.

The bill also allows any parent, custodian, or guardian to file a complaint with the county superintendent, on a form developed and provided by the county superintendent, if the classroom teacher fails to comply with any provision of this section. If the complaint is not resolved by the county superintendent within seven business days, the parent, custodian, or guardian can file a complaint with the state superintendent or designee. The state superintendent is required to make a form available for parents to file a complaint pursuant to this subsection.

By September 1 of each year, each county superintendent is required to report to the state superintendent the number of complaints filed with him or her the previous school year; and the state superintendent, annually by October 1, must report to LOCEA the number of complaints filed during the previous school year. The report is required to include the number of complaints filed statewide and by county.

The bill also includes definitions of “parent”, “custodian”, and “guardian” for the purposes of the new section.

CODE REFERENCE: West Virginia Code §18-5-27 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4012

Prohibiting the showing of proof of a COVID-19 vaccination

The bill addresses exemptions from compulsory COVID-19 vaccinations. It adds a requirement that religious beliefs must be “sincerely held”. It excludes from the definition of “covered employer” any Medicare or Medicaid certified facilities which are subject to enforceable federal regulations contrary to the requirements of §16-3-4b.

The new section created in this bill, §16-3-4c, provides that no state or local governmental official, entity, or agency may require proof of vaccination as a condition of entering the premises of a state or local government entity or utilizing services provided by a state or local government entity. There is an exception that states if any federal law or regulation requires proof of vaccination as a condition of entering, the provisions of this section do not apply. This provision also does not apply to a private entity where the local governmental unit primarily serves as a property owner receiving rental payments. It also provides that no hospital or state institution of higher learning may require proof of vaccination as a condition of entering the premises. Provided, that when federal law or regulation requires proof of vaccination as a condition of entering or participation in a course of study requires vaccination, the provisions of this section are inapplicable.

CODE REFERENCE: West Virginia Code §16-3-4b – amended; §16-3-4c – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: March 12, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4048

WV Keep, Bear and Drive with Arms Act

This bill removes previous provisions of the code that prohibited carrying or operating a vehicle with a loaded or uncased long gun, cross bow, or bow.

CODE REFERENCE: West Virginia Code §20-2-5 – amended

DATE OF PASSAGE: February 23, 2022

EFFECTIVE DATE: May 24, 2022

ACTION BY GOVERNOR: Signed March 9, 2022

House Bill 4097

To prohibit nonpublic funding sources for election administration and related expenses without prior written approval by the State Election Commission

The bill creates a new section within the state Election Code to govern the handling of non-public monies and anything of value for election administration and related expenses.

Subsection (a) of the bill prohibits public officials and bodies with responsibility over elections in West Virginia from directly receiving or accepting non-public money or anything of value for election administration and related expenses.

All such monetary gifts must be placed into a new special revenue revolving fund account, called the Nonpublic Funding for Election Administration Fund, which is to be administered by the Secretary of State with the approval of the State Election Commission. Subsection (b) through (e) specify requirements for the fund.

All such gifts of tangible property or other non-monetary gifts of value must also be accepted, distributed, and utilized by the Secretary of State with approval of the State Election Commission pursuant to subsection (f).

The bill authorizes the Secretary of State to promulgate legislative rules for administration of the fund (subsection (e)) and handling of non-monetary gifts (subsection (f)) covered by the amendment.

CODE REFERENCE: West Virginia Code §3-1A-9 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4257

Require visitation immediately following a procedure in a health care facility

The bill clarifies that the visitation is permitted once the patient is stable following a surgical procedure. The bill has language that health care facilities shall provide patients have adequate and lawful access to clergy so that patients can practice their religion by receiving clergy visitation at any reasonable time, as long as the visit does not disrupt clinical care; provided that if the health care facility limits the number of people able to visit the patient, the member of the clergy is not to be considered within that number. The bill defines clergy.

CODE REFERENCE: West Virginia Code §16-39-8 and §16-39-3 – amended

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: March 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4299

To prohibit the intentional interference with election processes and creating associated criminal penalties

The bill clarifies that it is a misdemeanor offense to physically interfere with a voter's travel on the walkways, driveways, and parking areas adjacent to the polling place with the intent to delay, hinder, interrupt, harass, or intimidate a voter. Those convicted of this misdemeanor may be fined up to \$1,000, confined in jail for not more than one year, or both fined and confined.

CODE REFERENCE: West Virginia Code §3-9-21 – new

DATE OF PASSAGE: February 24, 2022

EFFECTIVE DATE: May 25, 2022

ACTION BY GOVERNOR: Signed March 9, 2022

House Bill 4311

Creating criminal penalties for illegal voting activity

Senate Bill 4311 modifies one section of the state Election Code that establishes certain voting crimes and penalties relating to illegal voting and deceiving voters. Prior to amendment, this section established several voting crimes as a misdemeanor punishable by up to a \$1,000 fine and/or up to one year in jail.

The bill reorganizes this section into three subsections and makes all crimes established under this section a felony punishable by one to 10 years imprisonment and/or up to a \$10,000 fine. It also adds as an element of each crime that the person committed the crime knowingly and willfully.

In subsection (a), the bill establishes the following crimes relating to voting in multiple elections, which must be committed both knowingly and willfully, with the knowledge that the act is illegal:

- Voting or attempting to vote more than once in the same election in West Virginia;
- Voting or attempting to vote in more than one county in West Virginia at the same or equivalent election; and
- Voting or attempting to vote in West Virginia and another state or category at the same or equivalent election.

In subsection (b), the bill establishes the following crimes relating to illegal voting, which must be committed both knowingly and willfully:

- Voting or attempting to vote when the person knows he or she is not legally entitled to do so;
- Procuring or assisting in procuring an illegal vote to be admitted or received, with knowledge that it is illegal; and
- Causing or assisting in causing a legal vote to be rejected, with knowledge that it is legal.

In subsection (c), the bill establishes the following crimes relating to deceiving a voter, which must be committed both knowingly and willfully:

- Altering the ballot of a voter by marking out the name of a candidate the voter wishes to vote for with intent to deceive;
- Writing the name of a person on a ballot other than the candidate the voter directed with intent to deceive;
- Altering a ballot, whether it is voted or not, with intent to deceive; or
- Defrauding a voter by deceiving and causing the voter to vote for a different person than the voter intended or desired to vote for.

CODE REFERENCE: West Virginia Code §3-9-17 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4312

Extending the option of electronic absentee ballot transmission to first responders in certain emergency circumstances

House Bill 4312 modifies two sections of the state Election Code pertaining to absentee voting.

In §3-3-1(b)(3), the bill authorizes qualified first responders responding to an emergency outside of their county of residence to vote by electronic absentee ballot. “Qualified first responder” is defined as a person with specialized training who arrives and provides aid at the scene of an emergency, such as an accident, natural disaster, or act of terrorism. The bill provides that first responders typically include emergency medical technicians, firefighters, law-enforcement officers, neighborhood assistance officers, and paramedics.

The bill updates §3-3-5 to address the logistics of absentee voting by qualified first responders. The bill authorizes qualified first responders to electronically complete and verify an application to vote absentee. The bill provides the timeframe for a completed application for a qualified first responder to vote absentee by mail to be accepted from the 13th day preceding the election until 5:00 p.m. the day before the election. The bill provides for transmittal of absentee ballots to qualified first responders, and processing of received absentee ballots cast electronically by qualified first responders.

CODE REFERENCE: West Virginia Code §3-3-1 and §3-3-5 – amended

DATE OF PASSAGE: February 24, 2022

EFFECTIVE DATE: May 25, 2022

ACTION BY GOVERNOR: Signed March 9, 2022

House Bill 4438

Applying current requirements for certain voting systems to be independent and non-networked to all voting systems that seek certification in West Virginia

House Bill 4438 modifies minimum requirements for electronic voting systems. In a new subdivision (15), the bill requires all voting systems utilized in an election to be independent, non-networked voting systems, and prohibits any component of the system from being connected to the internet at any time.

CODE REFERENCE: West Virginia Code §3-4A-9 – amended

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: June 7, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Joint Resolution 102

Clarifying that the policy-making and rule-making authority of the State Board of Education is subject to legislative review, approval, amendment, or rejection

Proposing an amendment to the Constitution of the State of West Virginia, amending section 2, article XII thereof, relating to education and the supervision of free schools; clarifying that the policy-making and rule-making authority of the State Board of Education is subject to legislative review, approval, amendment, or rejection; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2022, which proposed amendment is that section 2, article XII thereof, be amended and reenacted to read as follows:

ARTICLE XII. EDUCATION.

§2. Supervision of free schools.

Subject to the provisions of this section, the general supervision of the free schools of the State is vested in the West Virginia Board of Education which shall perform the duties prescribed by law. Under its supervisory duties, the West Virginia Board of Education may promulgate rules or policies which shall be submitted to the Legislature for its review and approval, amendment, or rejection, in whole or in part, in the manner prescribed by general law. The board shall consist of nine members to be appointed by the Governor, by and with the advice and consent of the Senate, for overlapping terms of nine years. No more than five members of the board shall belong to the same political party, and in addition to the general qualifications otherwise required by the Constitution, the Legislature may require other specific qualifications for membership on the board. No member of the board may be removed from office by the Governor except for official misconduct, incompetence, neglect of duty, or gross immorality, and then only in the manner prescribed by law for the removal by the Governor of state elective officers.

The West Virginia Board of Education shall, in the manner prescribed by law, select the State Superintendent of Free Schools who shall serve at its will and pleasure. He or she shall be the chief school officer of the state and shall perform the duties prescribed by law.

The State Superintendent of Free Schools shall be a member of the Board of Public Works as provided by subsection B, section fifty-one, article VI of this Constitution.

Resolved further, That in accordance with the provisions of §3-11-1 et seq. of the Code of West Virginia, 1931, as amended, the amendment is hereby numbered “Amendment No. 1” and designated as the “Education Accountability Amendment” and the purpose of the proposed amendment is summarized as follows: “The purpose of this amendment is to clarify that the rules and policies promulgated by the State Board of Education, are subject to legislative review, approval, amendment, or rejection.”

DATE OF ADOPTION: March 3, 2022 (General Election ballot 2022)

House Concurrent Resolution 31

Applying to the Congress of the United States to call a convention of states

Applying to the Congress of the United States to call a convention for proposing amendments that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and for members of Congress: and adopting certain reservations, understandings and declarations limiting the application.

Whereas, Executive orders by the President of the United States have become a vehicle through which the President may overstep the limits of his or her constitutional authority; and

Whereas, The concentration of power at the federal level has had the effect of making federal officials less responsive to the will of the people and more readily influenced by lobbyists, wealthy corporations and special interests in Washington, D. C.; and

Whereas, Much of federal law is now enacted by federal bureaucrats who were never chosen by the people and have no accountability to the people whatsoever; and

Whereas, Policy decisions made at the state level tend to be more responsive to the needs and desires of the people; and

Whereas, The federal government has created a crushing national debt through improper and imprudent spending; and

Whereas, The federal government has invaded the legitimate roles of the states through the manipulative process of federal mandates, many of which are unfunded to a great extent; and

Whereas, The states have the ability to restore the responsiveness of government to the people and to restrain abuses of federal power by proposing amendments to the Constitution of the United States through a limited convention of the states under Article V; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby applies to Congress, under the provisions of Article V of the Constitution of the United States, for the calling of a convention of the states limited to proposing amendments to the Constitution of the United States that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and for members of Congress; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a copy of this resolution, legislative call and application to the President and Secretary of the United States Senate and to the Speaker and Clerk of the United States House of Representatives, and copies to the members of the said Senate and House of Delegates from this state; also to transmit copies hereof to the presiding officers of each of the legislative houses in the several states, requesting their cooperation; and, be it

Further Resolved, That this application constitutes a continuing application in accordance with Article V of the Constitution of the United States until the legislatures of at least two thirds of the several states have made applications on the same subject; and, be it

Further Resolved, The West Virginia Legislature adopts this application expressly subject to the following reservations, understandings, and declarations:

(1) An application to the Congress of the United States to call an amendment convention of the states pursuant to Article V of the United States Constitution confers no power to Congress other than the power to call such a convention. The power of Congress to exercise this ministerial duty consists solely of the authority to name a reasonable time and place for the initial meeting of a convention;

(2) Congress shall perform its ministerial duty of calling an amendment convention of the states only upon the receipt of applications for an amendment convention for the substantially same purpose as this application from two thirds of the legislatures of the several states;

(3) Congress does not have the power or authority to determine any rules for the governing of an amendment convention of the states called pursuant to Article V of the United States Constitution. Congress does not have the power to set the number of delegates to be sent by any state to such a convention, nor does it have the power to name delegates to such a convention. The power to name delegates remains exclusively within the authority of the legislatures of the several states;

(4) By definition, an amendment convention of the states means that states shall vote on the basis of one state, one vote;

(5) A convention of the states convened pursuant to this application shall be limited to consideration of the topics specified herein and no other. This application is made with the express understanding that an amendment that in any way seeks to amend, modify, or repeal any provision of the Bill of Rights shall not be authorized for consideration at any stage. This application shall be *void ab initio* if ever used at any stage to consider any change to any provision of the Bill of Rights;

(6) Pursuant to Article V of the United States Constitution, Congress may determine whether proposed amendments shall be ratified by the legislatures of the several states or by special state ratification conventions. The West Virginia Legislature recommends that Congress select ratification by the legislatures of the several states; and

(7) The West Virginia Legislature may provide further instructions to its delegates and may recall its delegates at any time for a breach of a duty or a violation of the instructions provided; and, be it

Further Resolved, That the Clerk of the House 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 ADOPTION: March 4, 2022

Senate Concurrent Resolution 55

Respectfully urging current presidential administration to open federal lease sales onshore and offshore

Respectfully urging the current presidential administration to open federal lease sales onshore and offshore; supporting critical energy infrastructure to safely deliver energy produced in West Virginia; and ensuring American energy companies can access the capital they need to hire American workers.

Whereas, All West Virginia residents deserve access to affordable and reliable energy, whether electricity, natural gas, or transportation fuels, and

Whereas, West Virginians are currently dealing with the highest inflation in over 40 years, with energy costs rising 29 percent, and gasoline surging 50 percent, according to the U.S. Bureau of Labor Statistics; and

Whereas, The current administration is pursuing a policy placing the United States at the mercy of the Organization of Petroleum Exporting Countries and Russia to meet our domestic needs, harming our national and economic security; and

Whereas, Foreign oil imports from Russia surged more than 20 percent providing over \$16 billion to Russia in 2021, according to the U.S. Energy Information Agency; and

Whereas, The current administration has frozen federal lease sales for American energy resources onshore and offshore while cancelling critical energy infrastructure projects like the KeystoneXL pipeline which would have reduced our dependence on Russian oil imports; and

Whereas, The current administration is actively litigating against its obligations to issue lease sales on federal lands and waters required under federal law; and

Whereas, The Federal Energy Regulatory Commission has continually delayed important decisions on permits for pipelines across the country and has recently issued new harmful policy statements that could further delay and impede critical domestic energy infrastructure from being developed, depriving West Virginia access to energy markets outside of our state; and

Whereas, The Securities and Exchange Commission is designing rules to discourage investment in domestic oil and natural gas companies which may further impede production and opportunities for West Virginians; and

Whereas, The Environmental Protection Agency has not issued a decision on West Virginia's application for Class VI primacy that would allow West Virginia to safely utilize long-term storage in conjunction with state energy development; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby respectfully urges the current Presidential Administration to open federal lease sales onshore and offshore, supporting critical energy infrastructure to safely deliver energy produced in West Virginia, and ensuring American energy companies can access the capital they need to hire American workers; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the President of the United States, the Secretary of the Interior, the Secretary of the Department of Energy, the Federal Energy Regulatory Commission, the White House National Climate Advisor, the Speaker and Clerk of the United States House of Representatives, the President Pro Tempore and Secretary of the United States Senate, the members of the West Virginia Congressional Delegation, and the news media of West Virginia.

DATE OF ADOPTION: March 12, 2022



2022 Third Extraordinary Session

House Bill 302

Clarifying West Virginia's abortion laws

This bill:

- Prohibits an abortion from being performed or induced or attempted to be performed or induced unless in the reasonable judgement of a licensed medical professional that includes the existence of a nonmedically viable fetus, the existence of an ectopic pregnancy, or the existence of a medical emergency.
 - Licensed medical professional is defined as a licensed MD or DO with admitting privileges at OFLAC licensed hospital.
- Creates a sexual assault/incest exception to the abortion ban for up to 8 weeks for adults. To trigger this exception:
 - A report of the sexual assault/incest must be made to law enforcement.
 - The report must be provided to the licensed medical professional performing the abortion.
 - Abortion is permitted within the first 8 weeks of pregnancy for an adult if the pregnancy is a result of sexual assault AND the patient has reported it to a law enforcement agency with proper jurisdiction at least 48 hours prior to the abortion taking place.
- Creates a sexual assault/incest exception to the abortion ban for up to 14 weeks for minors. To trigger this exception, at least one of the following must occur:
 - A report of the sexual assault/incest must be made to law enforcement.
 - Note: Mandatory reporters as defined by code must notify law enforcement of reports or suspicions of sexual assault/incest. This notification by a mandatory reporter to law enforcement meets this requirement.
 - The patient must obtain medical treatment for the sexual assault/incest by a licensed medical professional or in an OFLAC licensed medical facility.
 - Requires report Child Abuse and Neglect Investigations Unit be made within 48 hours.
 - In cases of minors or incapacitated adults, abortion is permitted within 14 weeks of pregnancy if the pregnancy is the result of sexual assault or incest, and the patient has either obtained medical treatment for that assault OR a report of the assault has been made to law enforcement with the proper jurisdiction.
- Establishes a process that must be followed when an abortion is to be performed on a minor.
 - If an unemancipated minor receives an abortion under 16-2R-3(a), which is “the reasonable medical judgment of a licensed medical professional that the embryo or fetus is nonviable, the pregnancy is ectopic or a medical emergency exists,” then notice must be given within 48 hours AFTER the abortion is performed.
 - If an abortion is performed under the circumstances of 16-2R-3(c), that would mean under code, that it’s being performed on a minor or an incapacitated or incompetent adult within the first 14 weeks of pregnancy and that pregnancy is the result of sexual assault, as defined by code, or incest, as defined by code, and the assault or incest has been reported to law enforcement or been treated as code lays out. Under that circumstance, the abortion may not

be performed until 48 hours after a police report is made or medical treatment is received and parental notification is provided, whichever occurs latest.

- Requires various statistics relating to abortions performed be reported to DHHR.
 - DHHR is required to provide medical licensing boards with quarterly reports.
 - Requires electronic copy of reports be provided to LOCHHRA
 - This does not include the physician’s name. This was taken out of the bill.
 - No personal identifiers, including, but not limited to, name, street address, city, zip code, or social security number, will be collected; and individual records may only be released for research purposes as approved by the state Registrar and may be released in a format designed to further protect the confidentiality of the woman as the state Registrar deems necessary.
- Prohibits prescribing or dispensing any chemical/drug with the intent to cause an abortion via telemedicine.
- Subjects licensed medical professionals who knowingly and willfully perform/induce or attempt to perform/induce an abortion subject to disciplinary action. If licensing board finds that medical professional unlawfully performed/induced an abortion, or attempted to do so, the board shall revoke the medical professional’s license.
- Subjects non-medical professionals to criminal penalties (felony; 3-10 years) for knowingly and willingly performing an abortion (including medical professionals that have lost their license).
 - Excludes mother from being subject to criminal penalties.
- Sunsets conflicting abortion statutes passed during Roe era.
- Requires surgical abortions to be performed at an OFLAC licensed medical facility.
 - The Women’s Health Center of West Virginia is not OFLAC licensed. Therefore, it cannot perform abortions at the clinic. However, the clinic still may provide the range of other health care services it provides without interruption.

CODE REFERENCE: West Virginia Code §9-2-11, §16-2F-9, §16-2I-9, §16-2M-7, §16-2O-1, §16-2P-1, §16-2Q-1, §16-5-22, §30-1-26, §33-42-8, §61-2-8 – amended; §16-2R-1 through §16-2R-9 – new

DATE OF PASSAGE: September 13, 2022

EFFECTIVE DATE: September 13, 2022

ACTION BY GOVERNOR: Signed September 16, 2022

2022 Second Extraordinary Session

House Bill 210

Creating Class M air rifle stamp

The bill authorizes the use of air rifles for hunting in certain circumstances and with certain limitations.

Existing law does not specifically permit the use of air rifles for hunting small or big game. The bill seeks to specifically permit and set limitations on the use of air rifles for hunting small and big game in the state.

The bill:

- Creates a new section of Code allowing any person lawfully entitled to hunt to hunt with an air rifle during small and big game firearms seasons.
- Provides that the air rifles may only be used for deer hunting in counties open to firearm deer hunting.
- Specifies that an air rifle may not be substituted for a muzzleloader during any muzzleloader season or during the Mountaineer Heritage season.
- Provides that no person may be afield with an air rifle and any bow or any arrow at the same time.
- Prohibits hunting with an air bow at any time.
- Provides that persons hunting with an air rifle are subject to all other rifle and firearms hunting regulations.
- Sets forth caliber restrictions for air rifle hunting
 - Big Game – no less than .45 caliber and with a bullet of no less than 200 grains
 - Small Game and Wild Turkey – may be hunted with an air rifle of .22 caliber or greater
- Provides that air rifles may be shot within 500 feet of a dwelling.

CODE REFERENCE: West Virginia Code §20-2-5k – new

DATE OF PASSAGE: April 25, 2022

EFFECTIVE DATE: April 25, 2022

ACTION BY GOVERNOR: Signed May 3, 2022

2021 Regular Session



Senate Bill 11

Declaring work stoppage or strike by public employees to be unlawful

This bill:

- Sets forth legislative findings which includes a declaration that any work stoppage or strike by public employees is unlawful.
- Sets forth when a county board of education employee is considered to be participating in a work stoppage or strike.
- Prohibits accrued and equivalent instructional time and the delivery of instruction through alternative methods from being used to cancel days lost due to a concerted work stoppage and strike.
- Prohibits the State Board from granting a waiver to a county board for its noncompliance with the 200-day minimum employment term or the 180-day minimum instructional term requirements if the noncompliance is the result of a concerted work stoppage or strike.
- Provides that if an employee remains employed by the county board notwithstanding his or her participation in a concerted work stoppage or strike, which the Legislature determines to be grounds for termination, the county board is required to withhold the prorated salary or hourly pay for each day that the employee participates and requires the sums to be forfeited to the county board.
- Prohibits a school closed due to a work stoppage or strike from participating in any extracurricular activities during any day the school is closed for that reason.

CODE REFERENCE: West Virginia Code §18-5-45a – new

DATE OF PASSAGE: March 4, 2021

EFFECTIVE DATE: June 2, 2021

ACTION BY GOVERNOR: Became law without Governor’s signature

Senate Bill 12

Relating to local health department accountability

The bill creates a definition of appointing authority that includes the county commission or municipality or combination thereof that authorized the creation of the local board of health.

The bill permits a member of the appointing authority to remove a member of the local board of health. The reasons permitted for removal are listed and include: official misconduct, incompetence, neglect of duty, or the revocation of any state professional license or certification. Gross immorality was removed as a basis for removal. Language was added to address a combined board. This section states with respect to a combined board, a county commission or appointing authority may remove any of its appointed members pursuant to the provisions of its lawfully adopted bylaws and shall remove any of its appointed members for official misconduct, incompetence, neglect of duty, or the revocation of any state professional license or certification. Existing language permitted a local board of health to adopt, promulgate, and amend rules and file the rule with the clerk of the county commission. The bill adds language to require the commissioner to establish a procedure by which adverse determinations by local health departments may be appealed, unless otherwise provides for, for the purpose of ensuring a consistent interpretation of state public health laws and rules of the Department of Health and Human Resources.

The bill provides that when rule is adopted, promulgated, or amended, the local board of health shall place a notice in the State Register and on their organization's web page, setting forth a notice of proposed action, including the text of the new rule or amendment, and the date, time, and place for receipt of public comment. The bill provides all rules shall be approved, disapproved, or amended and approved by the county commission or appointing entity within 30 days of approval from the local health department;

All rules of a combined local board of health shall be approved, disapproved, or amended and approved by each appointing entity within 30 days of approval from the combined local board of health. If one appointing entity approved and another does not approve a rule from a combined local board health department, the rule is only in effect in the jurisdiction of the appointing entity which approved the rule. An approved rule shall be filed with the clerk of the county commission or the clerk or the recorder of the municipality, or both, and shall be kept by the clerk or recording officer in a separate book as public records. The bill provides a rule currently in effect is not subject to approval, unless amended, from the county commission or appointing authority. The bill provides if there is an imminent public health emergency, approval of the county commission or appointing authority is not necessary before the rule goes into effect but shall be approved or disapproved by the county commission or appointing authority within 30 days after the rules are effective. Finally, the bill provides that if the Governor declares a statewide public health emergency, the state health officer may develop emergency policies and guidelines that each of the local health departments responding to the emergency must comply with in response to the public health emergency.

CODE REFERENCE: West Virginia Code §16-2-2, §16-2-9, §16-2-11 – amended

DATE OF PASSAGE: March 4, 2021

EFFECTIVE DATE: June 2, 2021

ACTION BY GOVERNOR: Signed March 16, 2021

Senate Bill 14

Providing for additional options for alternative certification

This bill creates a third set of conditions for which a person may be issued a professional teaching certificate with the intent of providing additional options for alternative certification. This third set of conditions includes that the person:

Holds a bachelor’s degree from an accredited institution of higher education.

Submits to a criminal history check.

Successfully completes pedagogical training or a pedagogical course or courses in substantive alignment with nationally recognized pedagogical standards; or approved or established by the state board.

Passes the same subject matter and competency test or tests required by the state board for traditional program applicants for licensure.

The bill also requires that teaching certificates granted pursuant to the new set of conditions be equivalent to certificates granted to graduates of teacher preparation programs at higher education institutions.

CODE REFERENCE: West Virginia Code §18A-3-2a – amended

DATE OF PASSAGE: February 26, 2021

EFFECTIVE DATE: May 27, 2021

ACTION BY GOVERNOR: Signed March 10, 2021

Senate Bill 89

Exempting certain kindergarten and preschool programs offered by private schools from registration requirements

This bill exempts from DHHR regulation any kindergarten, preschool, or school education program which is operated by a private, parochial, or church school that is recognized by the WVDE under Policy 2330, relating to non-public school accreditation. The bill also clarifies the programs operated by a county parks and recreation commission, boards, and municipalities that are exempt from DHHR regulation.

CODE REFERENCE: West Virginia Code §49-2-113 – amended

DATE OF PASSAGE: April 5, 2021

EFFECTIVE DATE: July 4, 2021

ACTION BY GOVERNOR: Signed April 15, 2021

Senate Bill 277

Creating COVID-19 Jobs Protection Act

This bill prohibits civil actions for any loss, damages, personal injury, or death arising from COVID-19 against any individual or entity, including health care providers, institutions of higher education, businesses, manufacturers, and volunteers. “Arising from COVID-19” includes, but is not limited to:

- Implementing policies and procedures designed to prevent or minimize the spread of COVID-19;
- Testing; and/or monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating COVID-19 exposure or other COVID-19 related information;
- Using, designing, manufacturing, providing, donating, or servicing precautionary, diagnostic, collection, or other health equipment or supplies, such as personal protective equipment;
- Closing or partially closing to prevent or minimize the spread of COVID-19;
- Delaying or modifying the schedule or performance of any medical procedure;
- Providing services or products in response to government appeal or repurposing operations to address an urgent need for personal protective equipment, sanitation products, or other products necessary to protect the public;
- Providing services or products as an essential business, health care facility, health care provider, first responder, or institution of higher education; and actions taken in response to federal, state, or local orders, recommendations, or guidelines lawfully set forth in response to COVID-19.

This bill expressly does not preclude an employee from filing a claim for workers’ compensation benefits. It also does not preclude certain types of product liability claims or claims against any person who engaged in intentional conduct with actual malice.

CODE REFERENCE: West Virginia Code §55-19-1, §55-19-2, §55-19-3, §55-19-4, §55-19-5, §55-19-6, §55-19-7, §55-19-8, and §55-19-9 – new

DATE OF PASSAGE: March 11, 2021

EFFECTIVE DATE: March 11, 2021; retroactive to January 1, 2020

ACTION BY GOVERNOR: Signed March 19, 2021

Senate Bill 334

Establishing license application process for needle exchange programs

The bill creates a licensure program for a syringe services program. The first section of the bill addresses definitions. Harm reduction means a program that provides services intended to lessen the adverse consequences of drug use and protect the public health and safety, by providing direct access to or a referral to: syringe services program, substance use disorder treatment programs, screenings, vaccinations, education about overdose prevention, wound care, opioid antagonist distribution and education, and other medical services. A syringe services program is defined as a community-based program that provides access to sterile syringes, facilitates safe disposal of used syringes, and is part of a harm reduction program. A syringe is defined as both the needle and the syringe used to inject fluids into the body.

With respect to licensure, the bill provides that all new and existing programs shall obtain a licensure from the Office for Health Facility Licensure and Certification and sets forth the criteria for the application. This section includes general application information, including but not limited to the name of the applicant, a description of the services to be provided, contact person, hours of operation, description of the applicant's ability to encourage usage of medical care and mental health services as well as social welfare and health promotion, letters of support from a majority of the members of the county commission and a majority of the members of a governing body of the municipality in which it is proposing to locate, and the payment of a fee.

The bill sets forth program requirements. The bill states that to be approved for a license, a syringe services program shall be part of a harm reduction program which offers or refers an individual for services. The services include the following: HIV, hepatitis and sexually transmitted diseases screening; Vaccinations, birth control and long-term birth control, behavioral health services, overdose prevention services, syringe collection and sharps disposal, educational services related to disease transmission, assist or refer and individual to substance use treatment program, refer to a health care practitioner or treat medical conditions; and include programmatic guidelines for sharps disposal, staff training, data collection and program evaluation and community relations.

The syringe services program shall offer services as every visit from a qualified health care provider, shall exclude minor from participation in the syringe exchange, but may provide minors with harm reduction services, shall ensure a syringe is unique to the program, shall distribute with a goal of a 1:1 model, may substitute weighing the volume of syringes returned versus dispensed as specified: This substitution is only permissible if it can be done accurately and if the syringes are in a see-through container and a visual inspection of the container takes place prior to the syringes being weighed, the syringes are distributed directly to a recipient, and proof of WV identification is required upon dispensing the needles.

The bill requires staff shall be trained on the requirements of the program, the services provided by the program, the applicant's policies and procedures concerning syringe exchange, disposing of infectious waste, procedures for obtaining or making referrals, opioid antagonist administration, cultural diversity and sensitivity to protected classes under state and federal law, completion of attendance logs for

participation in mandatory training, maintain a program for the public to report syringe litter and shall endeavor to collect all syringe litter in the community.

The bill requires the syringe services program to have a syringe dispensing plan which includes: maintaining records of returned syringes by participants for two years, preventing syringe stick injuries, tracking the number of syringes dispensed, tracking the number of syringes collected, tracking the number of syringes collected as a result of community reports of syringe litter, eliminating direct handling of sharps waste, following a syringe stick protocol and plan, a budget for sharps waste disposal or an explanation if no cost is associated with sharps waste disposal, a plan to coordinate with the continuum of care.

The bill includes a procedure for revocation or limitation of the syringe services program and administrative due process. The bill provides for administrative appeals and judicial review. The bill has reporting requirements, a section for renewal, and provides for emergency rulemaking to occur by July 1, 2021.

There is a section for immunity. The bill provides that notwithstanding any provision of the code to the contrary, an employee, volunteer, or participant of a licensed syringe services program may not be arrested, charged with, or prosecuted for possession of any of the following:

- Sterile or used syringes, hypodermic syringes, injection supplies obtained from or returned to a program, or other safer drug use material obtain from a program established pursuant to this article, including testing supplies for illicit substances.
- Residual amounts of a controlled substance contained in a used syringe, used injection supplies obtained from or returned to a program.
- A law enforcement officer who, acting on good faith, arrests or charges a person who is thereafter determined to be entitled to immunity from prosecution under this section is not liable for the arrest or filing of charges.
- An individual who is wrongly detained, arrested, or prosecuted under this section shall have the public record associated with the detainment, arrest or prosecution expunged.
- A health care professional, or an employee or volunteer of a licensed syringe services program is not subject to sanction, detainment, arrest, or prosecution for carrying out the provisions of this article.
- A business that has syringe litter is immune from civil or criminal liability in any action relating to the needle on its property unless the business owner acted in reckless disregard for the safety of others.

The bill provides the Office of Health Facilities Licensure and Certification may assess an administrative penalty of not less than \$500 nor more than \$10,000 per violation of this article. The office may also seek injunctive relief.

The bill provides that a syringe services program shall coordinate care with other health care providers;

In the event that the syringe service program is closed, the program shall notify the participant of the closure of the service, prior to closure, in a conspicuous location, and provide an individual with a transition care plan;

The Bureau for Medical services shall submit a state plan amendment to permit harm reduction programs to be an eligible provider, except that the syringe exchange services shall not be eligible for reimbursement under the state plan.

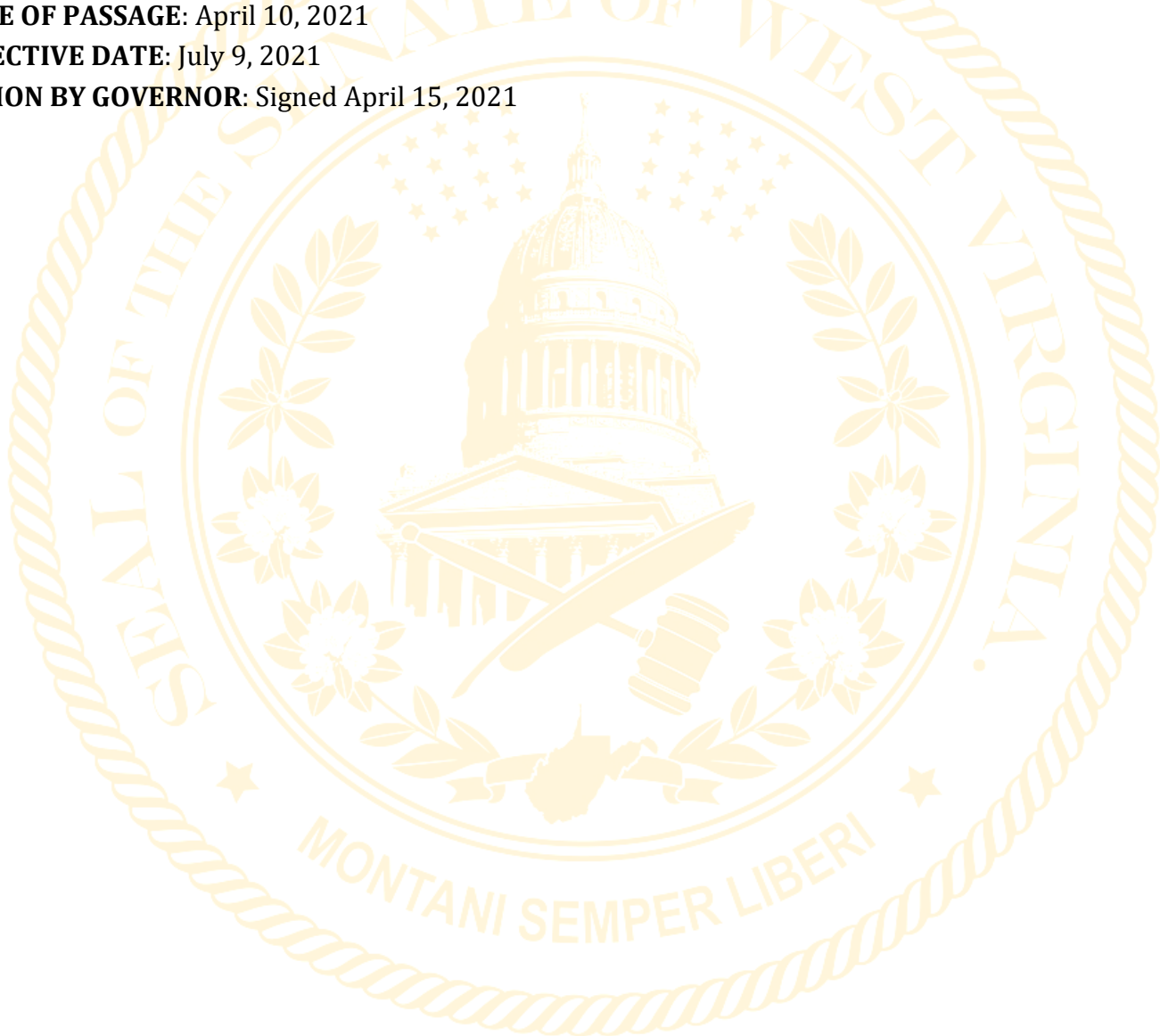
The bill provides that upon passage, an existing provider not offering the full array of harm reduction services as set forth in this section shall cease and desist offering all needle exchange services. The bill provides that any provider offering the full array of harm reduction services shall have until January 1, 2022 to come into compliance. Any new provider shall have until January 1, 2022 to come into compliance.

CODE REFERENCE: West Virginia Code §16-63-1 through §16-63-10 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 9, 2021

ACTION BY GOVERNOR: Signed April 15, 2021



Senate Bill 419

Redefining "firearm" to match federal code.

The purpose of this bill is to align the federal and state definitions of "firearm." The bill allows persons prohibited from possessing a firearm under federal law to possess antiques (pre-1898), replicas of antiques, and muzzle-loading firearms. Persons subject to a domestic violence protective order remain prohibited from possessing any firearm.

CODE REFERENCE: West Virginia Code §61-7-2 – amended

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: July 8, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

Senate Bill 458

Relating to possession of firearms by individuals during state of emergency

The purpose of this bill is to limit the authority of all levels of government from limiting lawful access to firearms and prohibits discrimination against firearm related businesses during a state of emergency.

New language provides that during a federal or state declared state of emergency, a government entity may not:

- Prohibit or restrict, seize, confiscate, authorize the seizure of, or require registration of any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or otherwise lawful personal weapons other than firearms;
- Suspend or revoke a license, or provisional license, to carry a concealed deadly weapon;
- Close or limit the operating hours of any entity selling or servicing firearms, ammunition, equipment, and supplies unless the closing or limitation of hours applies generally within the jurisdiction;
- Close or limit the hours of any indoor or outdoor shooting range; or
- Place restrictions or quantity limitations of any entity selling or servicing firearms, ammunition, equipment, and supplies.

Any individual who is adversely affected by a violation, or is subjected to an action, may seek relief against any state agency, county municipality, or any elected or appointed official or employee of this state, a county or municipality. The individual may also bring an action for the return of confiscated property. A prevailing plaintiff is entitled to actual damages, court costs and fees, and reasonable attorney's fees.

CODE REFERENCE: West Virginia Code §15-5-19a – amended

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: July 8, 2021

ACTION BY GOVERNOR: Signed April 21, 2021

Senate Bill 657

Relating to free expression on state institution of higher education campuses

This bill regulates possible limitations of free expression on state institution of higher education campuses. It provides that outdoor areas of campuses of state institutions of higher education are public forums for the campus community and prohibits the creation of “free speech zones” or other designated areas of campus outside of which expressive activities are prohibited.

The bill requires that any person who wishes to engage in expressive activity on campus be permitted to do so freely, as long as the person’s conduct is not unlawful and does not materially and substantially disrupt the functioning of the state institution of higher education. The bill allows state institutions of higher education to maintain and enforce reasonable time, place, and manner restrictions that are narrowly tailored to serve a significant institutional interest only when the restrictions employ clear, published, content-neutral and viewpoint-neutral criteria. Any restrictions must allow for members of the campus community to spontaneously and contemporaneously assemble, speak, and distribute literature. The bill does allow state institutions of higher education to prohibit, limit, or restrict expression that the first amendment does not protect and allows them to prohibit harassment. The bill also provides that these provisions do not enable individuals to engage in conduct that intentionally, materially, and substantially disrupts another’s expressive activity if the activity is occurring in a campus space reserved for that activity under the exclusive use or control of a particular group.

The bill prohibits a state institution of higher education from denying a religious, political, or ideological student organization any benefit or privilege available to any other student organization, or otherwise discriminate against such an organization, based on the expression of the organization.

The bill requires state institutions of higher education to develop materials, programs, and procedures to ensure that those persons who have responsibility for discipline, or education of students, such as administrators, campus police officers, residence life officials, and professors, understand the policies, regulations, and duties of state institutions of higher education regarding free expression on campus.

The bill requires that each state institution of higher education post on its website, as well as submit to the governor and Legislature by December 1, 2021, a report that details the course of action implemented to be in compliance with the requirements of the article. A report is also required to be given whenever there are changes or updates to the chosen course of action. The report must be:

- Accessible from the institution’s website home page by use of not more than three links;
- Searchable by keywords and phrases; and
- Accessible to the public without requiring registration or use of a username, a password, or another user identification.

The report must include:

- A description of any barriers to or incidents of disruption of free expression occurring on campus; and
- Any other information each state institution of higher education considers valuable for the public to evaluate whether free expression rights for all members of the campus community have been equally protected and enforced.

If a state institution of higher education is sued for an alleged violation of First Amendment rights, a supplementary report with a copy of the complaint, or any amended complaint, must be submitted to the governor and Legislature within 30 days.

The bill allows any person or student association aggrieved by a violation of this article to bring an action against the state institution of higher education and its employees acting in their official capacities, responsible for the violation and seek appropriate relief, including, but not limited to, injunctive relief, monetary damages, reasonable attorneys' fees, and court costs.

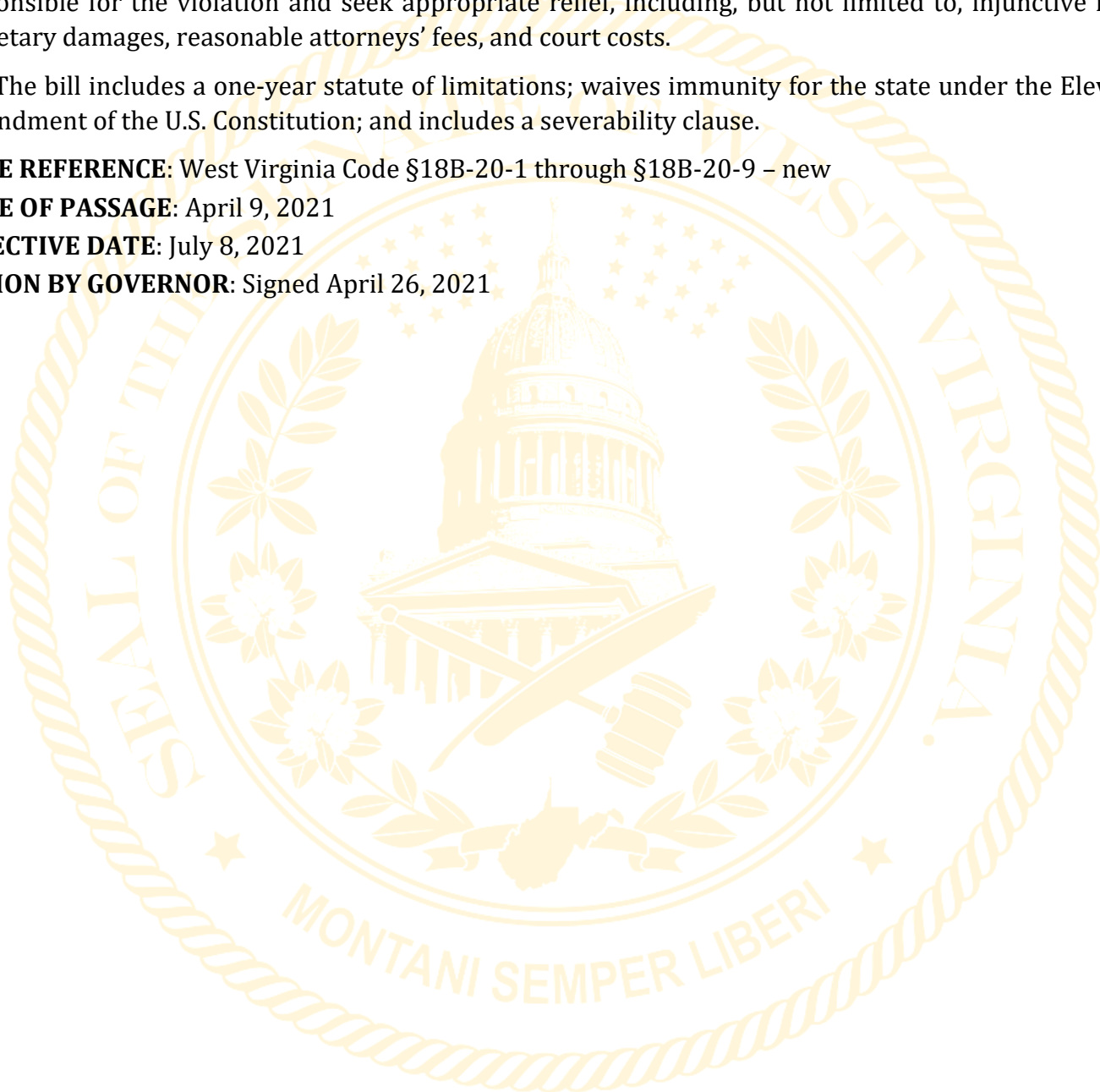
The bill includes a one-year statute of limitations; waives immunity for the state under the Eleventh Amendment of the U.S. Constitution; and includes a severability clause.

CODE REFERENCE: West Virginia Code §18B-20-1 through §18B-20-9 – new

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: July 8, 2021

ACTION BY GOVERNOR: Signed April 26, 2021



House Bill 2009

Relating to limitations on the use of wages and agency shop fees by employers and labor organizations for political activities

This bill amends two sections in the Wage Payment and Collection Act, W. Va. Code §21-5-1 et seq. The changes to these sections preclude deductions of union, labor organization, or club dues or fees from the wages of public employees, except for municipal employees covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021.

It expands the definition of “deductions” to include union and club fees, labor organization dues or fees, and any form of insurance offered by an employer; defines a new term, “assignment”, which incorporates the definition of “assignment of earnings” from the Consumer Credit & Protection Act.

The bill also replaces the notarization requirement for assignments with a requirement that an assignment or order must be in writing. It also expressly protects the right of private employers and employees to agree between themselves as to payroll deductions, and expressly protects the right of employees to join, become a member of, contribute to, donate to, or pay dues to a union, labor organization, or club. The bill amends one section in the Consumer Credit and Protection Act, W. Va. Code §46A-1-1 et seq., by adding union or club fees, labor organization dues or fees, and any form of insurance offered by an employer as deductions which are excluded under the definition of “assignment of earnings”. The bill makes the following additional changes elsewhere in the Code to correspond with the changes described above: The bill creates one new section in Chapter 7 (County Commissions and Officers) which provides that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of county officers or employees.

The bill amends one section in Chapter 8 (Municipal Corporations) by providing that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of municipal officers or employees, except for municipal employees covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021. The bill amends one section in Chapter 12 (Public Moneys and Securities) by removing language that currently allows state officers and employees to authorize voluntary deductions for payment of membership dues or fees to an employee association. It also authorizes the Auditor to approve and authorize voluntary other deductions as defined in the Wage Payment and Collection Act; removing a proviso regarding existing arrangements for dues deductions between employers or political subdivisions and employees; and clarifying that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of state officers or employees. Finally, the bill amends one section in Chapter 18A (School Personnel) by providing that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of teachers or other school employees.

CODE REFERENCE: West Virginia Code §8-5-12, §12-3-13b, §18A-4-9, §21-5-1, §21-5-3, §46A-2-116 – amended; §7-5-25 – new

DATE OF PASSAGE: March 19, 2021

EFFECTIVE DATE: June 17, 2021

ACTION BY GOVERNOR: Signed March 30, 2021

House Bill 2012

Relating to public charter schools

This Act makes numerous changes to related to Public Charter Schools as follow:

- The limit of 3 authorized and operating pilot public charter schools until July 1, 2023, and to 3 additional in every 3-year period thereafter is increased to 10 in both instances.
- An audit by the Legislative Auditor of the public charter school program is required two years after the first public charter school commences operation. The findings are to be reported to LOCEA.
- Requires two or more county boards to initially act together when application is made to form a public charter school with a primary recruitment area that encompasses territory in two or more counties. If the application is rejected by the collective group, one or more of the individual county boards may approve the application, but the school must be located in one of the counties where the application was approved.
- The newly created West Virginia Professional Charter School Board is added as an authorizer empowered to review, approve or reject applications, enter into contracts and oversee public charter schools.
- The definition of an “Education service provider” is amended to mean a public or private nonprofit or for-profit education management organization, etc.
- A “full-time virtual public charter school” is defined as a public charter school that offers educational services predominantly through an online program.
- The deadline for applying to establish a public charter school is reset to August 31 of the year prior to proposed beginning of operation in the following school year.
- Local Education Agency (LEA) status is changed to make a public charter school as its own LEA for all purposes except as needed under the provisions of the public school support plan (school aid formula) for funding purposes.
- Any rule promulgated by the State Board to clarify and address unforeseen issues with the charter school statute is prohibited from conflicting with the code. The rules required by these statutes must be promulgated by July 1, 2021 and may by emergency rules.
- Each authorizer now must require each charter school it oversees to submit an annual report to assist the authorizer in gathering the information it needs about the school consistent with the statutory requirements and the charter contract.
- The provisions related to charter contracts are modified as follows:
 - All or parts of an approved application may be incorporated into a charter contract as long as the application contains all of the requirements of the contents required for a contract.
 - A requirement that the contract contain the specific commitments of the authorizer relating to its obligations to oversee, monitor progress and supervise the charter school are deleted.
 - The contract must contain conditions under which a contract may be non-renewed and the non-renewal process, including the time period for notice of potential non-renewal and the reasons, the right to be represented by counsel, and not less than 60 days to provide a response. Contract revocation is removed from these provisions.

- A June 30 deadline of the final year of a charter school's operation is established for the authorizer to issue contract renewal application guidance to the charter school. The guidance must be specific to the named charter school.
- Annual performance audits and any required financial audits are added to the evidence to be considered by an authorizer in making decisions on charter contract renewal.
- A governing board may be represented by counsel and call witnesses at a recorded public hearing it may request to provide supporting information when the authorizer declines to renew its charter contract. The nonrenewal of a contract may be appealed to the State Board.
- A listing conditions for which a charter contract may be revoked at any time or not renewed. Is changed to apply only to non-renewals. Note, however, that the provision allowing a charter contract to be revoked at any time the authorizer determines that the health and safety are threatened is reinserted as discussed below.
- A charter contract may be revoked at any time if the authorizer determines that the health and safety of students attending the public charter school is threatened, an administrator employed by or member of the governing board over the charter school is convicted of fraud or misappropriation of funds, there is a failure to meet generally accepted standards of financial management, there is a material breach of the charter contract, there is a substantial violation of any provision of law from which the public charter school is not exempted, or there are dire and chronic academic deficiencies.
- Charter school applicants and governing boards are provided 30 days following an authorizer's decision to deny an application or not renew a contract to appeal the decision to the State Board. The State Board is to promulgate a rule establishing the process and timelines for these filed appeals. The State Board is required to remand the decision back to the authorizer for further proceedings if the substantive rights of the applicant have been prejudiced by certain listed violations or actions.

Virtual public charter schools may be authorized and are subject to the same requirements as non-virtual public charter schools to the extent those requirements do not conflict with the provisions of this section. The section permits the Professional Charter School Board to authorize one (2) statewide virtual charter schools that are limited to no more than 5% of the headcount enrollment per year. Each county board also may authorize one virtual charter school with enrollment limited to students within the primary recruitment area identified in the application and may not exceed 10% of the county's headcount enrollment. When enrolling a student who may require special education services, the same obligations apply to a virtual public charter school as applies to all other public charter schools. Enrollment may not be denied or delayed on the basis of a disability and the charter school must convene an Individualized Education Program (IEP) meeting after admission to ensure that the school develops an appropriate IEP in accordance with all of the requirements set forth in the Individuals with Disabilities Education Act (IDEA). To the extent the charter contract delineates instruction outside of a school building, the student or parent are not subject to penalties for being absent from a building and to the extent the instruction is learn at your own pace, are not subject to instructional term requirements.

The governing body of a virtual charter must undergo at least one training per year on appropriate oversight of virtual charters. Virtual charters are required to offer student orientation and require students

to attend the orientation before completing any other instructional activity as defined in the section. The virtual charter is also required to have a policy with consequences for students that fail to participate in instructional activities, including disenrollment when certain conditions are met. The virtual must coordinate directly with the district of residence regarding appropriate educational placement based on assessments for a student transferring from a virtual charter.

Virtual charter schools must provide data on student progress toward graduation as agreed to in the charter contract and shall maintain clear requirements relating to student engagement and teacher responsiveness. The authorizer may establish additional requirements for students in grades six and below to ensure they are developmentally appropriate.

The West Virginia Professional Charter School Board is created and will report directly to and be responsible to the State Board, separate from the Department. The mission of the board is to authorize high-quality public charter schools throughout the state that provide more options for students, particularly through schools designed to expand the opportunities for at-risk students. The Professional Charter School Board and public charter schools authorized in accordance with this article are subject to the general supervision of the state board solely for the purposes of accountability for meeting the standards for student performance required of other public school students.

The Professional Charter School Board has 5 members appointed by the Governor with advice and consent of the Senate, who will serve for staggered 2-year terms.

- The Chairs of the Senate and House Education Committees will serve as nonvoting ex-officio members.
- Qualifications are listed for the appointed members along with grounds for removal.
- The Board may appoint an executive director to serve at its will and pleasure and may employ staff.

The Professional Charter School Board must investigate official complaints submitted to it that allege serious impairments in the quality of education in a public charter school or virtual public charter school it has authorized pursuant to this article, or that allege such schools are in violation of the policies or laws applicable to them. The Board also may at its own discretion conduct or cause to be conducted audits of the education and operation of public charter schools or virtual public charter schools it has authorized pursuant to this article that it determines necessary to achieve its mission of authorizing high-quality public charter schools. Upon a determination that serious impairments or violations exist, the Board shall promptly notify in writing the public charter school governing board of the perceived serious impairments or violations and provide reasonable opportunity for the school to remedy the serious impairments or violations. The Board shall take corrective actions or exercise sanctions in response to apparent serious impairments or violations. If warranted, the actions or sanctions may include requiring a charter school to develop and execute a corrective action plan within a specified time frame.

CODE REFERENCE: West Virginia Code §18-5G-1, §18-5G-2, §18-5G-4, §18-5G-5, §18-5G-6, §18-5G-9, §18-5G-10, and §18-5G-11 – amended; §18-5G-13, §18-5G-14, and §18-5G-15 – new

DATE OF PASSAGE: April 3, 2021

EFFECTIVE DATE: June 1, 2021

ACTION BY GOVERNOR: Signed April 11, 2021

House Bill 2013

Relating to the Hope Scholarship Program

The purpose of this bill was to create the Hope Scholarship Program. The provisions of the bill:

- Create a compulsory school attendance exemption for eligible recipients participating in the Hope Scholarship Program who provide a notice of intent to the county superintendent; and requires the county superintendent to enter certain information regarding the recipient into WVEIS.
- Require the Department of Education to include in its budget request, and the Governor to include in each budget bill submitted to the Legislature, an appropriation to the Department of Education for the greater of an amount not less than two percent of net public school enrollment adjusted for state aid purposes or the total number of eligible Hope Scholarship applications received by the Hope Scholarship Board, if available, multiplied by the prior year's statewide average net state aid allotted per pupil; requires the amount appropriated to be transferred by the Department to the Hope Scholarship Board to meet its Hope Scholarship obligations; requires the Governor to also provide in each budget for the reappropriation for expenditure during the ensuing fiscal year the balance to the Department of Education that was not transferred to the Hope Scholarship Board due to an accumulated balance from prior years; and requires the amount requested and included in the budget bill to be reduced by any unused accumulated amounts transferred to the Hope Scholarship Board in previous years and any unused appropriations made to the Department of Education that were not transferred to the Hope Scholarship Board due to an accumulated balance from prior years.
- Define terms, one of which is a definition for "eligible recipient" which means a child who:
 - Is a resident of this state; and
 - Is enrolled full-time and attending a public elementary or secondary school program in this state for at least 45 calendar days during an instructional term at the time of application and until an award letter is issued by the board; or enrolled full-time in a public elementary or secondary school program in this state for the entire instructional term the previous year; or is eligible at the time of application to enroll in a kindergarten program in this state, except that if on July 1, 2024, the participation rate of the combined number of students in the Hope Scholarship Program and students eligible who have applied to participate in the Hope Scholarship program during the previous school year is less than five percent of net public school enrollment adjusted for state aid purposes for the previous school year, then, effective July 1, 2026, a child is considered to meet these requirements if he or she is enrolled, eligible to be enrolled, or required to be enrolled in a kindergarten program or public elementary or secondary school program in this state at the time of application.
- Create the West Virginia Hope Scholarship Board to administer the Hope Scholarship Program; requires that the board consist of the State Treasurer, the State Auditor, or a designee, the State Attorney General, or a designee, the State Superintendent of Schools, or a designee, the Chancellor for Higher Education, or a designee, the director of the Herbert Henderson Office of Minority Affairs, or a designee, and three members appointed by the Governor with the advice and consent of the Senate, who are parents of Hope Scholarship students, or for the initial appointments, parents who intend to apply for the Hope Scholarship on behalf of eligible recipients; includes further provisions

for the appointed members relating to qualifications, terms, and vacancies; provides for reimbursement of expenses for the members; provides that the Treasurer is the chairman and presiding officer of the board; authorizes the Treasurer to provide office space and staff to the board; authorizes the State Superintendent to provide staff to the board; provides that a majority constitutes a quorum; and subjects the members to the Governmental Ethics Act requirements.

- Authorize the Board to take any action necessary to effectuate the provisions of the Hope Scholarship article and sets forth the minimum powers the authority includes.
- Require the Hope Scholarship Program to be operational no later than July 1, 2022.
- Require the board to create a standard application form that a parent can submit to establish his or her student's eligibility for the award of Hope Scholarship funds, to be placed in a personal education savings account to be used for qualifying education expenses on behalf of the eligible recipient; and requires information about scholarship funds and the application to be available on the board's website.
- Require the board to make the applications available by March 1, 2022 and to begin accepting applications immediately thereafter; requires the board to issue an award letter to eligible recipients within 45 days of receipt of an application and all required documentation; and requires the board to approve an application if all of the following conditions are met:
 - A parent submits an application.
 - The student is an eligible student.
 - The parent signs an agreement with the board, promising to:
 - Provide an education for the eligible recipient in at least the subjects of reading, language, mathematics, science, and social studies.
 - Use the Hope Scholarship funds exclusively for qualifying expenses.
 - Comply with the rules of the program.
 - Afford the Hope Scholarship student opportunities for educational enrichment such as organized athletics, art, music, or literature.
 - The board confirms with the West Virginia Department of Education that the student satisfies the 2nd part of the definition of an eligible student, but if the West Virginia Department of Education does not respond within 30 days, this criteria is considered satisfied.
- Provide that an application for a Hope Scholarship is confidential and not subject to release pursuant to FOIA.
- Create a West Virginia Hope Scholarship Program Fund to be administered by the Treasurer and consist of funds transferred by the Department of Education.
- Require the amount of Hope Scholarship funds made available to an eligible recipient on a yearly basis be equal to 100% of the prior year's statewide average net state aid share allotted per pupil subject to administrative costs; and requires that the amount be prorated when an eligible students is awarded the scholarship for less than a full fiscal year.
- Require an amount not to exceed 5% of the fund to be transferred annually to the West Virginia Hope Scholarship Program Expense Fund to cover annual administrative costs; and allows the Treasurer to request an appropriation if the number of Hope Scholarship accounts increases significantly after any fiscal year.

- Require half of the annually required deposit to be made no later than August 15 of every year into an eligible recipient's Hope Scholarship account and half to be made no later than January 15 of every year; and provides that any funds remaining at the end of the fiscal year can be carried over to the next fiscal year.
- Provide that funds deposited in a student's account, other than funds for transportation services, do not constitute taxable income to the parent or student.
- Require the board to continue to make deposits into an eligible recipient's Hope Scholarship account unless any of the following occur:
 - The parent fails to renew the account or withdraws from the program.
 - The board determines that the student is no longer eligible for the Hope Scholarship.
 - The board suspends or revokes participation in the program for failure to comply with the program requirements.
 - The Hope Scholarship student successfully completes a secondary education program.
 - The student reaches 21 years of age.
- Require that if any of the foregoing conditions occur, the board must notify the parent that the eligible recipient's account will be closed in 45 calendar days. If a parent fails to adequately address the condition upon which closure is based within 30 days of receipt of notice, the board shall close the account and any remaining fund shall be returned to the state.
- Set forth the following as qualifying expenses:
 - Ongoing services provided by a public school district, including without limitation, individual classes and extracurricular activities and programs.
 - Tuition and fees at a participating school.
 - Tutoring services provided by an individual or a tutoring facility except that the tutoring services cannot be provided by a member of the Hope Scholarship student's immediate family.
 - Fees for nationally standardized assessments, advanced placement examinations, any examinations related to college or university admission, and tuition and/or fees for preparatory courses for the aforementioned exams.
 - Tuition and fees for programs of study or the curriculum of courses that lead to an industry-recognized credential that satisfies a workforce need.
 - Tuition and fees for nonpublic online learning programs.
 - Tuition and fees for alternative education programs.
 - Fees for after-school or summer education programs.
 - Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies.
 - Curriculum.
 - Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider.
 - Any other qualified expenses as approved by the board.
- Require annual renewal of the Hope Scholarship; provides that the recipient remains eligible to apply for renewal until one of the above conditions for ceasing deposits into an account occurs; and

requires that the board verify the following with the West Virginia Department of Education by July 1 of every year:

- A list of all active Hope Scholarship Accounts.
- The resident school district of each Hope Scholarship student.
- For a Hope Scholarship student who chooses to attend a participating school, annual confirmation of his or her continued attendance at a nonpublic school that complies with all requirements that other nonpublic school students must comply with.
- For a Hope Scholarship student who chooses an individualized instructional program:
 - He or she has annually taken a nationally normed standardized achievement test of academic achievement; the mean of the child's test results in the subject areas of reading, language, mathematics, science and social studies for any single year is within or above the fourth stanine or, if below the fourth stanine, show improvement from the previous year's results; and the child's test results are reported to the county superintendent; or
 - A certified teacher conducts a review of the student's academic work annually; the certified teacher determines that the student is making academic progress commensurate with his or her age and ability; and the certified teacher's determination is reported to the county superintendent.
- Require each county superintendent to submit the test results and determinations to the West Virginia Department of Education each year on or before June 15.
- Provide that if the parent fails to renew an eligible recipient's Hope Scholarship, the board shall notify the parent that the eligible recipient's account will be closed within 45 calendar days; and provides that if a parent chooses not to renew or does not respond within 30 calendar days of receipt of notice, the board shall close the account and any remaining moneys are to be returned to the state.
- Include provisions relating to allowing the board, in consultation with the West Virginia Department of Education, to adopt rules and policies for Hope Scholarship students who want to continue to receive services provided by the public school or district, including individual classes and extracurricular programs, in combination with an individualized instructional program.
- Include other provisions relating to the board's providing certain information pertaining to the Hope Scholarship Program; allowing the board to contract with private organizations to administer the program; requiring the board to implement a commercially viable, cost effective, and parent-friendly system for payment of services from Hope Scholarship accounts; addressing an education service provider's requiring partial payment of tuition or fees prior to the start of the academic year to reserve space for a student; allowing the board to propose legislative rules, including emergency rules, if necessary, to meet the required timelines that are necessary for the administration of the program.
- Require the board to conduct or contract for the random auditing of individual Hope Scholarship accounts as needed to ensure compliance with the Hope Scholarship statutory and rule requirements; allows the board to remove a parent or eligible recipient from the program and close an account for failure to comply with the terms of the parental agreement, failure to comply with applicable laws, failure of the student to remain eligible, or intentional and fraudulent misuse of

Hope Scholarship funds; and requires a parent or Hope Scholarship student be able to appeal the decision to make the student ineligible for funds to the board.

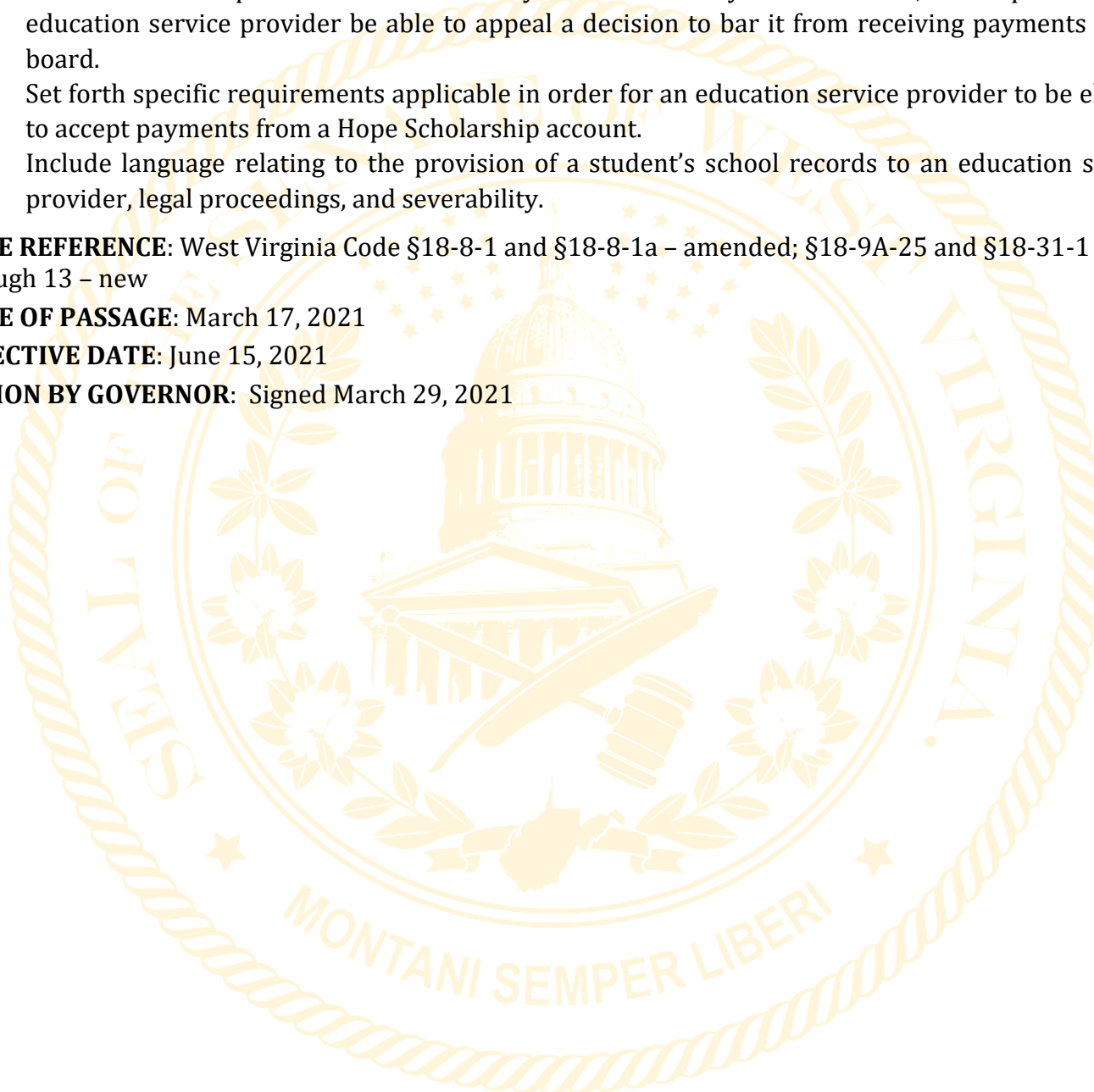
- Allow the board to conduct or contract for the audit of education service providers accepting payments from Hope Scholarship accounts in certain instances; allows the board to bar the education service provider from continuing to receive payments if the board determines that an education service provider has intentionally and substantially misused funds; and requires that an education service provider be able to appeal a decision to bar it from receiving payments to the board.
- Set forth specific requirements applicable in order for an education service provider to be eligible to accept payments from a Hope Scholarship account.
- Include language relating to the provision of a student's school records to an education service provider, legal proceedings, and severability.

CODE REFERENCE: West Virginia Code §18-8-1 and §18-8-1a – amended; §18-9A-25 and §18-31-1 through 13 – new

DATE OF PASSAGE: March 17, 2021

EFFECTIVE DATE: June 15, 2021

ACTION BY GOVERNOR: Signed March 29, 2021



House Bill 2014

Relating to role of the Legislature in appropriating federal funds

The purpose of this bill would amend state code governing the appropriation of state funds, including federal funds deposited into the State Treasury, reductions and expirations of appropriations in the event of revenue shortfalls, and updating of obsolete provisions.

The bill provides clarity the role of the Legislature in appropriating federal funds received by the state in all events, including public emergencies. Certain provisions are updated to modernize outdated language regarding federal block grants.

Several provisions are updated to state expressly that the only appropriation that authorizes expenditure of federal funds from the State Treasury under the state constitution is an appropriation made by the Legislature.

The bill limits executive authority to spend certain emergency federal funds received when the Legislature is not in session. A new section is added to limit the Governor's authority to expend such funds as follows:

"No amount of such unanticipated federal funds for an existing program, for a significant alteration of an existing program, or for the creation of a new program made available to the state for costs and damages resulting from an emergency including, but not limited to, flooding, forest fires, earthquakes, storms or similar natural disasters, civil disobedience, human-caused disasters, infectious disease outbreaks, or similar public health or safety emergencies that occur and are received while the Legislature is not in session and that are declared by the Governor as a state of emergency in excess of \$150 million for any part or the whole of the declared emergency may be expended without appropriation by the Legislature enacted following receipt of the funds. No provision of this code or any appropriations act in effect upon the receipt of unanticipated federal funds made available to the state for costs and damages resulting from an emergency including, but not limited to, flooding, forest fires, earthquakes, storms or similar natural disasters, civil disobedience, human-caused disasters, infectious disease outbreaks, or similar public health or safety emergencies that occur and are received while the Legislature is not in session and that are declared by the Governor as a state of emergency may be construed to authorize the appropriation of those funds, except as provided in this subsection."

In the limited circumstances permitting the expenditure of emergency federal funds for existing programs without further legislative appropriation, the bill requires the Governor to provide regular financial reports of proposed and actual expenditure of the funds to the President of the Senate, the Speaker of the House of Delegates, the chairs of the respective committees on finance of the two houses of the Legislature, and the Legislative Auditor.

The bill clarifies that if there is any conflict between the new provisions enacted by this bill and any other provision of law relating to receiving or expending federal funds, the provisions enacted under this bill shall govern and control and supersede any interpretation of budget language.

The bill states that copies of the Secretary of Revenue's annual report to the Governor concerning the administration of the budget must be submitted to the Legislature in the manner required for other reports made to the Governor.

The bill requires additional information on the final monthly report required to be certified by the Secretary of Revenue to the Governor and the Legislative Auditor, et al., as to revenue estimates and collections during each fiscal year. The report must show the proportion which the amount actually collected during the preceding month bears to the collection estimated by the Secretary for that month, as well as the proportion which the amount actually collected during the preceding fiscal year bears to the appropriations made for that year. The bill states that no reductions of appropriations may be made after the end of the fiscal year.

The Secretary of Revenue’s annual Consolidated Report of Federal Funds (now required to be submitted to the Governor no later than December 31) also include a detailed description of all federal funds anticipated to be received by the state during the remainder of the fiscal year.

The bill requires all federal funds received by the state to be deposited in the State Treasury in a special fund apart from the general revenue fund, and that those federal funds may only be expended upon appropriation of the Legislature.

The bill provides for the expiration of reappropriated funds at the end of a fiscal year only when revenues actually collected in a fiscal year fail to equal or exceed the amounts appropriated by the Legislature for that fiscal year.

The bill reiterates that where such general revenue funds are reappropriated by the budget act for the ensuing fiscal year, they do not expire at the end of the fiscal year just ended.

CODE REFERENCE: West Virginia Code §4-11-1 through §4-11-7, §5-1A-1, §11B-1-1 and §11B-1-4, §11B-2-11, §11B-2-21 and §11B-2-23, §12-2-2, §12-3-12 and §12-3-17, §12-4-2 and §12-4-3, and §15-5-6 – amended

DATE OF PASSAGE: March 31, 2021

EFFECTIVE DATE: March 31, 2021

ACTION BY GOVERNOR: Signed April 7, 2021

House Bill 2363

Relating to “Best Interests of the Child Protection Act of 2021”

This bill modifies the following sections of code:

- §48-1-220 – Defines “decision making responsibility.” It adds a proviso that both parents have authority to make emergency or non-elective healthcare decisions regarding the child, regardless of ratio of allocated parenting time.
- §48-1-239 – Defines “shared parenting.” It adds a requirement that in any event where, in the absence of agreement between the parents, a court orders shared parenting at a ratio of or further disparate than 65%-35%, the order must be written and contain specific findings of fact supporting the decision.
- §48-1-239a – Provides a definition of “shared legal custody” which means a continued mutual responsibility and involvement by both parents in major decisions regarding the child’s welfare including matters of education, medical care, and emotional, moral, and religious development consistent with the provisions of §48-9-207.
- §48-1-239b - Provides a definition of “sole legal custody” which means that one parent has the right and responsibility to make major decisions regarding the child’s welfare including matters of education, non-emergency medical care, and emotional, moral, and religious development.
- §48-1-241a – Provides a definition of “shared physical custody” which means a child has periods of residing with, and being under the supervision of, each parent consistent with the provisions of §48-9-206. Physical custody must be shared by the parents in such a way as to assure a child has frequent and continuing contact with both parents. There is a rebuttable presumption that such frequent and continuing contact with both parents is in the best interests of the child unless the evidence shows otherwise.
- §48-1-241b – Provides a definition of “sole physical custody” which means a child resides with and is under the supervision of one parent, subject to reasonable visitation by the other parent, unless the court determines that the visitation would not be in the best interests of the child.
- §48-9-102 – Sets forth legislative objectives for determining the best interests of the child in allocating custody. It adds consideration of “parenting” functions, as well as meaningful contact between a child and his or her siblings, including half-siblings.
- §48-9-105 – Provides the following for custodian actions outside of divorce:
 - Custody determinations within a divorce governed by the venue of the divorce code, §48-5-106 or procedures in child custody code, §48-20-101 et seq.
 - Custody determinations if parties reside in separate states are governed by procedures in child custody code, §48-20-101 et seq.
 - Modification of a custody allocation previously determined outside West Virginia is governed by procedures in child custody code, §48-20-101 et seq.
 - Within the state of West Virginia, venue is proper in the county where the parties and child last resided for six months, or the child’s “home county,” where the child has resided for six consecutive months since birth. If there is no “home county,” venue is proper where the respondent resides.

- Modification of a previous custody allocation is in the county where it was determined. If neither the child nor parents have resided in the county for 6 months preceding filing; and within 40 miles of the county seat, there may be a motion to change venue to either respondent's county of residence or petitioner's county of residence, if agreed.
- §48-9-203 – Defines proposed temporary parenting plans. It requires the court to include written orders with specific findings of fact supporting its determinations.
- §48-9-204 – Sets forth criteria for temporary parenting plans. It adds “parenting” functions to consideration by the court and requires the court to include written orders with specific findings of fact supporting its determinations.
- §48-9-206 – Relates to allocation of custody. It adds a preference that time allocated to the parent resulting in the child being under the care of that parent is preferred to the parent resulting in time allocated to the parent resulting in the child being under the care of a third party. It adds reasonable access to the child by telephone or other electronic contact as an objective. It also provides that a court cannot rely solely on “caretaking” functions to determine custody if the parents demonstrate reasonable participation in “parenting” functions. It requires that, in the absence of agreement of the parents, a determination by the court as to custody allocation must be made pursuant to a hearing, which cannot be conducted exclusively by the presentation of evidence by proffer, and that the allocation order be in writing and include specific findings of fact supporting its determinations.
- §48-9-207 - Relates to allocation of decision-making responsibility. It adds neglect and abandonment as criteria that may overcome presumption that joint decision-making is in the child's best interest. It also requires the court to include written orders with specific findings of fact supporting its determinations.
- §48-9-209 – Defines limiting factors of parenting plans. It clarifies criteria of interference with the other parent's relationship with the child.
- §48-9-301 - Relates to court-ordered investigations. It provides notice requirements of initiation and process of the investigation. It also requires that a hearing cannot take place until after the investigation report is provided to the parties and allows for a continuance of the hearing.
- §48-9-403 – Relates to process for relocation of a parent. A petition must be filed 90 days before relocation and served 60 days before relocation.
- §48-9-601 – Provides parental access to a child's records. It clarifies access to a child's vital records and requires notification if the child is a victim of a crime unless the other party is the perpetrator.
- §48-9-603 – Relates to effective date. It provides that existing orders remain in effect unless modified by a court, and that the 2021 amendments shall not, without more, be considered a substantial change in circumstances for modification of a parenting plan order under §48-9-401 et seq.

CODE REFERENCE: West Virginia Code §48-1-220, §48-1-239, §48-9-102, §48-9-203, §48-9-204, §48-9-206, §48-9-207, §48-9-209, §48-9-301, §48-9-403, §48-9-601, and §48-9-603 – amended; §48-1-239a, §48-1-239b, §48-1-241a, §48-1-241b, and §48-9-105 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 9, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

House Bill 2368

Myliisa Smith's Law, creating patient visitation privileges

The bill amends the Patient Safety and Visitation Act of 2001.

The bill amends §16-39-1 relating to the short title to indicate that the amendments made to this article during the 2021 Regular Session of the Legislature shall be known as "Myliisa Smith's Law".

The bill repeals §16-39-2 relating to legislative findings and purpose.

The bill amends §16-39-3 by adding new definitions for healthcare facility, patient, public health state of emergency, and visitor.

The bill adds a new section §16-39-8 relating to visitation of a patient in a health care facility. This new section provides:

- During a declared public health state of emergency for a contagious disease, a health care facility shall permit visitation of a patient in a manner consistent with applicable federal and state laws, regulations, rules, policies, and guidance. If the patient's death is imminent, the health care facility shall allow visitation upon request at any time and frequency. In all other instances, the health care facility shall allow visitation not less than once every five days.
- A visitor shall comply with the applicable procedures established by the health care facility.
- The health care facility may deny a visitor entry to the health care facility, may subject a visitor to expulsion from the facility, or may permanently revoke visitation rights to a visitor who does not comply with the applicable procedures established by the health care facility.
- A healthcare facility is not liable to a person visiting another person, nor to any other patient or resident of the health care facility, for any civil damages for injury or death resulting from or related to actual or alleged exposure during, or through the performance of, the visitation in compliance with this section, unless the health care facility failed to substantially comply with the applicable health and safety procedures established by the health care facility.

CODE REFERENCE: West Virginia Code §16-39-1, §16-39-2, and §16-39-3 – amended; §16-39-8 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: April 10, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

House Bill 2499

Tax reduction for arms and ammo manufacturing

The purpose of this bill is to provide for tax relief for the manufacturing, sale, and use of firearms to attract manufacturing facilities to locate in West Virginia. The bill makes definition changes to facilitate the changes set out in the bill.

The bill is broken into four (4) parts.

- The first part of the bill will implement property tax relief for these types of manufacturers. Under §11-6F-3, the value of “certified capital addition property” for purposes of property taxation is the property improvement’s salvage value which is five percent of the certified property’s original cost.
 - Beginning on July 1, 2021, the property taxation will be the salvage value of the original cost in two instances:
 - All real and personal property costs more than \$1 million and is constructed within two miles of an existing manufacturing facility which has an original cost of at least \$2 million and is owned by the same person or entity. OR
 - All real and personal property costs more than \$2 million and is constructed by a single entity or combination of entities engaged in a unitary business.
- The second portion of the bill amends the formula for calculating the Manufacturing Investment Tax Credit. Manufacturers for small arms, ammunition, ordinance, and accessories will receive a special higher percentage credit rate. The increased amount is defined as 50% of the qualified manufacturing investment for eligible taxpayers against the corporate net income tax and the severance tax, if applicable. The current rate of other qualified manufacturers is 5% of the investment. This credit is taken over a 10-year period at 1/10 per year. The bill also removes obsolete language concerning the repealed business franchise tax.
- The third part of the bill creates a new tax credit for federal excise tax imposed on small arms and ammunition. The section defines key terms.
 - Small arms and ammunition manufacturing facilities are eligible if a facility makes a qualified investment in a new or expanded manufacturing facility and if they are subject to taxes imposed by the personal income tax or the net corporate income tax.
 - Eligible taxpayers are allowed a credit against the portion of state taxes imposed that are the consequence of the taxpayer’s qualified investment in a new or expanded facility if the investment is at least \$2 million. The maximum amount of the allowable credit is 100 percent of amount of federal excise tax paid in a tax year under section 4181, Title 26 of the Internal Revenue Code. The allowable credit is to be taken over a 10-year period.
 - If any credit remains after the ten-year period, the amount is carried forward to each ensuing tax year until used or until after the 20th year when all remaining credit is forfeited.
 - This portion of the bill includes provisions concerning administration, enforcement, limitations, conditions and qualifications. There are provisions for forfeiture should in any tax year the property ceases to be used in a manner that would evoke the tax relief or if operations cease entirely. The bill allows the credit to be transferred under certain circumstances. There are also record keeping requirements and a five-year report on the effectiveness of the credit to the Governor and the presiding officers of both houses. The

credit is subject to West Virginia Tax Procedure and Administration Act and West Virginia Tax Crimes and Penalties Act. The Tax Commissioner is authorized to promulgate rules and the credit is effective for investments made on or after July 1, 2021.

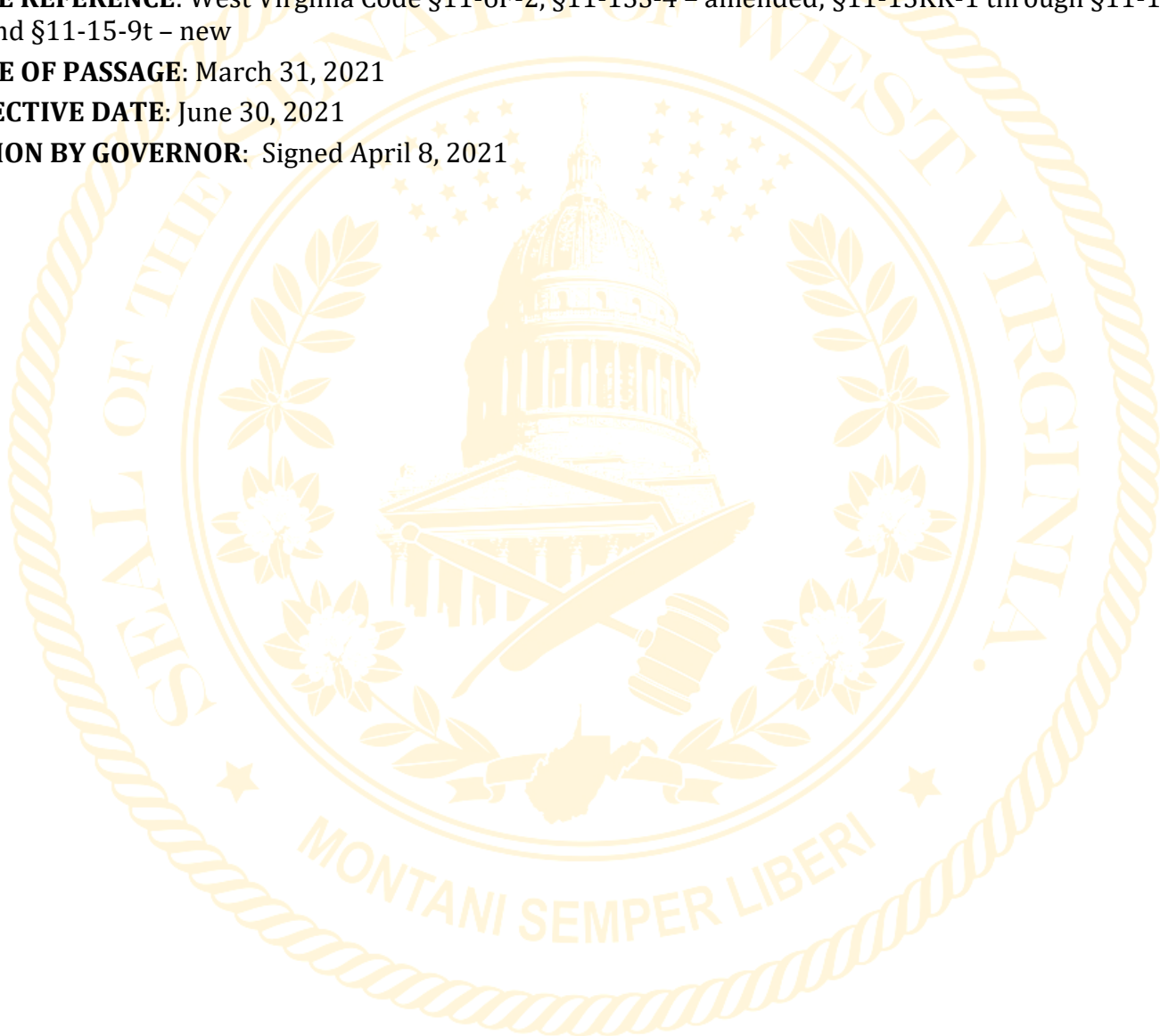
- The fourth part of the bill exempts sales of small arms and small arms ammunition from state sales and use taxes. “Small arms” are defined as any portable firearm, designed to be carried and operated by a single person, such as rifles, pistols, shotguns, and revolvers, with a gun barrel internal diameter of .50 caliber or smaller or 10 gauge or smaller for shotguns. “Small arms ammunition” is defined as ammunition designed for use in these same portable firearms.

CODE REFERENCE: West Virginia Code §11-6F-2, §11-13S-4 – amended; §11-13KK-1 through §11-13KK-17 and §11-15-9t – new

DATE OF PASSAGE: March 31, 2021

EFFECTIVE DATE: June 30, 2021

ACTION BY GOVERNOR: Signed April 8, 2021



House Bill 2529

Prohibiting West Virginia institutions of higher education from discriminating against graduates of private, nonpublic or home schools by requiring them to submit to alternative testing

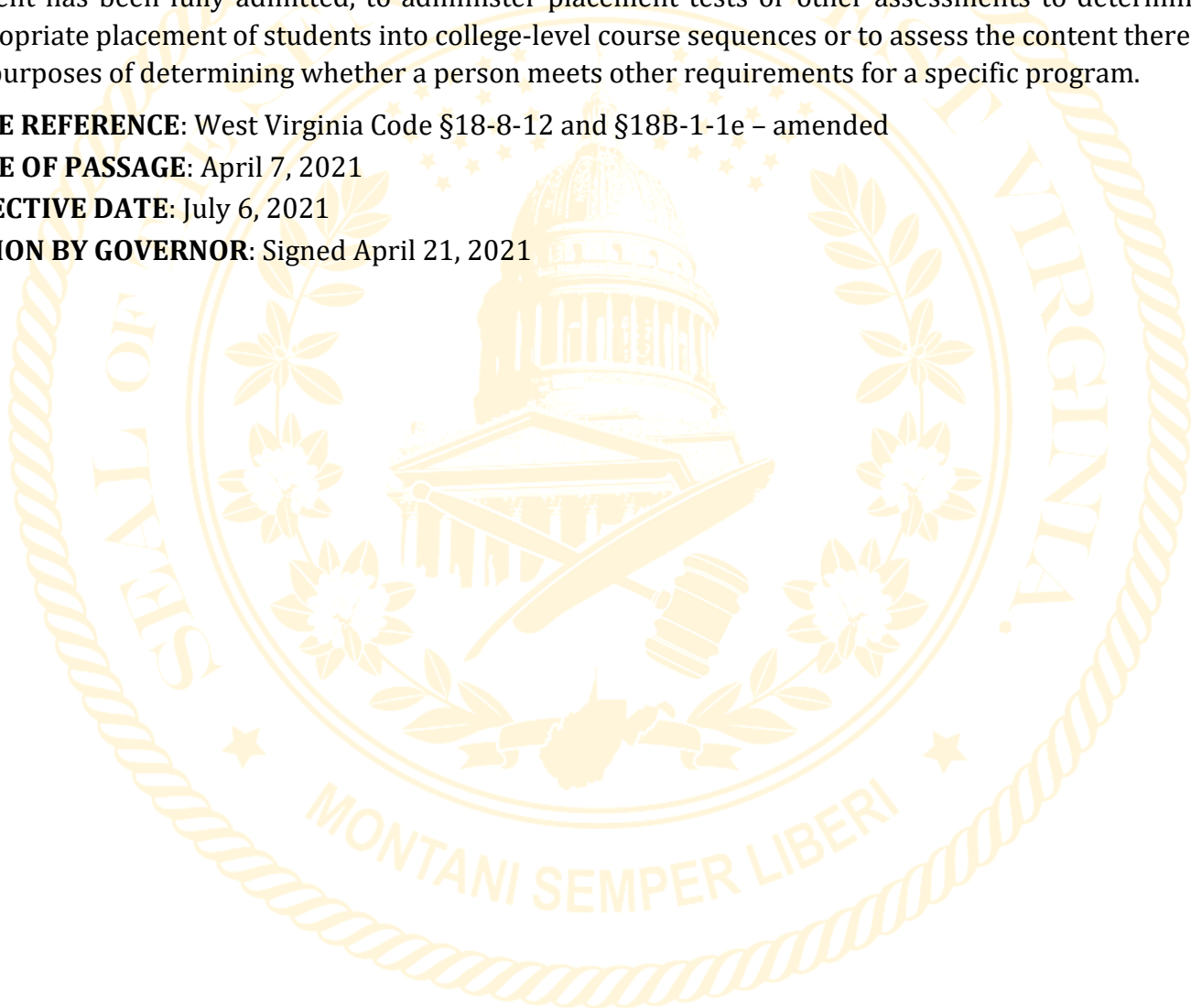
This bill prohibits a state institution of higher education from requiring a person who has obtained a diploma or other appropriate credential from a nonpublic or home school, and who has acceptable test results on the ACT, SAT, or other admission test recognized by the institution of higher education, to submit to alternate testing as a condition of admission; prohibits the rejection of a person from admission to an institution of higher education solely because their secondary education was not accredited by the State Board of Education or any accrediting agency approved by the board; and allows an institution, once a student has been fully admitted, to administer placement tests or other assessments to determine the appropriate placement of students into college-level course sequences or to assess the content thereof for the purposes of determining whether a person meets other requirements for a specific program.

CODE REFERENCE: West Virginia Code §18-8-12 and §18B-1-1e – amended

DATE OF PASSAGE: April 7, 2021

EFFECTIVE DATE: July 6, 2021

ACTION BY GOVERNOR: Signed April 21, 2021



House Bill 2694

Create the 2nd Amendment Preservation Act

The bill adds a new article creating the “West Virginia Second Amendment Preservation and Anti-Federal Commandeering Act”. The bill provides for the following:

- Prohibits federal commandeering of West Virginia law-enforcement for purposes of enforcement of federal firearms laws; and, prohibits police agencies, departments, or officers from participating in the execution of a federal search warrant or arrest warrant when the only property sought to be taken and seized under the warrant is firearms, firearms accessories, or ammunition;
- Prohibits police agencies, departments, or officers from participating in the execution of a federal arrest warrant of a citizen of this state when the federal arrest warrant charges no crime other than the crime of the possession of firearms, firearm accessories, or ammunition;
- No police department, agency, or officer engaged in a traffic stop or in response to a noise complaint may arrest or detain a person for the violation of a new inconsistent federal firearms law or inconsistent presidential executive order or action;
- Prohibits any court of the state to deprive the right to possess firearms, firearm accessories, or ammunition under any red flag law;
- Identifies permitted activities for West Virginia law-enforcement agencies;
- Authorizes the Attorney General to challenge unconstitutional federal actions related to firearms;
- Authorizes the Attorney General to publish model policies on or before January 1, 2022; and
- Provides law-enforcement immunity from civil or criminal liability for failure to enforce a federal statute, executive order, agency order, rule, or regulation determined by the Attorney General of West Virginia to infringe upon Second Amendment rights.

CODE REFERENCE: West Virginia Code §61-7B-1 through §61-7B-10 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 9, 2021

ACTION BY GOVERNOR: Signed April 27, 2021

House Bill 2791

Relating to end costs of homeschooled or private school students at vocational schools

The Act requires county boards of education to permit students who are homeschooled or attend private schools to enroll and take classes at county vocational schools, if any are provided and as capacity allows, at no expense or cost greater than expenses or costs normally charged to public school students. If a homeschooled or private school student is denied admission to a county vocational school, the county board must provide written notice to the parent or guardian of the student and Department of Education.

CODE REFERENCE: West Virginia Code §18-5-15g – new

DATE OF PASSAGE: April 5, 2021

EFFECTIVE DATE: July 4, 2021

ACTION BY GOVERNOR: Signed April 15, 2021

House Bill 2982

Relating to the Second Chances at Life Act of 2021

The bill defines terms by referencing other code sections. Abortion is defined by referencing §16-2F-2 which means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a female known to be pregnant and with intent to cause the expulsion of a fetus other than by live birth. This does not prevent prescription, sale, or transfer of IUD devices or other contraceptive devices, or other generally medically accepted contraceptive devices, instruments, medicines, or drugs for whom the drugs, contraceptive devices, instruments, medicines, or drugs were prescribed by a physician.

“Attempt to perform an abortion” is defined as an act or an omission of a statutorily required act that under the circumstances as the person believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of the applicable provisions of this code.

“Chemical abortion” is a new term, meaning the use or prescription of an abortion-inducing drug dispensed with the intent to cause an abortion.

The bill applies to a “licensed medical professional”, which means a person licensed under Chapter 30.

A “medical emergency” is defined as a condition that based on reasonable medical judgment of the patient’s physician, so complicates the medical condition of a pregnant female that it necessitates the immediate termination of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No conditions shall be deemed a medical emergency if based on a claim or diagnosis that the female will engage in conduct which she intends to result in her death or in substantial harm and irreversible physical impairment of a major bodily function.

The definition of “physician” means a person with an unrestricted license to practice allopathic medicine pursuant to Chapter 30.

The term “reasonable medical judgment” means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities.

The bill adds additional information to the informed consent portion of the law. It requires if a chemical abortion involving the two-drug process of mifepristone is initiated and then a prostaglandin such as misoprostol is planned to be used later the female shall be informed that:

- Some suggest that it may be possible to counteract the intended effect of a mifepristone chemical abortion by taking progesterone if the female changes her mind, before taking the second drug, but this process has not been approved by the Food and Drug Administration.
- After the first drug involved in the two-drug process is dispensed in a mifepristone chemical abortion, the physician shall provide written medical discharge instructions to the pregnant female which shall include the statement:

- “If you change your mind and decide to try to counteract the intended effects of a mifepristone chemical abortion, if the second pill has not been taken, please consult your physician.
 - You might experience a complete abortion without ever taking misoprostol;
 - You might experience a missed abortion, which means the fetus is no longer viable, but the fetus did not leave your body; or
 - It is possible that your pregnancy may continue; and
 - You should consult with your physician.”

The bill requires the female to certify, as part of the informed consent process, that she has been informed of these possibilities.

The bill contains waiver of liability language for a physician complying with the informed consent provisions of this section and prescribing a non-FDA approved drug to counteract a chemical abortion.

The bill requires the Secretary of the Department of Health and Human Resources to print materials designed to inform the female of the range of possibilities regarding the effects and risks of a mifepristone chemical abortion or an attempt to counteract it.

CODE REFERENCE: West Virginia Code §16-2I-1, §16-2I-2, and §16-2I-3 – amended

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 9, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

House Bill 3293

Relating to single-sex participation in interscholastic athletic events

This bill includes:

- Legislative findings regarding the state’s important government interest in ensuring equal athletic opportunity for biological females;
- Definitions for “biological sex”, “female”, and “male”;
- Requiring all public secondary schools and public schools of higher education to designate teams according to biological sex, using the “male, men, or boys”, “female, women, or girls”, and “coed” classifications;
- Prohibiting biological males from competing on teams designated for biological females where selection for such team is based upon competitive skill or the activity involved is a contact sport;
- Providing a cause of action for students aggrieved and harmed by a violation of this section and protecting identity of minor students involved in such action; and
- Requiring the promulgation of legislative rules, including emergency rules.

CODE REFERENCE: West Virginia Code §18-2-25d – new

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: July 8, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

Senate Joint Resolution 4

Incorporation of Churches or Religious Denominations Amendment

This resolution, if ratified by the voters of West Virginia, removes a prohibition in the State Constitution against churches or religious denominations incorporating. It has been in West Virginia's Constitution since 1863. In 2002, the U.S. District Court for the Western District of Virginia, in a case brought by Thomas Road Baptist Church found that the provision violates the Free Exercise Clause of the 1st Amendment to the U.S. Constitution. *Falwell v. Miller*, 203 F. Supp. 2d 624 (2002). Additionally, ratification of the amendment would serve to conform law to practice. This resolution will be placed on the ballot before voters during the general election held in November of 2022.

Election Date: November 2022 General Election

House Joint Resolution 2

Providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate

The purpose of this resolution is to place on the 2022 general election ballot a proposed constitutional amendment. The resolution would give the voters the option to adopt a constitution amendment to the West Virginia Constitution providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate.

Election Date: November 2022 General Election

House Joint Resolution 3

Property Tax Modernization Amendment

The purpose of this resolution is to place on the 2022 general election ballot a proposed constitutional amendment. If passed, the amendment would allow the legislature to exempt by law tangible machinery and equipment personal property directly used in business activity, tangible inventory personal property directly used in business activity and motor vehicles. This language is added to the list of other property which the legislature may exempt.

Election Date: November 2022 General Election

2021 Third Extraordinary Session

House Bill 335

Relating to COVID-19 immunization requirements for employment in the public or the private sectors

The purpose of the bill is to recognize specific exemptions for required COVID-19 immunizations required as a condition of continued employment or hire with a covered employer. The bill specifies two exemptions: 1) A medical exemption; and 2) a religious exemption.

To obtain a medical exemption, an employee or potential hire must receive an in-person examination from a physician or advanced practice registered nurse licensed in this state indicating that the employee or potential hire would be contraindicated by a COVID-19 immunization, that there is a precaution to the vaccine, or that the employee or potential hire has developed antibodies to COVID-19 from exposure or from contracting and recovering from COVID-19. To obtain a religious exemption, an employee or potential hire must present a notarized certificate to the covered employer stating that he or she has religious beliefs that would prevent them from taking the COVID-19 immunization.

The bill also defines key terms and permits a person to seek injunctive relief when harmed by a violation of the bill.

CODE REFERENCE: West Virginia Code §16-3-4b – new

DATE OF PASSAGE: October 20, 2021

EFFECTIVE DATE: January 18, 2022

ACTION BY GOVERNOR: Signed October 22, 2021

House Bill 3026

Relating to review, approval, disapproval, or amendment of local boards of health rules by county commission or county board of education

This bill is to clarify Senate Bill No. 12 which was adopted during the 2021 Legislative Session. That bill required rules adopted by local health departments be approved, disapproved, or amended and approved by a County Commission or other appointing entity within 30 days of approval by a local board of health.

The bill clarifies a number of terms, including:

- Enforcement Activity;
- Health Order;
- Imminent public health emergency;
- Guidance;
- Local health department rule;
- Local rule; and
- State rule.

The bill also clarifies that the appointing entity must approve a local health rule or it is void if no action has been taken on a rule within thirty days. Rules in effect on March 4, 2021, are not subject to approval by an appointing authority.

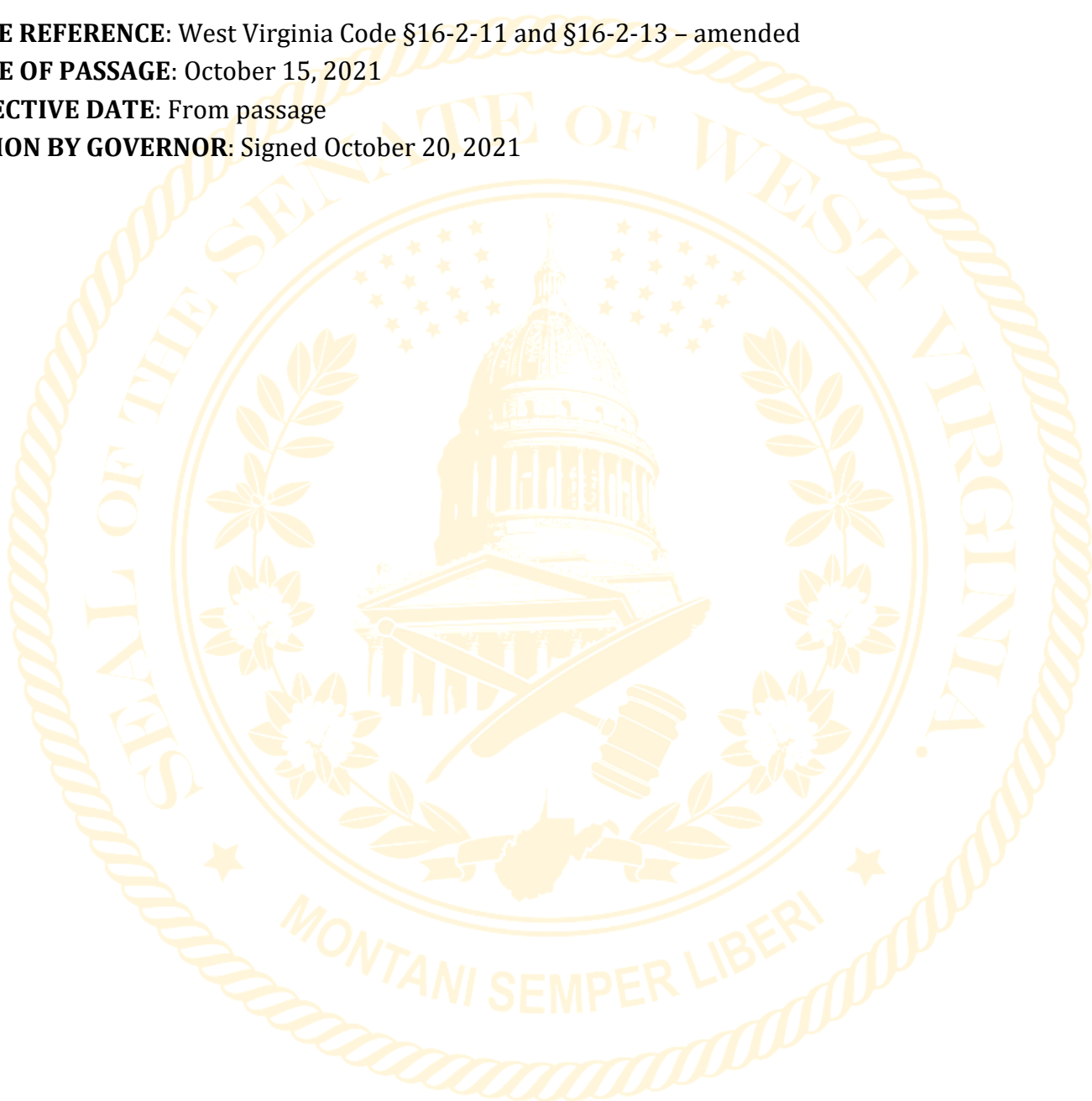
It also clarifies the authority of the local health officer by altering the purview of the local health officer to include performing enforcement activities, guidance, and issue health orders.

CODE REFERENCE: West Virginia Code §16-2-11 and §16-2-13 – amended

DATE OF PASSAGE: October 15, 2021

EFFECTIVE DATE: From passage

ACTION BY GOVERNOR: Signed October 20, 2021





2017-2020

Senate President Mitch Carmichael

2020 Regular Session



Senate Bill 16

Creating Protect Our Right to Unite Act

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

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

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

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

CODE REFERENCE: West Virginia Code §1-7-1 through §1-7-4 – new

DATE OF PASSAGE: February 13, 2020

EFFECTIVE DATE: May 13, 2020

ACTION BY GOVERNOR: Signed March 2, 2020

Senate Bill 42

Permitting faith-based electives in classroom drug prevention programs

This bill allows comprehensive drug awareness and prevention programs for students in grades K through 12 to include faith-based electives, along with nonfaith-based electives, for drug awareness in classrooms; and requires the state board to promulgate a rule on how the faith-based electives can be offered in a way that is consistent with constitutional requirements.

CODE REFERENCE: West Virginia Code §18-2-7b – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 51

Specifying forms of grandparent visitation

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

CODE REFERENCE: West Virginia Code §48-10-802 – amended; §48-10-803 – new

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 96

Prohibiting municipalities from limiting persons’ rights to possess certain weapons

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

CODE REFERENCE: West Virginia Code §8-12-5a – amended

DATE OF PASSAGE: March 2, 2020

EFFECTIVE DATE: May 31, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 303

Enacting Students' Right to Know Act

This bill creates the “Students’ Right-to-Know Act”. It requires the State Board, in collaboration with the HEPC and the CCTC, to collect the following information annually:

- The most in-demand occupations in the state, including entry wage and common degree levels for entering the occupation.
- The average cost of two and four-year colleges, universities, and vocational schools in the state by type and federal and state scholarship, merit, and need-based aid programs available for attending two and four-year colleges, universities, and vocational schools in the state by type of institution.
- The average monthly student loan payment and the average total amount of student loans for individuals who attend all two and four-year colleges, universities, and vocational schools in the state by the type of institution.
- The average student loan default rate for two and four-year colleges, universities, and vocational schools in the state by type of institution.
- Information relating to the availability of paid internship and externship opportunities for students attending two and four-year colleges, universities, and vocational schools in the state by type of institution and the average graduation rate for two and four-year colleges, universities, and vocational schools in the state by type of institution.
- The completion rates for apprenticeship programs, high school credential programs, and career and technical education programs, if available, and the percentage of college graduates working in an occupation that does not require a college degree for each major, if available.
- Median annual wages for public college/university graduates by degree level and degree area.
- The average starting salary of career-technical education completers.
- The number of military first-term enlistments and each branch’s starting salary.
- Contact information for each of the two and four-year colleges, universities, and vocational schools in the state and each branch of the U.S. Armed Forces, National Guard, and Reserves.
- Any other information the State Board, the Higher Education Policy Commission, or the Council for Community and Technical Colleges deem appropriate to assist high school students in weighing the costs and benefits of post-high school training and education.

The bill also requires that no later than October 15 of each year the State Superintendent of Schools distribute the information to every high school in the state for distribution to students by school guidance counselors; and to the public by making it readily available through publishing on the Department of Education’s website. It also allows the State Board to execute a memorandum of understanding with any department, agency, or division for acquiring the required information; and requires any department, agency, or division possessing any of the required information to provide that information to the State Board of Education. All the requirements are to be effective on January 1, 2021.

CODE REFERENCE: West Virginia §18-10P-1 et seq. – new

EFFECTIVE DATE: January 1, 2021

DATE OF PASSAGE: March 7, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 793

Relating to B&O taxes imposed on certain coal-fired electric generating units

This bill amends §11-13-2q of the business and occupation tax to clarify the definition for coal-fired merchant power plants. It also provides an election for recomputation of the taxable generating capacity of a coal-fired electric power generating unit placed in service prior to January 1, 1995.

Under previous law, the taxable generating capacity of those units was based on the unit's net generation during calendar years 1991 through 1994. This bill allows the owners or operators of those generating units to make an irrevocable election to reduce the taxable generating capacity of those units to 45 percent of the official capability of the generating unit, for taxable periods beginning on and after July 1, 2021.

However, this election is subject to the requirement that the owner agree to keep the generating units in operation until at least January 1, 2025. In the event a generating unit ceases to be operational during the required time period, a recapture tax is imposed. The recapture tax is also be imposed if ownership of the generating unit is transferred on or after July 1, 2021, but before January 1, 2025.

In the event federal law or regulation requires closure of the generating unit, the recapture tax is not applicable to periods after the closure date.

CODE REFERENCE: West Virginia Code §11-13-2q – amended; §11-13-12r – new

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 810

Implementing federal Affordable Clean Energy Rule

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

CODE REFERENCE: West Virginia Code §22-5-20 – amended

DATE OF PASSAGE: March 4, 2020

EFFECTIVE DATE: June 2, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 3039

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

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

CODE REFERENCE: West Virginia Code §44-10-4, §48-9-206, and §48-9-402 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 3127

Relating to the Secondary School Activities Commission and participation by home schooled students

This allows home-schooled students to participate in extracurricular activities at the public school serving their attendance zone under the following conditions:

- Satisfactory evidence of academic progress for 1 year in compliance with home school instruction statutory provisions, provided that the student's average test results are within or above the 4th stanine in all subject areas.
- Enrollment in at least one virtual instructional course per semester, consistent with the applicable virtual instruction policy of the county board in which the home-schooled student lives and the State Board.
- The student has not reached the age of 19 by August 1 of the current school year.
- The student is an amateur who receives no compensation, but participates solely for the educational, physical, mental and social benefits of the activity.
- Agreement to comply with all disciplinary rules of the West Virginia Secondary School Activities Commission (SSAC) and the county board in which the home-schooled student lives.
- Agreement to obey all rules of the SSAC governing awards, all-star games, parental consents, physical examinations and vaccinations applicable to all high school athletes.

The bill further provides that if a home-schooled student leaves a member school during the same school year, the same transfer protocols apply as member-to-member transfers. In addition, reasonable fees may be charged.

CODE REFERENCE: West Virginia Code §18-2-25 – amended

DATE OF PASSAGE: March 2, 2020

EFFECTIVE DATE: May 31, 2020

ACTION BY GOVERNOR: March 25, 2020

House Bill 4007

Born-Alive Abortion Survivors Protection Act

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

CODE REFERENCE: West Virginia Code §16-2P-1 – new

DATE OF PASSAGE: February 19, 2020

EFFECTIVE DATE: May 19, 2020

ACTION BY GOVERNOR: Signed March 2, 2020

House Bill 4020

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

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

CODE REFERENCE: West Virginia Code §7-1-3tt, §8-12-20, and §30-1-25 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4069

West Virginia Student Religious Liberties Act

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

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

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

CODE REFERENCE: West Virginia Code §18-33-1 through §18-33-8 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4129

Relating to adoption

The purpose of this bill is to update adoption laws. The bill permits the adoption hearing to take place in the county in which the foster child was originally removed or the county in which the adoptive parents reside at the discretion of the adoptive parents. It removes the 45-day period between filing of the petition for adoption of a child and the hearing on the adoption petition. The hearing may be held only after the child has lived with the adoptive parent for parents for a period of 6 months, proper notice has been given, and all necessary consents or relinquishments have been executed or submitted.

CODE REFERENCE: West Virginia Code §48-22-201 and §48-22-501 – amended

EFFECTIVE DATE: May 12, 2020

DATE OF PASSAGE: February 12, 2020

ACTION BY GOVERNOR: Signed February 24, 2020

House Bill 4439

Clarifying the method for calculating the amount of severance tax attributable to the increase in coal production

This bill establishes the Coal Severance Tax Rebate. The bill sets out legislative findings and defines necessary terminology. This rebate would be allowed for capital investments in new machinery and equipment directly used in severing coal for sale, profit or commercial use and coal preparation and processing facilities placed in service or use on or after the effective date of this article. Any new company would have to be engaged in coal production for a period of two years prior to possibly qualifying for this investment tax credit. Any unused tax credit for any single year of investment would be carried forward for a period not to exceed ten years. There is also a provision for suspension if the taxpayer is delinquent in the payment of severance taxes.

CODE REFERENCE: West Virginia Code §11-13EE-1 through 16 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4618

Relating to deadly weapons for sale or hire

This bill repeals the section of code related to the public display and offering for rent or sale to a passerby on a street, road or alley, any deadly weapon, machine gun, submachine gun or other fully automatic weapon, any rifle or shotgun or ammunition for same.

CODE REFERENCE: West Virginia Code §61-7-10 – amended

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4717

Seizure and Forfeiture Reporting Act

Currently law enforcement can seize money and other property under the West Virginia Contraband Forfeiture Act, and, if circumstances permit, sell it and apply the proceeds to fund agency budgets. This bill identifies internal and external procedural, accounting and management protocols for the seizure, management, accounting, reporting and disposition of these items. It also provides any law-enforcement agency or office who seizes or receives items subject to forfeiture must account for the same in the following manner:

- Maintain any items of property in the same manner as the agency maintains its appropriated funds;
- Establish a segregated account to track revenues and expenditures – no commingling of funds;
- Process all expenditures and payments in the same manner as appropriated funds;
- Place the assets in an interest-bearing depository insured by the federal government;
- Develop, maintain, and follow written policies for accounting, bookkeeping, inventory control, and procurement that comply with the applicable jurisdiction policies;
- Maintain posted records of revenue and expenditures;
- Report all transactions using cash-based accounting methods;
- Dispose of items purchased with shared funds in accordance with the agency's disposal policies. If an item has minimal or no value, an agency may donate the item to a recipient of its choice if permitted under the agency's disposal policies;
- Ensure the agency head authorizes all expenditures from the sharing accounts;
- Approved expenditures from the governing body (e.g., county commission, town council, or city manager's office).

Any law-enforcement agency or office receiving forfeited property must report the same to the State Auditor by providing the following information:

- Identity of the agency that seized the property;
- The time and date the property was seized;
- The type of property seized;
- The actual or estimated value of the property seized;
- The property's final disposition;
- Whether forfeiture was made by settlement agreement;
- Whether any procedure for forfeiture was initiated;
- The disposition of any action (procedures for forfeiture);
- If an arrest was made;
- Whether any charges were filed related to the seizure and the result of that arrest;
- If forfeiture procedures were initiated, the information in the notice;
- The total value of seized and forfeited property or property held by the agency at the end of the reporting period;
- A copy of the annual DOJ Certification Report provided to the State Auditor within 30 days

The State Auditor is required to establish and maintain a searchable public website that includes the information submitted above, and must submit a yearly report to the Speaker of the House of Delegates,

the President of the Senate, the Attorney General, and the Governor. The State Auditor may perform a financial audit of records related to inventory of seized property and expenditures of forfeiture proceeds. A copy of the financial audit report shall be submitted to the Speaker of the House of Delegates, the President of the Senate, the Attorney General, and the Governor.

If, in a fiscal year, an enforcement agency or office secures seized or forfeited assets in excess of 50 percent of the prior year's total seized or forfeited assets, or expends more than 50 percent of the prior year's total expenditures of forfeited assets, it must advise the State Auditor, who shall perform a public financial audit.

The State Auditor may recoup costs under this section by charging a fee; the State Auditor's aggregate report may include recommendations to improve statutes, rules, and policies related to seizure, forfeiture, and expenditures, and the report shall be made available on the State Auditor's website; data and reports compiled and prepared under this section would be considered public information under the West Virginia Freedom of Information Act. If an agency fails to file a timely report under subsection (b) the State Auditor shall immediately notify the agency that the report has not been received. The State Auditor may propose legislative rules. This section would be effective for the reporting period starting January 1, 2021, and nothing provided in this section would prevent a court of competent jurisdiction from sealing records otherwise made available under the provisions of this section.

CODE REFERENCE: West Virginia Code §60a-7-701 through §60a-7-707 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION OF THE GOVERNOR: Approved March 25, 2020

House Bill 4780

Permitting county boards to offer elective courses of instruction on the Bible

This bill provides that county boards of education may offer to students in grades nine and above an elective social studies course on the:

- Hebrew Scriptures, Old Testament of the Bible.
- New Testament of the Bible.
- Hebrew Scriptures and the New Testament of the Bible.

The bill sets forth the purpose of the course and provides that a student cannot be required to use a particular translation as the sole text of the of the Hebrew Scriptures or New Testament.

The bill also requires a county board to submit to the WV Department of Education the course standards for any elective course offered, including the teacher qualifications and required professional development.

The course is required to follow applicable law and all federal and state guidelines in maintaining religious neutrality and accommodating the diverse religious views, traditions, and perspectives of students in the school. The course cannot endorse, favor, promote, disfavor, or show hostility toward any particular religion or nonreligious faith or religious perspective. County boards are prohibited from violating any provision of the U.S. Constitution or federal law, the WV Constitution or any state law, any administrative regulations of the U.S. Department of Education, or any rule of the State Board. The state board is required to provide guidance to the county boards in complying with all of the above requirements.

CODE REFERENCE: West Virginia Code §18-2-9a – new

DATE OF PASSAGE: March 4, 2020

EFFECTIVE DATE: June 2, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4925

Requiring the Secondary Schools Athletic Commission to recognize preparatory athletic programs

This bill requires the WVSSAC to recognize preparatory athletic programs, whose participants attend a secondary school in WV for academic instruction, as nonparticipating members of the commission solely for the purpose of competing on the national level. It also:

- Requires the preparatory athletic program to pay the same fees as member schools.
- Provides that the recognition does not entitle the preparatory athletic program to compete against a member school during the regular season or in any commission state championship events.
- Gives the WVSSAC authority to promulgate an emergency rule to carry out the intent of these requirements.

Since this bill and HB 3127, relating to extracurricular activity participation by home school students, amend the same code section, this bill also includes the provisions of HB3127.

CODE REFERENCE: West Virginia Code §18-2-25 – amended

DATE OF PASSAGE: March 4, 2020

EFFECTIVE DATE: June 2, 2020

ACTION BY GOVERNOR: March 25, 2020

House Bill 4955

Relating to reducing the cost of fees for state licenses to carry concealed deadly weapons and provisional state licenses to carry concealed deadly weapons

The bill reduces the cost of the fee for a state license to carry a concealed deadly weapon for both regular and provisional applications. The previous fee for a regular license was \$75. This fee is reduced to \$25, and the entire \$25, along with any fees for replacements, is deposited in the concealed weapons license administration fund. The \$15 deposit in the Courthouse Facilities Improvement Fund is eliminated. However, the \$25 fee sent to the state police is still charged. The total out of pocket expense for this permit is \$50, provided no extra IDs are purchased.

The previous fee for a provisional license for those who are aged from 18 to 21 years is \$25. This is reduced to \$15, and the entire \$15, along with any fees for replacements, is deposited in the concealed weapons license administration fund. The \$5 deposit in the Courthouse Facilities Improvement Fund is eliminated. However, the \$15 fee sent to the state police is still charged. The total out of pocket expense for this permit is \$30, provided no extra IDs are purchased. The bill also exempts honorably discharged veterans of the armed forces of the United States from payment of fees for state licenses to carry concealed deadly weapons.

CODE REFERENCE: West Virginia Code §61-7-4 and §61-7-4a – amended

DATE OF PASSAGE: March 3, 2020

EFFECTIVE DATE: June 1, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

2019 Regular Session



Senate Bill 18

Relating to crimes committed on State Capitol Complex

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

CODE REFERENCE: West Virginia Code §62-1D-6, §62-1D-8, and §61-6-19 – amended

DATE OF PASSAGE: February 13, 2019

EFFECTIVE DATE: February 13, 2019

ACTION BY GOVERNOR: Signed February 25, 2019

Senate Bill 30

Eliminating tax on annuity considerations collected by life insurer

The bill eliminates a 1% tax collected by life insurers on the gross amount of annuity considerations.

The bill provides that for the taxable years beginning on or after January 1, 2021, the tax imposed by W.Va. Code §33-3-15 is discontinued. That section requires every life insurer transacting insurance in West Virginia to report annually to the Insurance Commissioner the gross amount of annuity considerations collected and received by it during the previous calendar year on its annuity business transacted in this state. Such amount is then taxed 1% of the gross amount of the annuity considerations, less annuity considerations returned and less termination allowances on group annuity contracts.

CODE REFERENCE: West Virginia Code §33-3-15 – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

Senate Bill 393

Protecting right to farm

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

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

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

- Subsection (a) provides that in addition to the limitations on actions brought against an agricultural operation in W. Va. Code §19-19-4, this section shall also apply to any nuisance action brought against an agricultural operation in any court of this state.
- Subsection (b) lists the requirements allowing a person to file a public or private nuisance action to recover damages against an agricultural operation.
- Subsection (c) provides that no agricultural operation which has been in operation for a period of more than one year shall be considered a nuisance, either public or private, as a result of any changed condition in or about the locality where the agricultural operation is located. Proof that the agricultural operation has existed for one year or more is an absolute defense to the nuisance action, if the operation is in compliance with all applicable state and federal laws, regulations, and permits.
- Subsection (d) provides that no state or local law-enforcement agency may bring a criminal or civil action against an agricultural operation for an activity that is in material compliance with all applicable state and federal laws, regulations, and permits.
- Subsection (e) provides that no agricultural operation shall be or become a private or public nuisance if the operators are conducting the agricultural operation in a manner consistent with commonly accepted agricultural practice. If the operation is in material compliance with all applicable state and federal laws, regulations, and permits, it shall be presumed to be conducted in a manner consistent with commonly accepted agricultural practice.
- Subsection (f) provides that no agricultural operation shall be considered a nuisance, private or public, if the agricultural operation makes a reasonable expansion, so long as the operation is in material compliance with all applicable state and federal laws, regulations, and permits, and it does not create a substantially adverse effect upon the environment or a hazard to public health and safety.
- Subsection (g) provides that requirements of a municipality are not applicable to an agricultural operation situated outside of the municipality’s corporate boundaries on the effective date of this chapter.
- Subsection (h) provides that an agricultural operation is not, nor shall it become, a nuisance after it has been in operation for more than one year, if the operation was not a nuisance at the time the operation began, and the conditions or circumstances complained of as constituting the basis for the nuisance action are substantially unchanged since the established date of operation.
- Subsection (i) provides that this section shall not apply (1) whenever a nuisance results from the negligent operation of any such agricultural operation, or (2) to affect or defeat the right of any

person to recover for injuries or damages sustained because of an agricultural operation or portion of an agricultural operation that is conducted in violation of a federal, state, or local statute or governmental requirement applicable to the agricultural operation.

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

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

- Subsection (a) makes a person who violates W. Va. Code §19-19-7(h) is liable to the agricultural operation for all costs and expenses incurred in defense of the action.
- Subsection (b) provides that the total amount of damages in any successful nuisance action shall not exceed the diminished value of the subject property.
- Subsection (c) outlines the exclusive compensatory damages that may be awarded to a claimant where the alleged nuisance originates from an agricultural operation and bars the award of punitive damages to claimants for nuisance actions originating from an agricultural operation.
- Subsection (d) provides that if any claimant or claimant’s successor in interest brings a subsequent private nuisance action against any agricultural operation, the combined recovery from all such actions shall not exceed the fair market value of his or her property.
- Subsection (e) bars a claimant from being awarded punitive damages for nuisance actions originating from an agricultural operation.

CODE REFERENCE: West Virginia Code §19-19-2 – amended; §19-19-7 and §19-19-8 – new

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: June 3, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

Senate Bill 624

Allowing county boards of education use alternative assessment provided in Every Student Succeeds Act

This bill requires the State Board to allow county boards to use an alternative assessment, such as the ACT, pursuant to the locally selected assessment option provided for in the Every Student Succeeds Act. It also prohibits the state Department of Education from paying any more than the general summative assessment per-student cost for a locally selected assessment. If required by the U.S. Department of Education, the bill provides that the state department is responsible for contracting and paying no more than \$100,000 total, of the costs of any studies required as part of the peer review process to satisfy the requirements of federal law. If the U.S. Department of Education determines that an alignment study is needed for a locally selected assessment option, the state department is required to ensure that an independent alignment study is used to evaluate the degree of alignment between the assessment and the state academic standards and the study is required to include at least three test forms. If the locally selected assessment is approved by the U.S. Department of Education and meets federal and state law, the state department is required to enter into a contract that allows for county boards to implement the locally selected assessment.

CODE REFERENCE: West Virginia Code §18-2E-5 – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: March 9, 2019

ACTION BY GOVERNOR: Vetoed by the Governor on March 9, 2019

House Bill 2001

Exempting social security benefits from personal income tax

The bill provides “exemptions” from West Virginia personal income taxes (WVPIT). The bill provides a 3-year phased-in exemption (35%, 65%, 100%) beginning January 1, 2020 (and January 1, 2021, and January 1, 2022, respectively) from WVPIT of Social Security benefits received by a taxpayer with a Federal Adjusted Gross Income of \$100,000 or less if married filing jointly, or \$50,000 or less if single or married filing separately.

The bill also contains the provisions of S.B. 472, which passed the Senate on February 26, 2019, and which extends the full exemption from personal income tax for military pensions to members of the last two branches of the uniformed services of the United States: The Public Health Service and the National Oceanic Atmospheric Administration, beginning January 1, 2019. The bill also adds new language clarifying that tier one railroad retirement benefits are not subject to the West Virginia personal income tax; and removes language that has expired by the terms of its provisions.

Note: Although commonly referred to as an exemption from West Virginia personal income taxes, what the amended statute in fact provides is a “decreasing modification” to the taxpayer’s federal adjusted gross income for the purposes of determining the taxpayer’s West Virginia adjusted gross income.

CODE REFERENCE: West Virginia Code §11-21-12 – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 2462

Issuing a certificate to correctional employees to carry firearms

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

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

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

CODE REFERENCE: West Virginia Code §15A-3-10 – amended

DATE OF PASSAGE: February 11, 2019

EFFECTIVE DATE: May 12, 2019

ACTION BY GOVERNOR: Signed February 19, 2019

House Bill 2583

Family Planning Access Act

The purpose of this bill is to permit a trained pharmacist to dispense a self-administered hormonal contraceptive under a standing prescription drug order issued by the State Health Officer. Participation in this program is voluntary.

The bill outlines requirements for issuing a standing order, including use of a self-screening risk questionnaire, written and oral education, timeline for renewal of standing order, eligibility standards, and requirement that a pharmacist maintain records of recipients of self-administered hormonal contraceptives.

The bill also mandates that pharmacists undergo training in order to participate in the program and lays out guidelines for the dispensing of self-administered hormonal contraceptives.

CODE REFERENCE: West Virginia Code §16-57-1 through §16-57-6 – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2691

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

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

CODE REFERENCE: West Virginia Code §61-7-4 – amended

DATE OF PASSAGE: March 4, 2019

EFFECTIVE DATE: March 4, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 3142

Reducing the severance tax on thermal or steam coal

The bill reduces the State's share of the 5% rate of severance tax on thermal or steam coal (4.65%) by 2% over 3 years, beginning July 1, 2019, as follows: "That on July 1, 2019, the reduction shall occur at the rate of 35 percent of the two percent reduction, on July 1, 2020, the reduction shall occur at the rate of 65 percent of the two percent reduction, and on July 1, 2021, at the rate of 100 percent of the two percent reduction." However, the remaining share (0.35%) that is dedicated to counties and municipalities will remain, i.e., 0.35% of 5%. As to this share, the bill also removes restrictions on the use of the distribution of this share by the counties and municipalities.

Another share of the 5% rate of severance tax is a 1% share dedicated to coal-producing counties. These counties are held harmless from the reductions by new language in the statute providing that ". . . the portion of the severance tax on coal . . . dedicated and to be distributed for the use and benefit of the coal-producing counties . . . shall not be less than the amount distributed . . . for the fiscal year beginning July 1, 2018."

Finally, the bill eliminates severance taxes on limestone and sandstone extraction effective July 1, 2019.

CODE REFERENCE: West Virginia Code §11-13A-3, §11-13A-6 and §11-13A-6a – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 3144

Coal Severance Tax Rebates

The bill provides a rebate for capital investment in new machinery, equipment, and improvements to real property having a useful life of 5 or more years directly used in severing coal for sale, profit or commercial use and coal preparation and processing facilities placed in service or use on or after the effective date of this enactment. The rebate amount would be 35% of the cost of the new machinery and equipment. The rebate amount is limited to 80% of the State portion of the severance taxes attributable to the additional coal produced as a result of the new machinery and equipment. A taxpayer who fails to use the machinery and equipment for at least 5 years in the production of coal in this state shall pay a "recapture tax" equal to the amount of rebate received for the years the machinery and equipment were prematurely removed from service.

CODE REFERENCE: West Virginia Code §11-13EE-1 through §11-13EE -17 – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

2019 First Extraordinary Session

House Bill 206

Relating to public education

The bill does the following as it relates to public education in West Virginia:

- Allows public charter schools to participate in PEIA. (§5-16-2 & 22).
- Exempts certain items from sales tax during the first Sunday in August, the previous Friday and Saturday, and the following Monday; and provides that the exempt items include certain items of clothing, school supplies, school instructional materials, laptop and tablet computers, and sports equipment all under various prices. (§11-15-9s).
- Requires the Governor, subject to the agreement entered into between the U.S. Secretary of Defense and the Governor pursuant to federal law, to: Expand the capacity of the Mountaineer Challenge Academy location in Preston County to accept cadets up to its maximum capacity; expand the Mountaineer Challenge Academy to a 2nd location in Fayette County; and to the extent necessary to accomplish the expansion and maximize use of federal funds, pursue an amendment to the agreement between the U.S. Secretary of Defense and the Governor. (§15-1B-24).
- Requires the State Board to implement a pilot project, designated the Mountain State Digital Literacy Project, in which participating schools are provided with instructional resources that feature an extensive curriculum related to digital literacy, online assessment preparation, and internet safety and administrators and teachers are provided access to online digital literacy related professional development and support; requires the State Board to select the schools to participate; requires the selected schools to possess varying geographic and demographic characteristics and serve students in grades K-8; requires the project to be designed and implemented to compliment and build upon certain existing digital literacy standards and assessments established pursuant to statute; allows the State Board to contract with a third-party to facilitate the project; requires the State Board to report to the Governor and LOCEA information on the development, structure, and fiscal estimate of the project on or before January 1, 2020; and requires State Board also to submit a pilot project evaluation report before January 1, 2025 recommending continuation, expansion or termination. (§18-2E-12).
- Eliminates requirements for county boards to file policies to promote school board effectiveness with State Board as well as amendments and reports; limits required annual meetings between county boards and LSIC's to only those LSIC's of low performing schools; removes requirement that the meeting include a quorum of the LSIC members; requires the principal and chair of the LSIC, or chair's designee, to address the dialogue of its community meeting on how to address issues that affect the school's academic performance and also any reports by the county superintendent with respect to the school's performance; and removes requirement that each county board report details to the State Board concerning the meeting or meetings held with LSICs and that the information become an indicator in the performance accreditation process for each county. (§18-5-14).
- Allows each county board to establish attendance zones; removes existing provisions relating to transfers between counties and transfers between high schools; requires a county board to

establish and implement an open enrollment policy without charging tuition and without obtaining approval from the board of the county in which a student resides and transfers; requires the policy to articulate any admission criteria, application procedures, transportation provisions, timelines for open enrollment periods, and restrictions on transfers due to building capacity constraints; and includes other provisions relating to allowing certain enrollment preferences, requiring compliance with requirements for children in foster care or meet the definition of unaccompanied youth prescribed in the McKinney-Bento Homeless Assistance Act, allowing the provision of transportation, allowing the appeal of a county board's refusal to accept the transfer of a student, counting the student in the net enrollment of the county he or she was transferred to, and providing that nothing in this section supersedes the eligibility requirements for participation in extra-curricular activities established by the SSAC. (§18-5-16 & 16a).

- Requires the Department of Education to survey districts to determine those grade levels, content areas, and geographic locations where class overcrowding is impeding student achievement and report to the Legislature by July 1, 2020 a tailored plan for reducing class overcrowding in such areas; and requires the study to at least include examination of certain specified issues. (§18-5-18a).
- Increases the percentage of work time school counselors must spend in a direct counseling relationship with students from 75% to 80%. (§18-5-18b).
- Requires that a teacher's recommendation relating to whether a student should be promoted to the next grade level to be a primary consideration. (§18-5-46).
- Allows each county board to establish by policy an exceptional needs fund from surpluses for students who are likely to perform better outside of the public school setting; and sets forth the provisions that the policy may include. (§18-5-48).
- Modifies section requiring an LSIC to be established at every school by increasing the number of at-large members appointed by the principal from two to three; changing membership in the cases of vocational-technical school, comprehensive middle schools, and comprehensive high schools; removing prohibition against more than one parent member of the council being employed at the school; allowing notification of organizational meeting to be done by electronic means; increasing the advanced notice required prior to an organizational meeting from two to five employment days; striking prohibition against chair serving for more than two consecutive terms; changing purpose of required meeting to engage in a dialogue regarding effective discipline policies to a meeting to engage in a dialogue regarding the school's academic performance and standing as determined by measures adopted by the State Board; adding encouraging students to adopt safe and healthy lifestyles and communicating to students the skills and attributes sought by employers to the policies and programs which may be adopted by an LSIC; and removing requirement for LSIC student discipline report to the countywide council on productive and safe schools. (§18-5A-2).
- Clarifies the process for Local School Improvement Councils to propose alternatives to the operation of the school and to request waivers, if needed, to county and State Board rules and policies, state superintendent interpretations, and state statutes; allows a county board to designate the school as an innovation school; and requires the county board to establish a process to evaluate an approved alternative. (§18-5A-3).

- Increases the amount allotted to each classroom teacher and librarian for academic materials, supplies, or equipment from \$100 to \$300. (§18-5A-5).
- Establishes the purpose and intent of the article for the establishment of public charter schools, prohibits any interpretation that would allow the conversion of a private school to a public charter school and prohibits elected official from profiting or receiving monetary compensation from a public charter school; limits the number of public charter schools authorized and in operation under an approved contract to three pilot public charter schools until July 1, 2023 and then an additional three every three years thereafter; and requires the State Board to report to LOCEA by November 1, 2022, and every three years thereafter, on the status of the state’s public charter schools. (§18-5G-1).
- Defines terms relating to charter schools. One important definition is that “applicant” means any one or more in combination of parents, community members, teachers, school administrators, or institutions of higher education in this state that have obtained 501(c)(3) tax-exempt status or have submitted an application for 501(c)(3) tax-exempt status and that have developed and submitted an application to an authorizer to establish a public charter school. Another important definition is “authorizer” which can include a county board; multiple county boards; or only in cases where a county board approves the application but requests the State Board to be an authorizer or is under state takeover, the State Board. (§18-5G-2).
- Lists the required criteria, governance structure, statutory compliance requirements for public charter schools. Among the criteria are: Subject to general supervision of the State Board for meeting student performance standards and of its authorizer for contract performance; not home school based; not affiliated with any religious organization; do not charge tuition; and no requirements that would exclude a child who would not be excluded from a public school. Among the governance requirements are:
 - Governed by a board that has autonomy decisions including finance, personnel, scheduling, curriculum and instruction; may not levy taxes; provides programs and services to students with an IEP in accordance with federal and state laws; and is responsible for a staffing plan that includes requisite qualifications and any associated certification and/or licensure for teachers and other instructional staff. Among the statutes and rules that a public charter school must comply with are: All federal laws and authorities applicable to noncharter public schools including nutrition standards, civil rights, disability rights and health, life and safety requirements; freedom of information and open meetings; immunization; compulsory attendance; instructional days or equivalent time; student assessments; student data accountability; reporting information on student and school performance using the electronic format established by the WVDE; reporting information on student and school performance in the same manner as noncharter public schools; accounting and financial reporting including an independent audit; criminal history checks; zoning and building codes and inspections; and transportation safety. (§18-5G-3).
- Establishes State Board powers and duties for implementation, general supervision and support of public charter schools including establishing and maintaining a catalogue of best practices; providing forms to promote quality applications and contracts; and providing training for applicants, administrators, and governing board members. The forms must be available by

February 2020 and include an application deadline of August 2020 for any charter school proposing to begin operation for the 2021-22 school year. No charter school may begin operation before the 2021-22 school year. The State Board may receive and expend gifts, grants and donation, apply for federal funds for implementation, establish reporting requirement that enable it to monitor performance and legal compliance and must submit an annual status report to the Governor and Legislature. (§18-5G-4).

- Provides for the State Board to promulgate rules that: Set forth requirements for public charter school funding one of which provisions requires that the rule include a requirement that 90% of the per pupil total basic foundation allowance follow the student to the public charter school; provide for a fee to be paid by the charter school to the authorizer to offset costs; clarify, if necessary, the requirements of the public charter school article and address any unforeseen issues that might arise relating to the implementation of the requirements of the public charter school article; and ensure the accountability of public charter schools for meeting certain standards of student performance required of other public school students and the accountability of authorizers for ensuring that those standards are met in the schools authorized by it. All State Board rules required to be promulgated by the charter school article must be promulgated on or before January 1, 2020. (§18-5G-5).
- Sets forth the powers and duties for the authorizer some of which include: Approving charter applications that meet the application requirements, demonstrate the ability to operate the school in an educationally and fiscally sound manner, and are likely to improve student achievement through the program detailed in the charter application; declining applications that fail to meet the application requirements; negotiating and executing a charter contract with each school it authorizes; monitoring the performance and compliance of the schools according to the terms of the charter contract; determining whether each charter contract it authorizes merits renewal or revocation; providing an opportunity in a public forum for local residents to provide input and learn about the charter application; approving or denying an application within 90 days following filing; and requiring a charter application approval to be submitted to the Department of Education. (§18-5G-6).
- Requires that a public charter school be administered by a governing board consisting of no fewer than five members which must include two parents and two members who reside in the community served by the school. Board members must file a full disclosure report with the authorizer identifying potential conflicts of interest, relationships with any management organizations and family members who are employed by or have business dealings with the school. The section includes the numerous provisions relating to the authority of the governing board and requirements pertaining to the governing board including that it must comply with the open governmental proceedings and freedom of information Acts. (§18-5G-7).
- Requires submission of a charter application to an authorizer in order to establish a new public charter school or convert an existing noncharter public school or program to a public charter school. The section sets forth the minimum elements to be included in an application. Some of the minimum elements include: A mission statement and vision statement for the public charter school, including the specialized academic focus, if any, to be promoted and advanced; the student achievement goals for the public charter school's program and the chosen methods of evaluating whether students

have attained the skills and knowledge specified for these goals; an explanation of how the school's proposed program is likely to improve the achievement of traditionally underperforming students in the local school district; a proposed five-year budget; acknowledgement that the school will participate in the state's accountability system; process and procedures to be followed in the case of the closure of the school, including provisions for the transfer of students and student records to the appropriate local school district and an assurance and agreement to payment of net assets or equity, after payment of debts; and the school's plan for parental involvement. Provides additional required elements for the application in cases where the applicant intends to contract with an education service provider for program implementation or comprehensive management. A couple of these additional items include: Student performance data and financial audit reports for all current and past public charter schools; and documentation of and explanation for any actions taken, legal or otherwise, against any of its public charter schools for academic, financial, or ethical concerns. (§18-5G-8).

- Requires a signed charter contract between the applicant and the authorizer prior to operation. Among the things that must be addressed in the charter contract are: The term of the contract which can be no more than five years; provisions to address each item required to be included in the charter application and, if applicable, the agreement with an education service provider that the governing board intends to contract with; the process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found; provisions relating to the performance of the school that set forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school; and sets forth the minimum indicators, measures, and metrics that will be used by the authorizer to evaluate the school; the process for amending the contract; the process for dispute resolution; and provisions for revoking a contract. (§18-5G-9)
- Requires a performance report by the authorizer prior to contract renewal and a renewal application; requires, if the public charter school's contract is expiring, the authorizer to offer contract renewal application guidance to the school; requires that no later than September 30 of a public charter school's final authorized year of operation the governing board seeking renewal submit a renewal application to the authorizer; requires the authorizer to either renew a charter contract for a term of five years or decline to renew the contract; requires the governing board to be granted 30 days to respond in writing before the decision to decline the contract becomes final; provides that failure to act on a renewal application within the designated timeframes is deemed an approval of the application; provides that a contract can be revoked at any time or not renewed if the authorizer determines that the health and safety of the students is threatened or the school has failed to comply with the provisions of the article, violated the contract, failed to meet performance expectations, failed to meet generally accepted standards of fiscal management, or violated any law from which it was not exempted; and includes provisions pertaining to closure of a public charter school or allowing the county board to return the school to noncharter public school status. (§18-5G-10).
- Requires a charter school to publicize to parents and the general public information about the school as an option in which they may choose to enroll their children and, if included in the schools

mission, the school focus on students with special needs or disciplinary problems. A county board is also required to publicize information about public charter schools within the county as an enrollment option to the same extent and through the same means as it publicizes information about noncharter public schools. A school must designate its primary recruitment area in the charter application and contract and must base the primary recruitment area on the schools estimated facility and program capacity. The school may establish one or more listed preferences for enrollment but may not discriminate against any person on any basis that would be unlawful in a public school and may not establish admissions policies to limit admissions. The listed preferences include: Children who reside in the primary recruitment area; students enrolled the previous year and their siblings; children with special need or severe disciplinary problems; and children of governing board members and employees, but no more than 5% of enrollment. The school must enroll all student who apply and were granted a preference and may enroll other applicants to fill any excess capacity subject to a random lottery if capacity is exceeded. Conversion schools must guarantee enrollment to all students residing in the school's previous attendance area and fill excess capacity as stated above. Provisions are also included relating to transfers back to noncharter schools and data reporting to the WVDE. (§18-5G-11).

- Includes provisions relating to access to public facilities for charter schools. (§18-5G-12).
- Allows public charter schools to participate in the applicable state teachers' retirement system. (§18-7A-3 & §18-7B-2).
- Replaces the existing requirements applicable after a student has a total of three and a total of five unexcused absences with the requirement that meaningful contact be made with the parent, guardian, or custodian to ascertain the reasons for the unexcused absences and what measures the school can employ to assist the student in attending and not incurring any additional unexcused absences; and provides the option for the school principal to make the meaningful contact instead of the attendance director or assistant. (§18-8-4).
- Includes professional personnel providing direct social and emotional support services to students, as well as professional personnel addressing chronic absenteeism, in the definition of "professional student support personnel". (§18-9A-2).
- Relating to adults included in net enrollment, removes language that prevents adults enrolled in evening programs from being included; causes the number of adults counted in net enrollment to run two years behind; and excludes any adult charged tuition or special fees beyond that required of the regular secondary vocational student. (§18-9A-2).
- Revises method of assisting counties with an actual net enrollment below 1,400 by increasing the adjusted net enrollment used to calculate those counties' basic foundation program under existing code by 10%; and capping the adjusted net enrollment at 1,400. (§18-9A-2).
- Reduces the percentage of the levy rate for county boards of education used to calculate local share from 90% to 85%. (§18-9A-2).
- Modifies the calculation of the allowance for professional student support personnel by providing that each county is to receive an allowance for 5 state aid eligible professional student support personnel positions to each 1,000 students in net enrollment; and provides that for the 2019-2020 fiscal year only, the number of positions funded for each county cannot be less than what would

have been funded under the previous calculation. If a county so chooses, these services may be provided through public-private partnership or contract (§18-9A-8).

- Increases the percentage used to calculate the allowance for current expense from 70.25% to 71.25%. (§18-9A-9).
- Increases Step 6d allowance for faculty senates from \$200 per professional instructional personnel and professional student support personnel to \$400 per professional instructional personnel and professional student support personnel. (§18-9A-9).
- Requires that each county board receive its allocated state aid share of the county's basic foundation program in the form of block grants. (§18-9A-19).
- Requires the State Superintendent to provide the State Auditor with the required data for use by the searchable budget data website, subject to FERPA; and sets forth the specific required data that must be included. (§18-9B-22).
- Makes public charter schools eligible for high acuity needs funding. (§18-20-5).
- Increases teacher salaries across-the-board by \$2,120 or by an average of 5%. (§18A-4-2).
- Provides that each classroom teacher providing math instruction in the teacher's certified area of study for at least 60% of the time the teacher is providing instruction to students shall be considered to have three additional years of experience for the purposes of the salary schedule. (§18A-4-2).
- Provides that each classroom teacher certified in special education and employed as a full-time special education teacher shall be considered to have three additional years of experience for the purposes of the salary schedule. (§18A-4-2).
- Modifies provisions relating to salary equity by removing the definition of salary equity; providing legislative findings relating to county boards having flexibility to use local funds, including, but not limited to, providing salary supplements to teachers; and removing the requirement that the Department of Education include in its budget request a request for funding sufficient to meet the objective of salary equity. (§18A-4-5).
- Creates exceptions to the requirement that county salary schedules be uniform in the following cases: For teachers who are assigned and fully certified to teach in a subject area in which the county board finds it has a critical need and shortage; for teachers who teach in schools that are remote or experienced high rates of turnover in experienced teachers; and for teachers, who in addition to regularly assigned teaching duties, are assigned as a master teacher, mentor, academic coach, or other title whose duties include providing strong school-based support and supervision to assist licensure candidates in a clinical internship, beginning teachers, and other teachers at the school to improve their professional practice as set forth in the county's comprehensive system of support for teacher and leader induction and professional growth. (§18A-4-5a).
- Provides that if two or more employees with the same certification establish an identical seniority date, the priority is to be determined by a random selection system established by the employees and approved by the county board and conducted within 30 days of the time the employees establish the identical seniority date; requires all decisions on reductions in force to be based on qualifications as set forth in county board policy; requires that in defining the "word" qualifications in its policy, county boards consider including the teacher hiring criteria and prohibits county boards from including salary as one of the criteria in the definition; requires that the criteria included in the county board policy be considered only after considering personnel whose last

performance evaluation was less than satisfactory; requires that reductions in force be based on seniority, certification, licensure, and performance evaluations; allows, in the event of a reduction in force, a county board to release any classroom teacher with unsatisfactory evaluations for the previous two consecutive years regardless of years of service instead of releasing less senior classroom teachers; and makes other changes relating to notification of professional personnel on the preferred recall list and the posting of position openings. (§18A-4-7a).

- Increases salaries of service personnel across-the-board by \$115 per month or an average of 5%. (§18A-4-8a).
- Increases the number of days that employees are permitted to use annually without regard to the cause of the absence from 3 to 4; and includes provisions relating to providing that a classroom teacher who has not used more than four days personal leave during the 200-day employment term is to receive a bonus of \$500 at the end of the school year. (§18A-4-10).
- Changes the name of the Underwood-Smith Teacher Scholarship Program to the Underwood-Smith Teaching Scholars Program; adds establishing and updating as necessary a list of critical teacher shortage fields for which scholarships are available to the provisions required to be in the HEPC rules; adds requiring scholarship recipients to teach in a public school in this state in a critical teacher shortage field to the provisions required to be in the HEPC rules; requires the HEPC and the State Board of Education jointly to ensure that Underwood-Smith Teaching Scholars award recipients receive additional academic support and training from mentors in their academic field beginning with the freshman year and continuing through degree completion and the teaching obligation; continues the Underwood-Smith Teacher Scholarship and Loan Assistance Fund as the Underwood-Smith Teaching Scholars Program Fund; requires that each recipient be distinguished as an “Underwood-Smith Teaching Scholar”; includes language preserving the scholarship and loan assistance for those benefiting under the existing provisions; requires the Vice Chancellor for Administration to appoint a selection panel; modifies the eligibility criteria for the scholarship awards; modifies the requirements for the scholarship agreement which includes requiring that the recipient teach full-time in critical teacher shortage field, under contract with a county board for a period of not fewer than five consecutive years for the four academic years; provides that the scholarship terms, conditions, requirements and agreements applicable to a recipient prior to the effective date of this section are to continue in effect; modifies scholarship renewal requirements; increases the amount of the award from up to \$5,000 per year to \$10,000. (§18C-4-1 et seq.)
- Changes the name of the Underwood-Smith Teacher Loan Assistance Program to the Teacher Education Loan Repayment Program; requires as a condition of eligibility that for the loan repayment program the applicant must be currently employed in a public school in this state as a teacher in a critical teacher shortage field or as a school counselor in a school or geographic area of the state identified as an area of critical need for such field; requires as a condition of eligibility that the applicant agree to be employed full time under contract with a county board for a period of two school years as a teacher in a critical teacher shortage field or as a school counselor in a school or geographic area of critical need for such field for each year for which a loan repayment assistance award is received. (§18C-4A-1 et seq.).

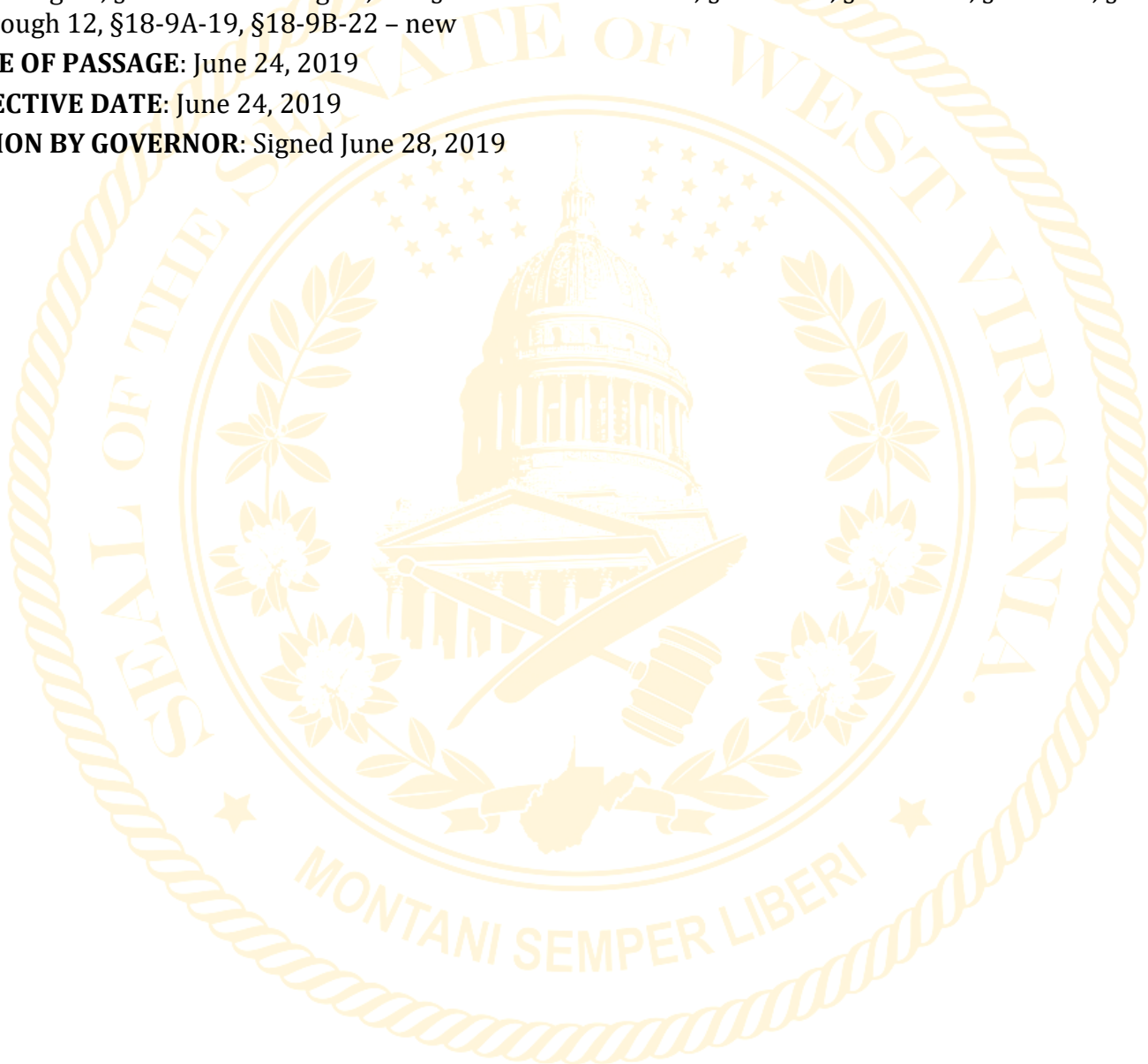
- Increases minimum BRIM coverage from \$1 million to \$1.25 for each occurrence beginning FY2021; and includes provisions relating to requiring that at least annually the county board provide written notice of insurance coverage to each of its insureds. (§29-12-5a).
- Allows public charter schools to elect to obtain insurance coverage from BRIM. (§29-12-5a).

CODE REFERENCE: West Virginia Code §5-16-2, §5-16-22, §15-1B-24, §18-5-14, §18-5-16, §18-5-16a, §18-5-18a, §18-5-18b, §18-5-46, §18-5A-2, §18-5A-3, §18-5A-5, §18-7A-3, §18-7B-2, §18-8-4, §18-9A-2, §18-9A-8, §18-9A-9, §18-20-5, §18A-4-2, §18A-4-5, §18A-4-5a, §18A-4-7a, §18A-4-8a, §18A-4-10, §18C-4-1 through 5, §18C-4A-1 through 3, and §29-12-5a – amended; §11-15-9s, §18-2E-12, §18-5-48, §18-5G-1 through 12, §18-9A-19, §18-9B-22 – new

DATE OF PASSAGE: June 24, 2019

EFFECTIVE DATE: June 24, 2019

ACTION BY GOVERNOR: Signed June 28, 2019



House Bill 207

Exempting Certain Merchants from Business and Occupation Tax

This bill provides a merchant power plant in this state an exemption from business and occupation taxes if they meet certain criteria. The exemption would be for taxable years January 1, 2020 and thereafter. There is also a proration provision.

The criteria for receiving the tax credit include:

- The power plant is not subject to Public Service Commission regulation;
- The power plant sells only on the wholesale market;
- The power plant does not sell electricity subject to long term sales contracts; and
- The power plant does not sell to retail consumers.

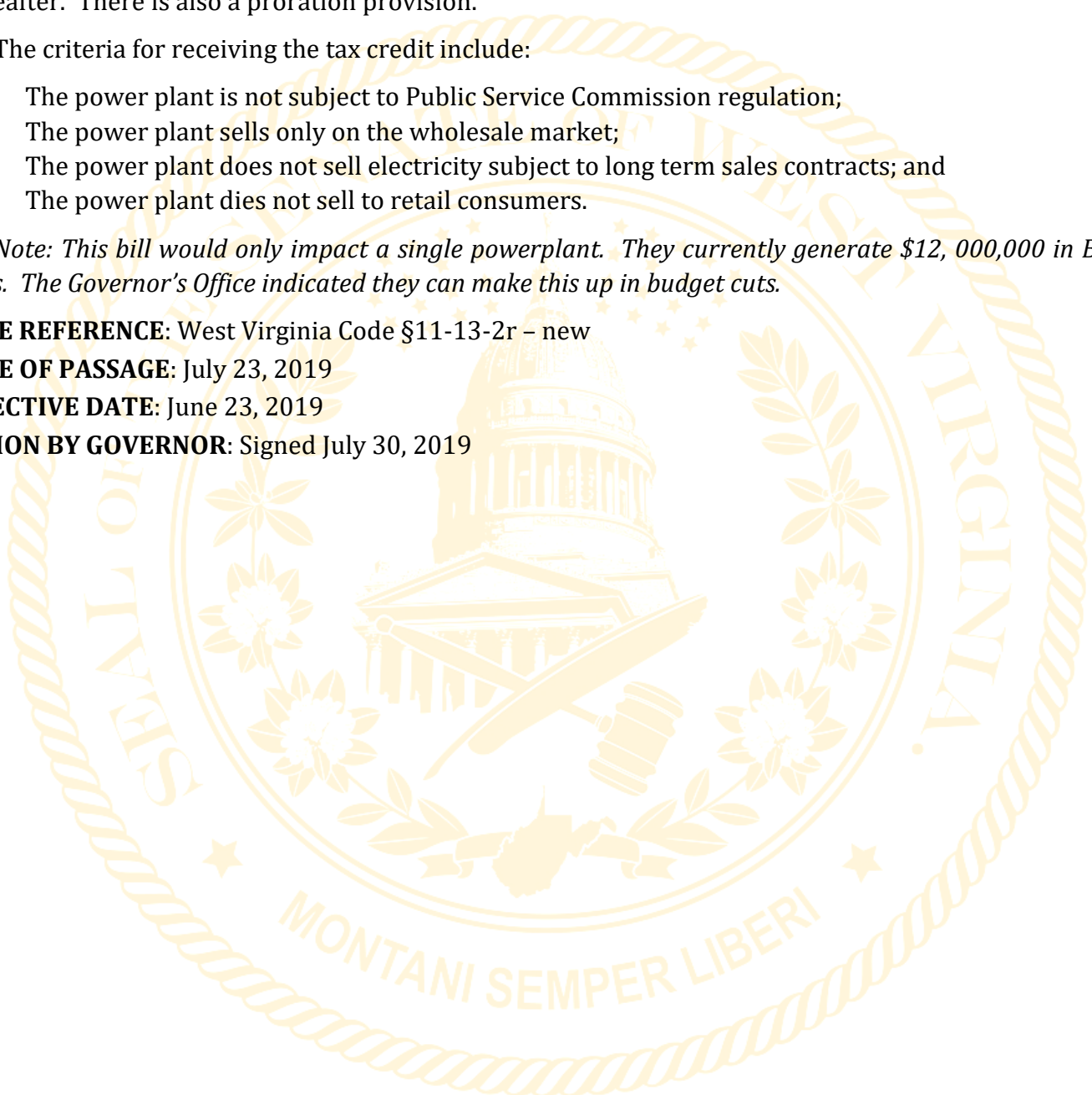
Note: This bill would only impact a single powerplant. They currently generate \$12, 000,000 in B & O taxes. The Governor's Office indicated they can make this up in budget cuts.

CODE REFERENCE: West Virginia Code §11-13-2r – new

DATE OF PASSAGE: July 23, 2019

EFFECTIVE DATE: June 23, 2019

ACTION BY GOVERNOR: Signed July 30, 2019



2018 Regular Session



Senate Bill 244

Specifying conditions for unlawful possession of firearm at school-sponsored activities

This bill rewrites the subsection setting forth the instances in which it is unlawful to possess a firearm or other deadly weapon on a school bus, on school grounds, and at school sponsored functions, and limits the prohibition at school sponsored functions to when the function is taking place in a specific area that is owned, rented, or leased by the West Virginia Department of Education, the West Virginia Secondary Schools Activities Commission, a county school board, or local public school for the actual period of time the function is occurring.

The bill also amends the exception which allows certain retired law-enforcement officers to possess a firearm on a school bus, in or on a public primary or secondary education building, structure, facility or grounds, or at a school sponsored function. Currently, the exception would allow a retired law-enforcement officer who is employed by a state, county or municipal law enforcement agency; is covered for liability purposes by his or her employer; is authorized by a county board and the school principal to serve as security for a school; meets all the requirements to carry a firearm as a qualified retired law-enforcement officer under the Law-Enforcement Officer Safety Act of 2004; and meets all of the requirements for handling and using a firearm established by his or her employer and has qualified with his or her firearm to those requirements. The amended language would grant an exception for a retired law-enforcement officer who meets all the requirements to carry a firearm as a qualified retired law-enforcement officer under the Law-Enforcement Officer Safety Act of 2004, carries that firearm in a concealed manner and has on their person official identification in accordance with that act.

The bill also clarifies the exception applicable to a person with a valid concealed handgun permit legally possessing a concealed handgun in a motor vehicle in areas of vehicular ingress or egress to a public school. The amendment clarifies that the glove box or other interior compartment does not have to be locked.

The bill also limits the exception applicable to persons specifically authorized by the county board or principal to conduct programs with valid educational purposes by excluding students from qualifying for that exception.

CODE REFERENCE: West Virginia Code §61-7-11a – amended

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

Senate Bill 319

Allowing individuals who completed home schooling be eligible for PROMISE scholarship without equivalent diploma

This bill allows individuals who complete homeschool to be eligible for the PROMISE scholarship without having to acquire a GED while retaining the ability of others to use the GED or its equivalent for PROMISE eligibility.

CODE REFERENCE: West Virginia Code §18C-7-6 – amended

DATE OF PASSAGE: March 7, 2018

EFFECTIVE DATE: July 1, 2018

ACTION BY GOVERNOR: Signed March 20, 2018

Senate Bill 364

Allowing parent or legal guardian of homeschooled child provide signed statement for obtaining permit or license to operate motor vehicle

This bill allows a parent or legal guardian of a homeschooled child to provide a signed statement in lieu of a driver eligibility certificate signed by the attendance director or chief administrator affirming that the child is being educated in accordance with law and is making satisfactory academic progress and meets the conditions to be eligible to obtain a driver's permit or license.

CODE REFERENCE: West Virginia Code §18-8-11 – amended

DATE OF PASSAGE: March 2, 2018

EFFECTIVE DATE: May 31, 2018

ACTION BY GOVERNOR: Signed March 20, 2018

Senate Bill 451

Relating generally to hunting and fishing

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

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

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

CODE REFERENCE: West Virginia Code §20-2-5 and §20-7-9 – amended

DATE OF PASSAGE: March 6, 2018

EFFECTIVE DATE: June 4, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

Senate Joint Resolution 3

Judicial Budget Oversight Amendment

The purpose of this resolution is to amend §51, Article VI of the West Virginia Constitution to allow the Legislature to decrease the total general revenue appropriation to the judiciary in the annual Budget Bill. The resolution eliminates a provision of the Constitution, preventing Legislature from decreasing any item in the Budget Bill related to the judiciary. However, the resolution requires that in order to decrease the total general revenue appropriation to the judiciary from the appropriation in the previous budget (the then-current budget), to an amount below 85% of the previous budget, the Legislature must approve such a reduction by a separate 2/3 vote of each house. Additionally, the resolution proposes new language giving the Chief Justice of the West Virginia Supreme Court of Appeals a new right and a new duty “when requested by either house of the Legislature [. . .] to, appear and be heard with respect to any budget bill, and to answer inquiries relative thereto.”

The resolution also amends §51, Article VI to alter outdated language relating to the timing of legislative sessions in the context of the Governor’s submission of the Budget Bill to the Legislature. Since the original incorporation of this language into the Constitution, the Constitution has been amended elsewhere, so that legislative session begins on the second Wednesday of January and on the second Wednesday of February every fourth year after 1973. The amendment simply alters obsolete language to reflect the current, constitutionally required practice whereby the Governor submits the budget to the Legislature on the first day of each regular session. Finally, the bill clarifies that during an extension of the Regular Session by three days for the purpose of considering budgetary matters, the Legislature may also consider actions addressing the Governor’s veto of legislation, pursuant to §14, Article VII of the Constitution. This language was added to clarify that the amendments to §51, Article VI are not aimed at overriding the more recently adopted provisions of §14, Article VII. The resolution makes numerous minor technical changes to language in the section of the Constitution being amended. The proposed amendment will be on the general election ballot in November 2018.

CODE REFERENCE: §51, Article VI of the West Virginia Constitution – amended

DATE OF ADOPTION: March 10, 2018

Senate Joint Resolution 12

No Constitutional right to abortion Amendment

The purpose of this resolution is to nullify a West Virginia Supreme Court of Appeals decision, *Womens’ Health Center, et al. v. Panepinto*, 191 W. Va. 436 (1993), in which the Court held that §3, Article III of the West Virginia Constitution requires Medicaid funding of abortions. The proposed amendment provides that “[. . .] nothing in this constitution secures or protects a right to abortion or requires the funding of abortion.” The proposed amendment will be on the general election ballot in November 2018.

CODE REFERENCE: §57, Article VI of the West Virginia Constitution – new

DATE OF ADOPTION: March 5, 2018

House Bill 2916

Authorizing certain first responders to carry firearms

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

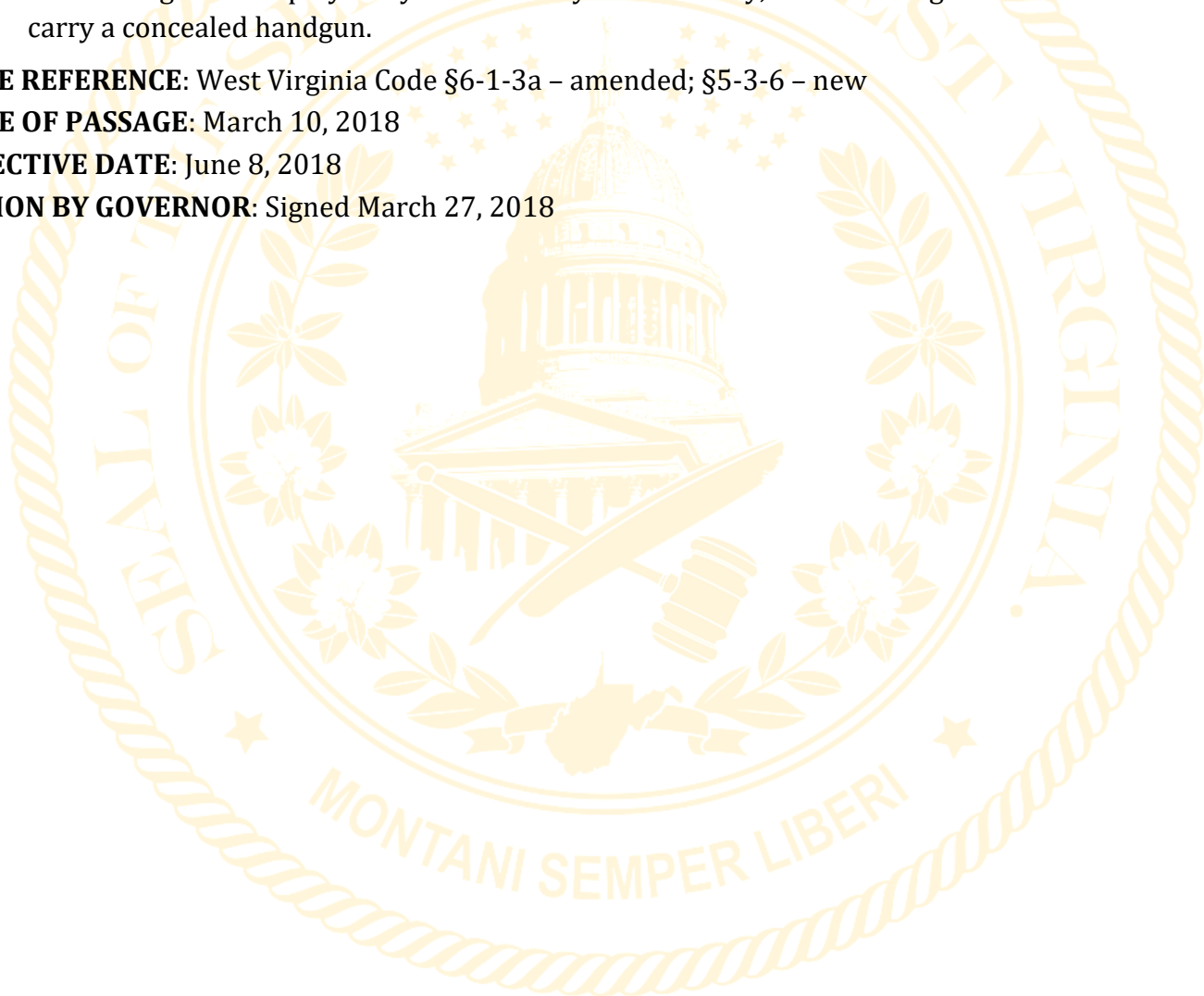
- written approval is given by the Attorney General or Sheriff;
- the investigator or reservist is not otherwise prohibited from carrying a concealed handgun under current law;
- the investigator or reservist has successfully completed entry level law enforcement training and maintains certification;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

CODE REFERENCE: West Virginia Code §6-1-3a – amended; §5-3-6 – new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 27, 2018



House Bill 4001

Relating to eligibility and fraud requirements for public assistance

This bill would require the Department of Health and Human Resources to implement a number of provisions relative to applicants for assistance and recipients for assistance at the Department. It defines key terms. Currently, applicants for SNAP are able to seek a work requirement waiver from the federal government. Additionally, only the applicants income/assets are tested, without further verification via computer tracking database. (2018) This bill relates to investigations, inspections, evaluations, and review conducted by the Department of Health and Human Resources to prevent fraud and abuse. It disenrolls providers who commit fraud and requiring repayment. Further, the bill authorizes the Secretary to develop a data analytics pilot program to identify potential fraud and help guide policy objectives to eliminate future fraud, and requires a report on the pilot project to the Legislature.

The bill defines fraud as it relates to Medicaid, creates criminal penalties against providers for failure to keep medical records for a specific time period, authorizes a civil cause of action for fraud when a person or entity knew or reasonably should have known a claim to be false, and enlarges the statute of limitations to file health care fraud civil actions. It defines terms relating to public assistance, and requires the Department of Health and Human Resources to implement work requirements for applicants of Supplemental Nutrition Assistance Program (SNAP). It limits recipients to 3 months of benefits in any 36-month period unless the recipient is working or participating in a work, educational, or volunteer program for at least 20 hours a week. The bill provides further exemptions to work requirements, requires discontinuance of a federal waiver in certain counties, requires a study of the impact of the SNAP work requirements in those counties where they were implemented, eliminates the federal waiver statewide within a certain time-period, and requires a report to the Legislature.

The bill further establishes work requirements, authorizing a waiver to if necessary to implement a policy that complies with federal law, and authorizes rulemaking. It requires a design or establishment of a computerized income, asset, and identity verification system for each public assistance program administered by the Department of Health and Human Resources, allows for contracting with a third-party vendor, and sets out required contract terms. The bill requires accessing information of various federal, state, and miscellaneous sources for eligibility verification, requires identity authentication as a condition to receive public assistance; requiring the department to study the feasibility of requiring photos on EBT cards, specifies procedures for case review of public assistance benefits, sets forth notice requirements and right to a hearing, requires referrals for fraud, misrepresentation, and inadequate documentation, and authorizes referrals of suspected cases of fraud for criminal prosecution. Lastly, the bill requires a report to the Governor and Legislature related to cases of fraud. It sets forth prohibitions on the use of an electronic benefit transfer card, tracks out-of-state spending of SNAP and TANF benefits, and provides a penalty for taking the identity of another person for the purpose of gaining employment.

CODE REFERENCE: West Virginia Code §9-2-6, §9-7-2, §9-7-5, and §9-7-6, and §61-3-54 – amended; §9-8-1 through §9-8-12 – new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 4006

Revising the processes through which professional development is delivered for those who provide public education

Under current law, professional development is delivered by the state to those who provide public education in significant part through a state master plan and through various state-level agency and prescriptive programs, some of which are provided through the Office of the Secretary of Education and the Arts. The bill consolidates the processes through which the state's professional development is delivered, providing a primary role for the State Board of Education at the state level and a reorientation toward more county-level considerations with focus on the leadership of school principals.

As part of this change in the delivery of professional development away from the state master plan and the Office of the Secretary of Education and the Arts to the State Board of Education and the Department of Education, the bill improves the focus on school-level continuous improvement processes led by the principal. The bill includes instructional leadership among the duties and responsibilities of principals and assistants and requires course work in public school instructional leadership and management techniques in their certification requirements. The instruction must include the standards for high quality schools, the school accreditation process and strategic planning for continuous improvement. School systems are given the flexibility to establish their own systems of support and supervision of beginning principals and the current state mandated programs and processes for those purposes are eliminated.

Because of those changes, the revisions to accomplish this goal include the elimination of the state master plan for professional development and certain prescriptive and state level agency programs. It also eliminates certain state agencies that are no longer needed to provide certain components of professional development, including the Department of Education and Arts, the office of its Cabinet Secretary ("the Secretary"), and several of the offices and programs for which they have been responsible, including the Center for Professional Development and the Principals Academy, among others. Much of the length of the bill is due to consequential amendments made to these sections to substitute others to assume those responsibilities.

Details of the code section changes are as follows:

- §4-13-2 is amended to replace the Secretary on the West Virginia Sesquicentennial of the American Civil War Commission with the State Superintendent of Schools. The section is further amended to add a representative from the Herbert Henderson Minority Affairs Office as an additional member to the West Virginia Sesquicentennial of the American Civil War Commission.
- §5-26A-3 is amended to replace the Secretary on the West Virginia Commission for National and Community Service with "a representative of an arts or crafts organization."
- §5B-2C-6 is amended to remove the Department of Education and the Arts as one of the options that the West Virginia Academy of Science and Technology may use for technical support resources in preparing an annual report.
- §5F-1-2 is amended to remove the Department of Education and the Arts as one of the 9 departments within the executive branch headed by a Secretary appointed by the Governor.
- §5F-1-6 is amended to establish a July 1, 2018 internal effective date for all provisions of the bill other than in instances where specifically provided otherwise.

- §5F-2-1 is amended to move the Division of Culture and History and the Division of Rehabilitation Services from within the administration of the Department of Education and the Arts to within the administration of Department of Commerce; and remove both the Educational Broadcasting Authority and the Library Commission from being agencies within the administration of the Department of Education and the Arts and reestablishing each of them as an independent agency within the executive branch.
- §6-7-2a is amended to eliminate the statutory salary of the Secretary of Education and the Arts.
- §10-5-2a, the statute creating the West Virginia Distance Learning Coordinating Council, is repealed.
- §18-2I-1, -2 and -4 are amended to revise the framework for requiring the State Board of Education to deliver professional development. §18-2I-4 is further amended to add language relating to the new framework for requiring the State Board of Education to deliver professional development by adding principals to those who are to be included in legislative rules governing processes for collaboration among the Department of Education, county boards and classroom teachers; to provide that the “Center for Professional Development” is hereby transferred to be under the authority and control of the State Board of Education; to require the State Board of Education to “incorporate within the Department of Education” the “Center for Professional Development”; and to require the center to provide statewide coordination for the continued growth and development of advanced placement programs in WV high schools.
- §18-2I-3, the statute requiring the State Board of Education to establish a master plan for professional development, is repealed.
- §18-10A-1, -2, -3, -6a and -12 are amended to conform the statutes by substituting the Department and Secretary of Commerce for the Department and Secretary of Education and the Arts regarding responsibilities for the Division of Rehabilitation Services and related topics.
- §18-30-4 is amended to conform the statute by changing the membership of the West Virginia Prepaid Tuition and Savings Plan Board by removing the Secretary of Education and the Arts. The section is also amended to reduce the membership of the Board by one of the two representatives of the Higher Education Policy Commission and add to the membership of the Board one representative of the Council for Community and Technical College Education. The section is also amended to add to the requirements for the five other members, appointed by the Governor, that they may have knowledge, skill and experience in an arts field, not just an academic, business or financial field.
- §18A-2-9 is amended to designate the principal as the instructional leader of the school and making further adjustments to their qualifications, responsibilities, professional development and assignments.
- §18A-2-12 is amended to remove language relating to certain responsibilities of the current Center for Professional Development.
- §18A-3-2d, the statute requiring internships for beginning principals, is repealed.
- §18A-3-1, -1d, -2c and -8 are amended to solely vest the State Board of Education with the general direction and control of the education of professional educators. The amendments also remove references to the Secretary, the current Center for Professional Development and the Chancellor for Higher Education. In addition, §18A-3-1(b) is amended to add a new requirement that the standards for education of professional educators in the state and for awarding certificates to them

include “a provision for the study of the history and philosophical foundations of Western Civilization and the writings of the founders of the United States of America.”

- §18A-3A-1, -2, -3, -2b and -5, statutes relating to the Center for Professional Development and the Principals Academy, as well as the West Virginia Advanced Placement Center, and certain requirements for training in evaluation skills and mentoring, are repealed.
- §18A-3C-1, -2 and -3 are amended to revise language that would govern performance evaluations of teachers, principals and assistant principals as part of professional development.
- §18B-1B-2 is amended to remove the Secretary from the Higher Education Policy Commission. The section is also amended to establish new qualifications for the 7 at-large members of the Commission, and revise the processes for their selection and appointment.
- §18B-3D-2 is amended to conform the statute by changing the membership of the Chancellor’s advisory committee for the Workforce Development Initiative by substituting a representative from the Herbert Henderson Minority Affairs Office for the Secretary of Education and the Arts.
- §18B-11-4 and -6, statutes relating to the requirement that the Higher Education Policy Commission and the Council for Community and Technical College Education establish two assistive device depositories for assistive devices for individuals with disabilities upon receipt of line item appropriations, and relating to the National Institute for Teaching Excellence, are repealed.
- §18B-16-5 and -8 are amended to update references, including references to the Higher Education Policy Commission and the Council for Community and Technical College Education, in relation to, among others, the responsibilities of the Higher Education Vice Chancellor for Administration relating to health care education, and remove language referencing appropriations to the Secretary of Education and the Arts for the rural health initiative.
- §18B-18B-1 is amended to conform the statute by changing the membership of the Science and Research Council by substituting an additional member appointed by the Governor who has demonstrated interest, knowledge, skill and experience in academic research and scientific innovation, and who possesses recognized credentials and expertise in one or more of certain areas of science-related fields, for the Secretary of Education and the Arts.
- §29-24-3 and -5 are amended to conform the statutes by substituting the Secretary of Commerce for the Secretary of Education and the Arts in regard to responsibilities for the Technology-Related Assistance Revolving Loan Fund For Individuals With Disabilities Board, of which the Director of the Division of Rehabilitation Services is a member.

CODE REFERENCE: §10-5-2a, §18-2I-3, §18A-3-2d, §18A-3A-2, §18A-3A-2, §18A-3A-2b, §18A-3-3, §18A-3A-5, §18B-11-4, and §18B-11-6 – repealed; §4-13-2, §5-26A-3, §5B-2C-6, §5F-1-2, §5F-2-1, §6-7-2a, §18-2I-1, §18-2I-2, §18-2I-4, §18-10A-1, §18-10A-2, §18-10A-3, §18-10A-6a, §18-10A-12, §18-30-4, §18A-2-9, §18A-2-12, §18A-3-1, §18A-3-1d, §18A-3-2c, 18A-3-8, 18A-3C-1, §18A-3C-2, §18A-3C-3, §18B-1B-2, §18B-3D-2, §18B-16-5, §18B-16-8, §18B-18B-1 §29-24-3, and §29-24-5 – amended; §5F-1-6 – new

DATE OF PASSAGE: March 10, 2018

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

ACTION BY GOVERNOR: Signed March 28, 2018

House Bill 4016

Relating to combatting waste, fraud, and misuse of public funds through investigations, accountability and transparency

This bill creates a new article, titled “Open Governmental Finances,” for the purpose of combatting waste, fraud, and misuse of public funds through investigations, accountability, and transparency. The bill requires the State Auditor to make a searchable financial transparency website available to the public no later than July 1, 2018. The bill specifies information which must be included on the website regarding the current fiscal year and the three preceding fiscal years. The bill provides that all governmental agencies have 30 days, once the data becomes available, to provide the required information to the Auditor on a specified form. The Auditor is additionally directed to track and publish annual reports on complaints of possible fraud, misappropriation, mismanagement, or waste of public moneys.

CODE REFERENCE: West Virginia Code §6-9B-1 through §6-9B-4 – new

DATE OF PASSAGE: March 8, 2018

EFFECTIVE DATE: June 6, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 4183

Relating generally to standardized testing requirements for nonpublic schools

This bill makes the following changes to testing requirements required for nonpublic schools operating under §18-28-1 et seq.:

- Removes requirement that every child enrolled between the ages of 7 and 16 be administered one of several named tests in certain named subjects, and instead simply requires a nationally normed standardized achievement test be administered at the same grade levels and in the same subject areas as required in the public schools.
- Requires that the test be published or normed within the last ten years.
- Requires that the student participation rate on the standardized achievement test be the same as that required in the public schools.
- For any nonpublic school that exclusively teaches special education students or children with learning disabilities, the bill Removes language exempting school from subsection setting forth what happens when the school’s composite test results fall below the 40th percentile; and removes requirement to assess every child between the ages of 7 and 16, and instead requires students be assessed at the same grade levels and in the same subject areas as required in the public schools of the state.
- Provides that nothing in the section prohibits a nonpublic school from administering standardized achievement tests in additional subject areas or at additional grade levels; and conforms accountability provisions for schools falling below the 40th percentile to the above changes.

CODE REFERENCE: West Virginia Code §18-28-3 – amended

DATE OF PASSAGE: March 8, 2018

EFFECTIVE DATE: June 6, 2018

ACTION BY GOVERNOR: Signed March 22, 2018

House Bill 4187

Business Liability Protection Act

The purpose of this bill is to prohibit employers, public or private, from taking certain actions against employees or customers lawfully possessing a firearm on the employer's property.

Under existing code, any owner, lessee, or other person charged with the care, custody, and control of real property may prohibit the open or concealed carry of a firearm on his or her property. The bill, however, provides a new exception.

Prohibitions

First, the bill provides that no owner, lessee, or other person charged with the care, custody, and control of real property may prohibit any customer or employee from possessing a legally owned firearm when: a) it is lawfully possessed; b) it is locked inside or locked to a motor vehicle; and, c) the customer or employee is lawfully on the premises.

As defined, the bill does not include cars owned, leased, or rented by the employer.

Second, the bill provides that the property owner may not violate the privacy rights of a customer or employee by a) by making a verbal or written inquiry regarding the presence of a firearm; or, b) searching the vehicle.

Third, no employer may condition employment upon a) the fact that an employee holds a concealed carry license, or b) an agreement with the employer that the employee will not possess a firearm in their car on the property.

Fourth, no property owner may prevent a customer or employee from entering the parking lot because the vehicles contain a lawful firearm.

Limitations

A property owner has no duty of care related to the acts prohibited under this act.

Enforcement

The Attorney General is given the authority to enforce the provisions by injunctive or other equitable relief and may assess civil penalties not to exceed \$5,000 per violation. The Attorney General may recover costs and attorneys' fees.

Customers and employees are also given a private cause of action for injunctive or other equitable relief and civil penalties. The prevailing party is entitled to attorneys' fees and costs.

CODE REFERENCE: West Virginia Code §61-7-14 – amended

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 21, 2018

House Bill 4424

Providing that the Ethics Act applies to certain persons providing services without pay to state elected officials

Currently, the Ethics Act does not apply to persons performing duties on a volunteer basis that are ordinarily performed by public officials. The bill provides that the Ethics Act applies to a “public servant volunteer” which is defined as a person who is granted or vested with powers, privileges or authorities ordinarily reserved to public officials or who performs services, without compensation, on behalf of a public official.

CODE REFERENCE: West Virginia Code §6B-1-3 and §6B-1-5 – amended

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 4473

Relating to use of state funds for advertising to promote a public official or government office

This bill amends the article of code enacted by the “trinket bill” in 2016. The bill redefines the term “advertising” to explain that the term includes the (impermissible) distribution of information meant to promote a public official or a political party. The current definition is extremely broad, simply defining “advertising” to mean any “publishing, distributing, disseminating, communicating, or displaying information to the public through audio, visual, or other media tools.” The bill also defines the term “press release” to include the reporting of specific, but brief information about an event, circumstance or other happening.

The bill permits the name and likeness of a public official to be used in publicly-funded educational materials, so long as the primary purpose of the education material is to provide “information about the processes, operations, structure, functions, or history of an agency, agencies, or branch of government”, or to provide lists of contact information. The bill also specifically permits the name and likeness of a public official to be included in the West Virginia Blue Book and Legislative Manual. In addition, the bill permits the name and likeness of a public official to be included in a publicly-funded press release that is intended for legitimate news or informational purpose, and taken as a whole, does not feature or present the public official for the purpose of self-promotion.

Finally, the bill permits the name and likeness of a public official to be included on an agency’s website or social media account for the purpose of sharing biographical information, sharing educational materials, sharing press releases, or for any other purpose that is reasonable, incidental, appropriate, and has the primary purpose of promoting the agency’s mission and services rather than promoting the public official.

CODE REFERENCE: West Virginia code §6B-2B-1 through §6B-2B-4 – amended

DATE OF PASSAGE: March 7, 2018

EFFECTIVE DATE: June 5, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

2017 Regular Session



Senate Bill 222

Relating to disqualification for unemployment benefits

Currently, W.Va. Code §21A-6-3 provides for disqualification of unemployment compensation benefits for any week in which the unemployment is due to a stoppage of work which exists because of a labor dispute unless the commissioner is satisfied that he or she (1) was not participating, financing or directly interested in the dispute; and (2) did not belong to a grade or class of workers who were participating, financing or directly interested in the labor dispute.

The bill provides that an individual is disqualified from benefits for any week or portion thereof in which he or she did not work as a result of a strike or bona fide labor dispute. A lockout is not considered a strike and no individual may be denied benefits by reason of a lockout. An individual is determined to have left or lost his or her employment by reason of a lockout where the employee has established that he or she presented himself or herself physically for work at the workplace on the first day of such lockout or on the first day he or she is able to present at the workplace and that the employer denied the individual the opportunity to perform work. Employees are not entitled to benefits if non-striking employees or contractors operate the facility or perform the employees' duties unless they are permanent replacements.

CODE REFERENCE: West Virginia Code §21A-6-3 – amended

DATE OF PASSAGE: April 3, 2017

EFFECTIVE DATE: July 2, 2017

ACTION BY GOVERNOR: Signed April 8, 2017

Senate Bill 230

Relating to certain WV officials carrying concealed firearm nationwide

The purpose of this bill is to provide statutory authority necessary to give prosecuting attorneys and assistant prosecuting attorneys the option to carry firearms for self-defense pursuant to the Federal Law Enforcement Officer Safety Act. It grants prosecutors and assistant prosecutors limited 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 in the prosecutor's office.

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

CODE REFERENCE: West Virginia Code §7-4-1 – amended; §30-29-12 – new

DATE OF PASSAGE: April 4, 2017

EFFECTIVE DATE: July 3, 2017

ACTION BY GOVERNOR: Signed April 20, 2017

Senate Bill 239

Limiting use of wages by employers and labor organizations for political activities

Currently, it is a crime to coerce or intimidate any nonsalaried employee of the state government or any of its subdivisions into engaging in any form of political activity. Further, withholdings from wages are governed by the Wage Payment and Collection Act.

The bill expands the prohibition against coercion and intimidation of state employees from engaging in any form of political activity to all employees. The bill clarifies that an employer may not withhold any portion of a person's wages for use as contributions to any candidate or political committee or for any other political purposes except by written assignment in accordance with the Wage Payment and Collection Act. The bill also makes it an unfair labor practice for any labor organization to use agency shop fees paid by an individual who is not a member of the labor organization to make any contributions to influence an election or to operate a political committee without affirmative authorization by the individual. The bill also amends the definition of "deductions" so that term only includes amounts required by law or Court order to be withheld and those amounts required by the terms of an employer-sponsored or employer-provided plan or program providing fringe benefits in which the employee is a participant. The bill amends the definition of "fringe benefits." Finally, the bill removes the requirement that a wage assignment must be notarized, and it provides for time periods for applicability.

CODE REFERENCE: West Virginia Code §3-8-12, §21-1A-4, §21-5-1, and §21-5-3 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Vetoed April 26, 2017

Senate Bill 330

Relating to WV Workplace Freedom Act

Currently, the West Virginia Workplace Freedom Act contains a definition of "state." Further, the West Virginia Workplace Freedom Act contains a subsection regarding construction of the Act as it relates to collective bargaining and collective bargaining agreements in the building and construction industry.

The bill provides technical corrections to the West Virginia Workplace Freedom Act by striking the term "state" in the definitions section. The bill also strikes a provision regarding collective bargaining and collective bargaining agreements in the building and construction industry. This correction is intended to make it clear that the West Virginia Workplace Freedom Act is intended to apply to the building and construction industry.

CODE REFERENCE: West Virginia Code §21-5G-1 and §21-5G-7 – amended

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Vetoed March 28, 2017 (Senate override of veto March 30, 2017. House override of veto on April 7, 2017.)

Senate Bill 345

Allowing certain hunting and trapping on private lands on Sundays

The bill is designed to promote uniformity in Sunday hunting law statewide; it would only permit Sunday hunting on private lands with the permission of the landowner (as is outlined in current code in W.Va. Code §20-2-7). In doing so, the local option election provisions would be removed from code, and all local option elections that have taken place on the matter to approve or disapprove Sunday hunting on private lands would be void. Also, certain limitations on what types of firearms trappers may carry on Sundays are removed by repealing W.Va. Code §20-2-19a.

CODE REFERENCE: West Virginia Code §20-2-19a – repealed; §20-2-5, §20-2-42g, and §20-2-42h – amended

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 24, 2017



Senate Bill 437

Discontinuing WV Greyhound Breeding Development Fund

On a broad level, the purpose of this bill is to end state funding of the greyhound racing industry and to provide that the pre-existing casinos in the state with live dog racing will no longer be required to conduct live racing to maintain their licensure or to conduct certain types of lottery games.

The bill creates a new section, §19-23-10a, which does the following:

- Terminates the West Virginia Greyhound Development Fund at the end of this fiscal year.
- Upon termination of the Fund, directs the Lottery Commissioner will withhold \$1 million to transfer to a special account to facilitate care for and adoption of or placement of WV whelped greyhounds in no-kill animal shelters.
- Provides that the remainder of the amounts in the West Virginia Greyhound Development Fund will be transferred to the State Excess Lottery Revenue Fund for appropriation by the Legislature.
- Provides that beginning after the current fiscal year, all amounts currently required by the Code to be deposited in the West Virginia Greyhound Breeding Development Fund will instead be deposited in the State Excess Lottery Revenue Fund.
- Provides that beginning after the current fiscal year, all amounts currently required by the Code to be deposited into any fund for the purpose of funding purses or awards for greyhound racing will instead be deposited in the State Excess Lottery Revenue Fund.
- The bill also makes changes in numerous sections of Code to eliminate requirements for pre-existing dog racetracks:
- A dog racetrack is no longer required to race a minimum number of dates to qualify for a racing license, to conduct racetrack video lottery, or to conduct racetrack table games. A dog racetrack is no longer required to conduct live racing at all to conduct racetrack video lottery or to conduct racetrack table games.
- A dog racetrack is no longer required to conduct a minimum number of live racing dates to contract with a legal wagering entity to receive telecasts and accept wagers on dog races (aka, simulcast racing).
- The bill provides that an existing dog racetrack that no longer conducts live racing may continue to operate video lottery terminals or racetrack table games in a location where racing was previously conducted, or in another location within the same county that is approved by the Lottery Commission. Ostensibly, a casino that previously had dog racing can move with approval of the Lottery Commission.

The bill redirects funds previously directed to the West Virginia Greyhound Development Fund or to greyhound purse funds, as follows:

- A percentage of a dog track's pari-mutuel pool on a televised racing day is redirected to the State Excess Lottery Revenue Fund.
- Unredeemed amounts from pari-mutuel tickets are redirected to the State Excess Lottery Revenue Fund.
- A percentage of net terminal income from licensed video lottery is redirected to the State Excess Lottery Revenue Fund.

- A percentage of table games license fees collected by the commission is redirected to the State Excess Lottery Revenue Fund.
- A percentage of table games license fees collected by the commission is redirected to the State Excess Lottery Revenue Fund.
- An amount that was previously distributed to WV Greyhound Breeding Development Fund from the State Excess Lottery Fund shall remain in the State Excess Lottery Fund.
- An amount of net terminal lottery funds from racetrack video lottery that a racetrack was required to distribute to its special fund for the payment of regular purses applies only to horse tracks.
- An of excess net terminal lottery funds from racetrack video lottery a racetrack was required to distribute to its special fund for the payment of regular purses applies only to horse tracks.

The bill also requires the Lottery Commission to transfer 15% of the amount of gross terminal income from racetrack video lottery, originating at thoroughbred racetracks, that the Lottery Commission is authorized to deduct for expenses related to administering racetrack video lottery to the general operations account of the Racing Commission.

The bill changes the way a percentage of net terminal revenue from racetrack video lottery, that was previously split evenly between the Greyhound Fund and the Thoroughbred Development Fund, is distributed. Specifically, 1.5% of the total net terminal revenue of all four racetrack casinos was previously divided in half, between the Greyhound Fund and the Thoroughbred Fund. The bill provides that instead, 1.5% of net terminal revenue originating at thoroughbred tracks will go to the Thoroughbred Development Fund and 1.5% of net terminal revenue originating at dog racetracks will be distributed to the State Excess Lottery Revenue Fund.

The bill also updates certain definitions to ensure that dog racetracks which cease live racing are included in the definition of “racing association” for the purposes of preserving pension contributions for casino employees.

In addition to technical changes, the Senate made the following changes to the introduced version of the bill:

- Removes a provision which stated that dog racetracks no longer would need a racing license to conduct simulcast racing, and explicitly requires dog racetracks to hold a license to conduct simulcast racing.
 - Gives the WV Racing Commission rulemaking authority to implement licensure requirements for dog racing licensees conducting simulcast racing only.
- Requires the Lottery Commission to transfer 15% of the amount of gross terminal income from racetrack video lottery, originating at thoroughbred racetracks, that the Lottery Commission is authorized to deduct for expenses related to administering racetrack video lottery to the general operations account of the Racing Commission.
- Provides for the deposit of net terminal revenue originating at horse racetracks into the Thoroughbred Development Fund and distributes a percentage of net terminal revenue that originally went to the Greyhound Development Fund to the State Excess Lottery Revenue Fund.

- Provides that requirements that video lottery terminals may only be located in a facility that conducts live racing will not apply to existing dog tracks that cease live racing, and that terminals will be permitted on the grounds where live racing was previously conducted.
- Provides that requirements that racetrack table games may only be located in a facility that conducts live racing will not apply to existing dog tracks that cease live racing, and that table games will be permitted on the grounds where live racing was previously conducted.

CODE REFERENCE: West Virginia Code §19-23-3; §19-23-7, §19-23-10, §19-23-10a, §19-23-12b, §19-23-13, §19-23-13c, §29-22-18a, §29-22A-3, §29-22A-7, §29-22A-10, §29-22A-10d, §29-22A-10e, §29-22A-12, §29-22C-3, §29-22C-8, §29-22C-10, §29-22C-27, §29-22C-27a – amended; §29-22A-10b – new

DATE OF PASSAGE: April 1, 2017

EFFECTIVE DATE: June 30, 2017

ACTION OF GOVERNOR: Vetoed April 8, 2017



Senate Bill 575

Limiting nuisance actions against shooting ranges for noise

The purposes of the bill are stated to be as follows: 1) to limit applicability of noise ordinances to shooting ranges to those in effect at the time of construction began on the range or operation began, whichever is earlier; 2) to limit nuisance actions to violations of section 1 above; and, 3) to allow ranges reopening within two years of condemnation to be under standards applicable to the condemned range property and making provisions retroactively.

CODE REFERENCE: West Virginia Code §61-6-23 – amended

DATE OF PASSAGE: April 4, 2017

EFFECTIVE DATE: July 3, 2017

ACTION BY GOVERNOR: Signed April 14, 2017

Senate Bill 656

Relating to Student Data Accessibility, Transparency and Accountability Act

This bill replaces references to ACT, SAT and the College Board with generic language. It also provides that certain vendors that provide the 11th grade assessment can only receive payment or other consideration for assessment results and necessary directory or other permissible information if they obtain affirmative written consent from the student if the student is 15 years old or older or from the parent if the student is under 15, in response to clear and conspicuous notice, solely for providing the student access to employment, educational scholarships or financial aid, or post-secondary educational opportunities.

CODE REFERENCE: West Virginia Code §18-2-5h – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Vetoed April 26, 2017

House Bill 2002

Relating to parental notification of abortions performed on unemancipated minors

This bill alters the required parental notification of abortion. It alters the findings and purpose section. It also adds a definition of “medical emergency” and modifies the definition of “unemancipated minor”. Inserting the word “unemancipated” in various places through the bill prior to the word “minor”. Also prior language in the law about “grave risk to the life or health of the minor” has been changed to “medical emergency” as defined in our code.

The notice provisions require notice by the physician in person, by phone or by letter delivered personally by the physician or his or her agent. Upon notice, there is a requirement that 24 hours pass prior to the performing of the procedure. There is also a provision for certified mail, restricted delivery. Time of delivery is set out in the bill as 12 noon on the next day. The provision for notice may be waived by the person entitled to notice. A new waiver is created. An unemancipated minor may go to a psychiatrist or a licensed psychologist. The psychiatrist or licensed psychologist may not be affiliated with the physician providing the abortion. The psychiatrist or psychologist shall determine if the minor finds that that the minor is mature enough to make the abortion decision independently or that notification would not be in the minor's best interest.

An unemancipated minor may object to then notice and either she or a physician on her behalf may petition the court for a waiver. The current law regarding an appeal when an unemancipated minor is denied an abortion without notification has been simplified to allow a confidential appeal to the West Virginia Supreme Court. There have also been minor changes to the reporting requirements by physicians.

The penalties section now eliminates the fine currently in code for performing an abortion on an unemancipated minor in violation of the code. It leaves the penalties similar to in other statutes relative to abortion, mainly it makes practitioners subject to discipline from their licensing board.

The Senate altered the definition of unemancipated minor by deleting the provision regarding the unemancipated minor be in high school. It also eliminated the provision that allowed a physician to petition the court for a waiver of the notice requirements. It also returned the timeframe for the notice requirement from the House version of 25 hours to current law of 48 hours.

The Senate also eliminated the newly created waiver provision that allowed a psychologist or psychiatrist to determine that an unemancipated minor was mature enough to proceed with an abortion without parental notice of if the notice was not in her best interest. The bill also added notice requirements after the performance of an abortion due to a medical emergency.

CODE REFERENCE: West Virginia Code CODE REFERENCE: West Virginia Code §16-2F-1 through 6 and §16-2F-8 – amended.

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2196

Relating to the secondary schools athletic commission

This bill requires the commission to consider eligible for participation in interscholastic activities of secondary schools a student who is receiving home instruction along with students who are enrolled in a registered private or parochial school that does not have interscholastic programs and who:

- Has demonstrated satisfactory evidence of academic progress for two years and:
 - The home school student's average test results are within or above the fourth stanine in all subject areas; and
 - The private or parochial school students meet the same academic and attendance requirements of public school students.
- Has not reached the age of nineteen by August 1 of the current school year.
- Is an amateur who receives no compensation, but participates solely for the educational, physical, mental and social benefits of the activity.
- Agrees to comply with all disciplinary rules and regulations of the West Virginia Secondary Schools Activities Commission and the county board in which the home-schooled, private or parochial student lives, applicable to all other athletes and activity participants; and
- Agrees to obey all rules of the West Virginia Secondary Schools Activities Commission governing awards, all-star games, parental consents, physical examinations and vaccinations applicable to all high school athletes.

Eligibility is limited to participation in interscholastic programs at the public secondary, private or parochial school serving the attendance zone in which the student lives. Home school, private or parochial students who leave a member school during the school year shall be subject to the same transfer protocols that apply to member-to-member transfers. Homeschool, private and parochial school students participating in interscholastic programs are required to pay the same amount that public school students pay when participating in these programs. One year following the effective date of this bill, the state board is required to determine additional costs, on a per student basis, of non-enrolled students participating in interscholastic programs, and must make recommendations to the Legislature regarding how the costs of these non-enrolled students have affected the school aid formula.

CODE REFERENCE: West Virginia Code §18-2-25 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Vetoed April 26, 2017

House Bill 2542

Relating to public higher education personnel

This bill repeals the following sections of Code:

- §18B-7-9 – Requires the commission and council to jointly conduct an initial human resources review of each organization, and then a systematic human resources review of each organization at least once within each five-year period.
- §18B-7-11 – Limits the percentage of the total number of classified and nonclassified employees placed in the category of nonclassified at a higher education organization to no more than 25%; and limits the percentage of the total number of classified and nonclassified employees in positions considered to be critical to the institution to no more than 10%.
- §18B-7-12 – Allows the president of an organization, or a representative, and a classified employee to mutually agree on duties to be performed in addition to those duties listed in the job description.
- §18B-9-1, 2, 3, and 4 – Requires the commission and council jointly to implement a complete and uniform system of personnel classification and compensation for classified employees which includes the temporary classified employee salary schedule.
- §18B-9A-3 – Provides that an organization is subject to article nine and cannot exercise certain human resource flexibility provisions until the commission or council has certified that an organization has achieved full funding of the temporary classified employee annual salary schedule or is making appropriate progress toward attaining full funding.
- §18B-9A-8 – Sets forth incremental steps to implement the recommendations of the Select Committee on Higher Education Personnel and the provisions of the articles of code relating to personnel generally, faculty, and the classification and compensation system with the temporary classified employee salary schedule.

This bill also:

- Removes the requirement that the commission employ a Vice Chancellor for Human Resources, a Generalist/Manager, a Director of Classification and Compensation and a Training and Development Specialist; removes a portion of the duties of the Vice Chancellor and reassigns the remaining duties to the chancellor or a qualified designee.
- Adds consulting with institutions on human relations policies and rules to the duties of the Chancellor for Higher Education.
- Modifies the legislative intent and purpose section for the article relating to personnel to be consistent with other changes in the bill.
- Defines “more senior employee” as an employee who has greater longevity with the institution than another employee who is also subject to layoff as part of a reduction in force.
- Removes language providing that the section on reducing the workforce is applicable to an employee who is transferred involuntarily to a position in nonclassified status for which he or she did not apply; and providing that any classified employee involuntarily transferred to a position in nonclassified status may exercise the rights in the section only for positions equivalent to or lower than the last job class the employee held.

- Requires governing boards to adopt a rule on reductions in workforce of full-time classified employees after consultation with and providing 30 days written notice to the applicable staff council of an organization.
- For certain layoffs, allows an institution to layoff the incumbent in the position being eliminated. In the case of elimination of some but not all of the position of the same job title, requires consideration of an employee's documented quality of work performance as demonstrated in performance evaluations of record (including, but not limited to, disciplinary records), skills, seniority as measured by years of service, or other factors, as determined by the board.
- Provides that if the organization desires to lay off a more senior employee, it may offer him or her a severance package, the value of which cannot exceed the employee's salary for a year.
- Removes language requiring that if the organization desires to lay off a more senior employee, it must demonstrate that the senior employee cannot perform any other job duties held by less senior employees of that organization in the same job class or any other equivalent or lower job class for which the senior employee is qualified.
- Removes language requiring a random selection system be used in cases of identical seniority.
- Removes language relating to requiring that during a furlough or reduction in workforce employees be placed on a preferred recall list.
- Removes language relating to requiring that a nonexempt classified employee, who applies and meets the minimum qualifications for a nonexempt job opening at the organization where currently employed, whether the job is a lateral transfer or a promotion, be promoted or transferred before a new person is hired.
- Removes requirement that applications for employment include each applicant's social security number.
- Removes language applicable in cases of a reduction in force relating to an employee of an organization under the council not being able to displace an employee of an organization under the commission; relating to an employee of an organization under the commission not being able to displace an employee of an organization under the council; and addressing instances where an employee is performing a dual service for a formerly administratively linked community and technical college and a former sponsoring institution.
- Makes modifications to provisions relating to continuing education and professional development such as requiring the continuing education and professional development be operated under rules adopted by the governing boards instead of the commission and council; and expanding application of provisions to include all employees instead of only faculty and classified employees.
- Modifies required personnel report to LOCEA by requiring it to be every five years instead of annually; and requiring the report to include progress toward achieving fair compensation of all employees rather than full funding of the temporary classified employees' salary schedule.
- Modifies requirements for human resources report card by requiring it to be submitted to LOCEA every five years instead of annually; and removing requirements for several specific items of data.
- Allows a governing board to adopt a rule relating to faculty after consulting with and providing 30 days written notice to the faculty senate; and providing that the rule preempts any conflicting rule adopted by the commission or council.

- Modifies the definition of classified employee to mean a regular employee who: 1) Does not meet the duties test for exempt status under the provisions of the Fair Labor Standards Act; and 2) does not otherwise meet the definition of nonclassified employee except that any employee who was a classified employee as of January 1, 2017, retains that status unless otherwise meeting the definition of nonclassified employee.
- Modifies the definition of nonclassified employee to mean any employee who meets any one or more of the following criteria: 1) Holds a direct policy-making position at the department or organization level; 2) reports directly to the president or CEO of the organization; 3) is in a position considered by the president or designee to be critical to the institution pursuant to policies or decisions adopted by the governing board; 4) is in an information technology-related position; 5) is hired after July 1, 2017 and meets the duties test for exempt status under the Fair Labor Standards Act at the time of hire or anytime thereafter; or 6) was in nonclassified position as of January 1, 2017.
- Provides that unless otherwise established by action of the institution where employed, a nonclassified employee serves at the will and pleasure of the organization, which authority can be delegated by act of the board.
- Removes the Compensation Planning and Review Committee's duty to oversee the five-year market salary study.
- Replaces requirement that the commission and council jointly contract with an external vendor to conduct a classified employee market salary study with the requirement that the commission and council use workforce compensation data provided by Workforce West Virginia and other compensation data as is readily available from nationally recognized sources, including compensation data of CUPA-HR, to establish the appropriate external market conditions of classified positions.
- Makes minimum compensation level approved by the commission and council subject to available funds.
- Modifies the definition of major deficiency for the purposes of applying sanctions when not corrected within the allotted time by excluding failure to comply with federal or state law.
- Allowing rather than requiring the commission or council to apply sanctions for failure to notify the commission or council that a major deficiency has been corrected within an agreed upon period.
- Removes suspension of new hiring as a suggested sanction.
- Removes authority of each chancellor to reject or disapprove any rule if he or she determines that it's not in compliance with law or rule or if it's inconsistent with legislative, commission and council intent.
- Allows West Virginia University, Marshall University, the West Virginia School of Osteopathic Medicine, or any other organization that provides notice to the commission or council, after consultation with staff council, to file rules to implement the article related to personnel generally and the article related to faculty; and provides that upon adoption, any rules promulgated by the commission or council under those two articles are inapplicable to the organization.
- Allows West Virginia University, Marshall University, the West Virginia School of Osteopathic Medicine; or any other organization that provides notice to the commission or council to establish a classification and compensation rule, after consultation with and providing 30 days written notice

to the staff council of the applicable organization, that incorporates best human resources practices and addresses the areas of organization accountability, employee classification and compensation, performance evaluation, reductions in force, and development of organizational policies, and upon the adoption, the provisions of the article establishing the classification and compensation system and any rule promulgated by the commission or the council thereto, is inapplicable to the extent it conflicts with the rule promulgated by the organization; and requires any rule adopted to use the statutory definitions of classified and nonclassified employees.

- Requires that any classification and compensation rule provide for the following: 1) The establishment of a classification and compensation system to address certain specified objectives; 2) provisions for an objective performance evaluation model; 3) a quarterly meeting between management and representatives of staff council to discuss implementation and effectiveness of any adopted rule and authority for management to make recommendations to the president or board of Governors of an organization; and 4) external review of human resource practices at the organization at least once every five years relating to compliance with certain statutory provisions. The rule also may provide for differential pay for certain employees who work different shifts, weekends or holidays and for differential treatment for employees.

CODE REFERENCE: West Virginia Code §18B-7-9, 11 and §18B-7-12; §18B-9-1 through §18B-9-4; and §18B-9A-3 and §18B-9A-8 – repealed; §18B-1B-5; §18B-4-1 and §18B-4-2a; §18B-7-1, §18B-7-2, §18B-7-3, §18B-7-6 and §18B-7-8; and §18B-9A-2, §18B-9A-5, §18B-9A-6 and §18B-9A-7 – amended; §18B-8-7 and §18B-9B-1 – new

DATE OF PASSAGE: March 14, 2017

EFFECTIVE DATE: June 12, 2017

ACTION BY GOVERNOR: Signed March 23, 2017

House Bill 2589

Permitting students who are homeschooled or attend private schools to enroll and take classes at the county's vocational school

The bill:

- Requires county boards to permit students who are homeschooled or attend private schools to enroll and take classes at the county's vocational schools, if the county offers vocational classes either itself or through a joint vocational program or service with another county or counties; requires that the students be treated equally for admission purposes with applicants enrolled in public school; and provides that the students cannot be charged more than public school students of compulsory school age.
- Adds a new article that creates the Middle School Technical Education Program Act (Middle School STEP Act).
- Requires participating middle schools use existing resources to implement the pilot program.
- Includes provisions relating to qualifications of instructors.
- Requires the pilot program to be a one semester elective course, but allows middle schools with alternative scheduling systems to adapt the program to meet their scheduling needs.
- Requires certain entities within 50 miles that receive state funding to provide speakers upon request.
- Requires guest speakers be scheduled weekly to introduce students to a particular career and to prepare students to pursue the featured career by providing relevant information on certain topics.
- Requires the course to include instruction on certain minimum skill sets required to discover and take advantage of employment opportunities.
- Requires the course to include instruction on certain minimum skill sets required to discover and take advantage of educational opportunities.
- Requires, as a condition for successful completion of the course, the student to create a plan to become employable following high school or post-secondary school.
- Requires the state board to establish guidelines for middle schools to submit a request for the school's admission into the pilot program; and requires admission to be on a first come, first serve basis.
- Provides that the goal is for a minimum of 10 middle schools participate each year and allows the state board to solicit additional middle schools to participate to meet the goal, but prohibits the state board from requiring any middle school to participate.
- Requires students who successfully complete the course to receive a West Virginia STEP Certificate.
- Requires an annual report to LOCEA on certain aggregate information on the progress of students who have received the West Virginia STEP Certificate.

CODE REFERENCE: West Virginia Code §18-5-15g; and §18-21A-1 through §18-21A-7 – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: June 7, 2017

ACTION BY GOVERNOR: Vetoed April 26, 2017

House Bill 2679

Relating to the possession of firearms in parks and park facilities

This bill accomplishes the following:

- Prohibits county Parks and Recreation commissions from promulgating or enforcing rules which prohibit firearm possession in county parks;
- Exempts from the prohibition against carrying an uncased or loaded firearm in the woods of their state:
 - Possessing handgun for self-defense if not prohibited by law; or
 - Possessing a rifle or shotgun for self-defense if not prohibited to possess firearms. This does not apply to uncased rifles or shotguns specifically in state parks, forests or state forest recreational facilities and on marked trails in State Parks or forests.
- Licensed hunters in season where hunting is lawful; and
- Incorporates the provisions of the committee substitute for committee substitute for Senate Bill 345 (Sunday Hunting) and House Bill 3101 (Unlawfully taking fish within 200 feet of DNR personnel actively stocking fish), both of which passed their respective houses.

CODE REFERENCE: West Virginia Code §20-2-19a – repealed; §7-11-5, §20-2-5, §20-2-42g, and §20-2-42h – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: June 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2781

Requiring a person desiring to vote to present documentation identifying the voter to one of the poll clerks

This bill amends and reenacts one section of code for the purpose of delaying implementation of automatic voter registration with the Division of Motor Vehicles. As passed by the Legislature in 2016, automatic voter registration was set to become effective July 1, 2017. This bill delays that implementation until July 1, 2019. The bill requires the Division of Motor Vehicles to make a presentation to the Joint Committee on Government and Finance if it is unable to meet this new deadline, and include in that presentation any changes that should be made to the code. Additionally, the Division of Motor Vehicles shall report to the Joint Committee on Government and Finance by January 1, 2018, providing a “full and complete list of all infrastructure they require” to implement automatic voter registration. Lastly, House Bill 2781 struck language from the code that would have required the Division of Motor Vehicles to submit certain information to the Secretary of State for any person who affirmatively declined to register to vote. That information would have included name, address, date of birth and electronic signature.

CODE REFERENCE: West Virginia Code §3-2-11 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: April 8, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 3080

Requiring instruction in the Declaration of Independence and the United States Constitution

This bill provides that the full week of classes during the week within which September 11 falls shall be recognized as “Celebrate Freedom Week”; and that the purpose of Celebrate Freedom Week is to educate students about the sacrifices made for freedom in the founding of this country and the values on which this country was founded.

Celebrate Freedom Week must include appropriate instruction in each social studies class which:

- Includes an in-depth study of the intent, meaning and importance of the Declaration of Independence and the Constitution of the United States with an emphasis on the Bill of Rights.
- Uses the historical, political and social environments surrounding each document at the time of its initial passage or ratification.
- Includes the study of historical documents to firmly establish the historical background leading to the establishment of the provisions of the Constitution and Bill of Rights by the founding fathers for the purposes of safeguarding our Constitutional republic.

The bill also provides that these new requirements are applicable to all public, private, parochial and denominational schools; and that the new provisions do not create a standard or requirement subject to the state accountability measures.

Beginning with the 2018-19 school year, students in public schools are to be administered a test the same as or substantially similar to the civics portion of the naturalization test used by the United States Citizenship and Immigration Services between their ninth and twelfth grade years as an indicator of student achievement in the area of civics education. The test results can be reported in the aggregate to the county board for evaluation by the board’s curriculum director and reported to the board members. The bill further provides that nothing in these new provisions creates a standard or requirement subject to state accountability measures.

CODE REFERENCE: West Virginia Code §18-2-9 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: June 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017



2015-2016

Senate President William P. Cole III

2016 Regular Session



Senate Bill 1

Establishing WV Workplace Freedom Act

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:

- compensatory damages;
- costs and reasonable attorney fees, which shall be awarded if the injured person substantially prevails;
- punitive damages;
- preliminary or injunctive relief; and,
- 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.

CODE REFERENCE: West Virginia Code §21-1A-3 and §21-1A-4; §21-5G-1 through §21-5G-7 – new

DATE OF PASSAGE: February 5, 2016

EFFECTIVE DATE: May 5, 2016

ACTION BY GOVERNOR: Vetoed February 11, 2016; Veto override February 12, 2016

Senate Bill 6

Requiring drug screening and testing of applicants for TANF program

The bill requires the secretary of DHHR to create a three-year pilot program to drug test certain persons applying for benefits from the Temporary Assistance to Needy Families (TANF) Program. The bill requires the secretary to seek the necessary federal approval immediately following enactment of this section and begin the program within 60 days of receiving approval. If federal approval is not granted for any portion of the program, the secretary shall implement the program to meet the federal objections while still operating the program consistent with the purposes of the bill.

Under the pilot program an applicant for whom there exists a reasonable suspicion of substance abuse, as defined in the bill, shall be required to complete a drug test. The cost of the test is paid by DHHR. If the test is positive, the applicant may request further testing at his or her own expense.

A first positive test requires completion of a substance abuse treatment and counseling program and a job skills program approved by DHHR; program participants continue to receive benefits while participating and are subject to periodic drug screening. Upon a second positive test, the applicant is ordered to a second substance abuse treatment and counseling program and a job skills program but is suspended from receiving benefits for a 12 month period or until completion of the second program. Upon a third positive test, the applicant is permanently terminated from the TANF Program. Refusal to participate or failure to complete a substance abuse treatment and counseling program and a job skills program renders an applicant ineligible. Refusal to take a drug test renders an applicant ineligible.

An applicant found ineligible to receive TANF as a result of a positive test or a refusal to take a test is subject to an immediate investigation from Child Protective Services. The bill provides that no dependent child's eligibility for benefits may be affected by a parent's failure to pass a drug test or complete a treatment program so designation of a protective payee is authorized when a parent is ineligible.

The bill permits persons who are currently not eligible for benefits under current law because of a prior conviction of a felony drug offense to participate in this pilot program, subject to federal approval.

The bill contains provisions for a due process review of a denial and a one-time reapplication. The bill contains confidentiality provisions, grants emergency rulemaking authority to the secretary, and establishes a misdemeanor offense of intentionally misrepresenting a material fact in an application for benefits. Finally, the bill requires the secretary report to the Joint Committee on Government and Finance by December 31, 2016, and annually thereafter until the conclusion of the pilot program.

CODE REFERENCE: West Virginia Code §9-3-6 – new

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 10

Creating Unborn Child Protection from Dismemberment Abortion Act

This bill prohibits the practice of a “dismemberment abortion”. The term “dismemberment abortion” is means, with the purpose of causing the death of an unborn child, purposely to dismember a living unborn child and extract him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush or grasp a portion of the unborn child’s body to cut or rip it off.

A physician or other licensed medical practitioner may perform this type of abortion if he or she determines, based upon his or her reasonable medical judgement, it is necessary to avert death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.

A physician or other licensed medical practitioner who perform a dismemberment abortion is subject to a disciplinary action by their respective boards.

A person who performs a dismemberment abortion is subject to a penalty for the unlawful practice of medicine which is a felony and, upon conviction thereof, shall be fined not more than \$10,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both.

CODE REFERENCE: West Virginia Code §16-20-1 – new

DATE OF PASSAGE: February 29, 2016

EFFECTIVE DATE: May 29, 2016

ACTION BY GOVERNOR: Vetoed March 9, 2016; Veto override March 10, 2016

Senate Bill 254

Not allowing county park commissions to prohibit firearms in facilities

The bill prohibits county parks and recreation commissions from promulgating rules and regulations prohibiting firearms. It further provides an update in terminology in three areas: first, that commissions are to submit proposed rules and regulations to county commissions (instead of the county court) for approval. It also requires a commission file any order for the appointment, supervision and discharge of park police officers with the county commission, as opposed to the county court. Lastly, it places concurrent jurisdiction of misdemeanors provided for by the section with magistrates, as opposed to justices of the peace.

CODE REFERENCE: West Virginia §7-11-5 – amended

DATE OF PASSAGE: March 5, 2016

EFFECTIVE DATE: June 3, 2016

ACTION BY GOVERNOR: Vetoed March 15, 2016

Senate Bill 272

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

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.

CODE REFERENCE: West Virginia Code §5-3-6 and §60-3-24a – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Vetoed April 1, 2016

Senate Bill 387

Shared animal ownership agreements to consume raw milk

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 the responsible party must acquire a percentage ownership interest in the animal, the responsible party pay for a portion of the animal's care and boarding, the responsible party is then entitled to receive a "fair share" of the raw milk produced by the animal, and 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 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.

CODE REFERENCE: West Virginia Code §19-1-7 – new

DATE OF PASSAGE: February 23, 2016

EFFECTIVE DATE: May 23, 2016

ACTION BY GOVERNOR: Signed March 3, 2016

Senate Bill 619

2016 Regulatory Reform Act

This bill makes amendments and changes to the Legislative Rulemaking procedures for both State agencies and the Legislative Rule-Making Review Committee. In addition, it requires state agencies provide better explanation of its consideration of a public comments to a proposed rule. It also establishes that a sunset provision be included in all future legislative rules. In particular, the Senate Bill 619 does the following:

§29-3-5: Adds a requirement that, prior to submission of a proposed rule, State Agencies respond to public comments received during the rule-making process and explain the reasoning for comments being incorporated or not incorporated into the rule. The bill provides that the failure to adequately respond to public comments may be grounds for rejection of the proposed rule.

Under §29A-3-11(a), the bill removes the requirement that agencies submit 15 copies of the proposed rules to the Legislative Rule-Making Review Committee (LRMRC); instead, the Committee may request any number of copies. Along with the rule, an agency must also submit a detailed description of the objective or purpose of the rule and the proposed changes to the rule and an explanation of the statutory authority for the rule, including a detailed summary of the effect of each provision with citation to the specific statute which empowers the agency to enact such a provision. The agency may consolidate substantially similar public comments in the interest of efficiency; however, the agency must provide explanation for each and every issue raised in the public comments.

§29A-3-11(b) addresses what the LRMRC must determine while reviewing proposed rules. The bill adds that the committee make a determination as to whether the proposed rule is needed or overlaps/duplicates other rules (including federal statutes or local laws). It additionally adds the LRMRC determination to include whether the expiration of a rule will impact federal funding.

§29A-3-11(c) gives the Committee the option of recommending to the legislature that the full body reject the proposed rule. Currently, the Committee may recommend complete or partial authorization, authorization with amendments or that the rule be withdrawn.

§29A-3-19 is a new section that mandates sunset provisions be incorporated into all rules newly proposed or modified after April 1, 2016. Newly proposed rules shall include a 5 year sunset provision and all existing rules shall include a sunset provision setting forth some termination date when a modification is proposed. Emergency rules and rules promulgated by the Department of Environmental Protection are exempted from this requirement. The section also gives the Committee the authority to establish a procedure for timely review of rules prior to the expiration of rules promulgated by agencies that have affirmatively sought renewal prior to expiration. This may include a requirement that the agency show cause as to why the expiring rule is required and necessary to be continued. The bill also requires the Secretary of State to provide notice to a promulgating agency of its rule's expiration at least 18 months prior to a rule's sunset date.

§29A-3-20 is a new section that requires all executive agencies with rule making authority to review all rules, guidelines, policies and recommendations under their jurisdiction which have federal counterparts, and determine whether the state equivalent is more stringent than the federal. The agency

must also provide for a comment period and submit a report to the Joint Committee on Government and Finance on or prior to November 1, 2017. The report shall include a description of the state rules, guidelines, policies and recommendations that are more stringent than their federal counterparts and comments received from the comment period. This new section also requires each agency review all rules within four years to determine whether the rules should be continued without change, modified or repealed. It requires the agency submit a report on or before July 1, 2020 to the LRMRC, which must include a description of each rule, a determination as to whether the rule should be continued or modified and the reasoning for said determination.

§29A-3A-20 is a new section that applies the same sunset requirements of state agency rules to rules promulgated by the Higher Education Policy Commission. Specifically, it requires sunset provisions be incorporated into all rules newly proposed or modified after April 1, 2016. Newly proposed rules shall include a 5 year sunset provision and all existing rules shall include a sunset provision setting forth some termination date when a modification is proposed. The section also gives the Legislative Oversight Commission on Education Accountability the authority to establish a procedure for timely review of rules prior to the expiration of rules promulgated by agencies that have affirmatively sought renewal prior to expiration. This may include a requirement that the HEPC show cause as to why the expiring rule is required and necessary to be continued. The bill also requires the Secretary of State to provide notice to the HEPC of a rule's expiration at least 18 months prior to a rule's sunset date.

CODE REFERENCE: West Virginia Code §29A-3-5 and §29A-3-11 – amended; §29A-3-19, §29A-3-20, and §29A-3A-20 – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION OF GOVERNOR: Signed April 1, 2016

Senate Concurrent Resolution 1

Urging Congress propose regulation freedom amendment

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 ADOPTION: March 12, 2016

House Bill 3019

Requiring official business and records of the state and its political subdivisions be conducted in English

This bill declares that “all official business of this state shall be conducted in English” including the printing of official documents, and, would require that all government meetings be conducted English. Subsection (b) of the bill provides numerous exceptions when other languages may be used by government officials. These include to protect the health and safety during a declared or apparent emergency; and protecting the rights of criminal defendants or victims of crime. Subsection (c) of the bill provides limitations on the applicability of the section, noting that it may not be construed to: (1) Diminish the usage of, prevent the study or development of, or discourage the use of any Native American language in any context or for any purpose; (2) Prohibit an elected official from speaking to any person in a language other than English while campaigning or providing constituent services. However, those officials are encouraged to use English as much as possible to promote fluency in English; (3) Disparage any language or discourage any person from learning or using any language; or (4) Prohibit informal and nonbinding translations or communications among or between representatives of government and other persons.

CODE REFERENCE: West Virginia Code §2-2-13 – new

DATE OF PASSAGE: February 25, 2016

EFFECTIVE DATE: May 26, 2016

ACTION BY GOVERNOR: Signed March 4, 2016

House Bill 4005

Repealing prevailing hourly rate of wages requirements

This bill repeals prevailing hourly rates of wages requirements that contractors must pay laborers, workers, and mechanics for public construction projects in excess of \$500,000 that are paid with public funds.

CODE REFERENCE: West Virginia Code §21-5A-1 through §21-5A-12 – repealed

DATE OF PASSAGE: February 4, 2016

EFFECTIVE DATE: May 4, 2016

ACTION BY GOVERNOR: Vetoed February 11, 2016; Veto override February 12, 2016

House Bill 4009

Letting Our Counties Act Locally Act

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.

CODE REFERENCE: West Virginia Code §7-27-1 through §7-27-45 and §31-15-16c – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

House Bill 4013

Requiring a person desiring to vote to present documentation identifying the voter

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.

CODE REFERENCE: West Virginia Code §3-1-34, §3-1-41, §3-2-11, §3-2-12, and §17B-2-1 – amended; §3-1-51 – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

House Bill 4014

Preventing the State Board of Education from implementing common core academic standards and assessments

This bill adds digital literacy to the list of areas that the State Board is required to adopt high-quality education standards for; sets forth legislative findings relating to constitutional education requirements; and defines “academic standards”. Recognition is also made of the state board adopting what it represented were academic standards in ELA and Math that are no longer aligned with Common Core State Standards.

The bill establishes an Academic Standards Evaluation Panel, and requires the deans responsible for the math programs, the deans responsible for the English programs, and the deans responsible for the science programs at West Virginia University and Marshall University to each appoint one member. Any dean that is responsible for more than one of the three programs must appoint one member for each program he or she is responsible for. It also requires the HEPC Chancellor, or his or her designee, to serve as an ex officio member and be responsible for facilitating the work of the panel. The panel is required to: 1) Evaluate and recommend revisions to the standards based on empirical research and data to ensure grade-level alignment to the standards of states with a proven track record of consistent high-performing student achievement in ELA on the NAEP, and in mathematics on both the NAEP and the TIMSS international assessment; 2) review the “Next Generation Content Standards and Objectives for Science in West Virginia Schools” and recommend revisions; 3) remove Common Core strategies that require instructional methods; 4) use facilities, staff and supplies provided by the HEPC; and 5) submit its evaluation and recommended revisions to the state board and LOCEA by October 1, 2016.

The bill also requires that the state board: 1) Withdraw from the Memorandum of Agreement entered into with the Council of Chief State School Officers and The National Governors Association for Best Practices which required the state board to agree that Common Core represents 85% of WV’s standards in ELA and Mathematics; and 2) withdraw as a governing state in the SBAC.

The bill also requires that any academic standards adopted by the state board: 1) Be age level and developmentally appropriate, particularly as it relates to sequencing of content standards and the measurement of student academic performance; 2) be free of instructional strategies; 3) meet national and international benchmarks empirically proven to increase and sustain student achievement; and 4) be based solely on academic content.

The bill also includes provisions relating to requiring LOCEA to review the proposed rules relating to the academic standards.

Relating to assessments, the bill removes:

- The requirement that the state board promulgate a rule establishing the comprehensive statewide student assessment program.
- The requirement that the state board align the comprehensive statewide student assessment with the college readiness standards adopted pursuant to §18-2-39 or develop other aligned tests so that progress toward college readiness in ELA and math can be measured.

- Authorization for the state board to require that student proficiencies be measured through the ACT EXPLORE and the ACT PLAN.

The bill requires that, beginning in school year 2016-2017, the state board review and approve a summative assessment system for administration to all public school students in grades 3 through 8 that assesses students in English, reading, writing, science and mathematics. It further provides that science can only be administered once during the grade span of 3-5 and once during the grade span of 6-8. The assessment is to include those students as required by IDEA and Title I of the ESEA. The summative assessment system is required to meet the following requirements:

- Be a vertically-scaled, benchmarked, standards-based system of summative assessments.
- Document student progress toward state standards and national college and career readiness benchmarks derived from empirical research.
- Be capable of measuring individual student performance in English, reading, writing, science, and math.
- Be available in paper-and-pencil and computer-based formats.
- Be a predictive measure of student progress toward a national college readiness assessment used by higher education institutions for admissions purposes.
- Be aligned or augmented to align with the standards in effect at the time the test is administered.

The bill also requires that the state board review and approve a college readiness assessment to be administered to all students in the 11th grade for the first time in school year 2016-2017 and subsequent years. The 11th grade college readiness assessment must be administered at least once to each eleventh grade student and must meet the following requirements:

- Be a standardized, curriculum-based, achievement college entrance examination.
- Assess student readiness for first-year, credit-bearing coursework in postsecondary education.
- Test in the areas of English, reading, writing, science and mathematics.
- Have content area benchmarks for measuring student achievement.
- Be administered throughout the United States.
- Be relied on by institutions of higher education for admissions.
- Be aligned with or augmented to align with the standards in effect at the time the test is administered.

This bill also requires the state board to review and approve career readiness assessments and assessment based credentials that measure and document foundational workplace skills. The assessments are to be administered to public secondary school students in grades eleven or twelve for the first time in school year 2016-2017 and subsequent years. The test is voluntary and may only be administered to students who elect to take the assessment. The assessment-based credential is to be available to any student that achieves at the required level on the required assessments. The assessments are required to meet the following requirements:

- Be a standardized, criterion-reference, measure of broadly relevant foundational workplace skills.
- Assess and document student readiness for a wide range of jobs.
- Measure skills in all or any of the following areas: (1) Applied mathematics; (2) locating information; or (3) reading for information.

- Align with research-based skill requirement profiles for specific industries and occupations.
- Lead to a work readiness certificate for students that meet the minimum proficiency requirements on the component assessments.
- Be available in paper-and-pencil and computer based formats.

Other provisions in the bill include:

- Prohibiting the state board from acquiring or implementing any assessment instrument or instruments or test items developed to specifically align with Common Core State Standards including the SBAC or PARCC.
- Requiring, for any online assessment, the state board to provide online assessment preparation to ensure that students have the requisite digital literacy skill necessary to be successful on the assessment.
- Requiring the state board to develop a plan and make recommendations regarding end-of-course assessments and student accountability measures and submit its finding to LOCEA by December 31, 2016.
- Limiting any summative assessment approved by the state board to taking no more than 2% of a student's instructional time.

CODE REFERENCE: West Virginia Code §18-2E-5 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Vetoed April 1, 2016

House Bill 4145

Relating to carry or use of a handgun or deadly weapon

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.

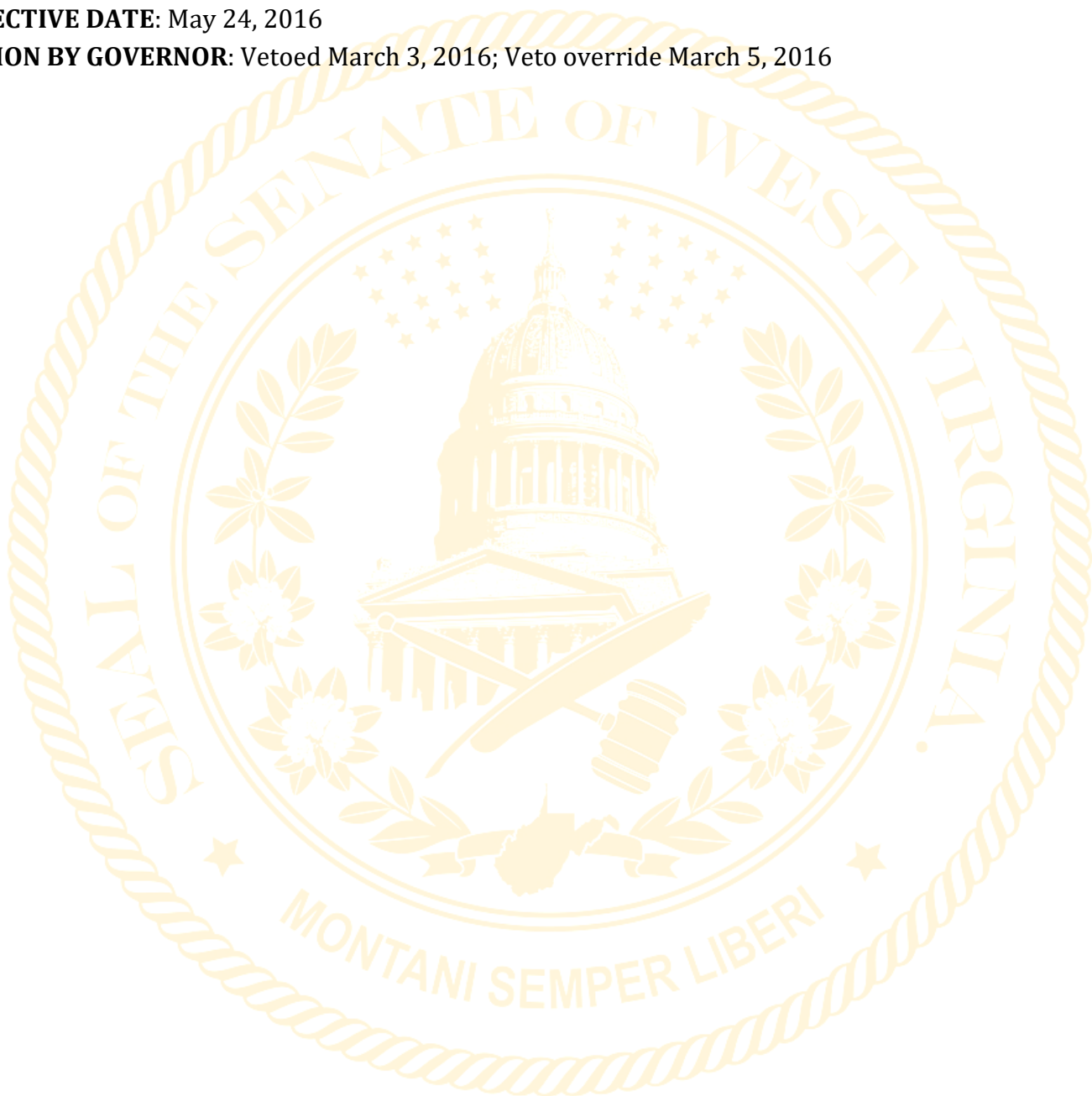
Lastly, the bill provides that nothing in the article should be construed to abrogate or modify statutory provisions and common law decisions related to defense of self or others.

CODE REFERENCE: West Virginia Code §20-2-6a – repealed; §61-7-3, §61-7-4, §61-7-6, §61-7-7, and §61-7-11a – amended; §61-7-4a, §61-7-15a, and §61-7-17 – new

DATE OF PASSAGE: February 24, 2016

EFFECTIVE DATE: May 24, 2016

ACTION BY GOVERNOR: Vetoed March 3, 2016; Veto override March 5, 2016



House Bill 4171

Relating to the public school calendar

This bill removes the requirement for “one hundred eighty separate instructional days,” by deleting the word “separate” throughout the bill. It provides that the instructional term for students shall begin no earlier than August 10th and no later than June 10th of each calendar year, with the exception of schools operating on a balanced calendar.

The bill stipulates that the preparation day at the beginning of the school calendar is reserved for classroom preparation and collaborative meetings and may only be used for other purposes if agreed to by the teacher. It changes the number of faculty senate days from four to six to match state board policy. It further adds flexibility in scheduling faculty senate meetings from “once at least every 45 instructional days” to once in the first month of school, once in the last month of school, and once in the months of October, December, February, and April.

The bill provides that additional minutes of instruction be used to recover time lost due to early dismissals or late arrivals first. It adds the provision that the remaining accrued minutes may be used for instructional minutes or days lost due to inclement weather or emergencies, provided that any reimagining student instructional days awarded by the state board must be used prior to using accrued time for instructional days.

CODE REFERENCE: West Virginia Code §18-5-45 – amended

DATE OF PASSAGE: March 9, 2016

EFFECTIVE DATE: March 9, 2016

ACTION BY GOVERNOR: Vetoed April 1, 2016

House Bill 4174

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

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.

CODE REFERENCE: West Virginia Code §20-5-58 and §61-6-23 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

House Bill 4175

Relating generally to home schooling

This bill:

- Provides that a home schooled student is not subject to prosecution nor is the student a status offender.
- Requires a showing of probable cause before a county superintendent can seek an order denying home instruction of the child.
- Changes requirement that notice to provide home instruction be provided annually to requiring that the notice be provided upon commencing home instruction.
- Removes requirement that notice of instruction include the grade level of the child.
- Requires that notice of intent include assurance that the child will receive instruction in reading, language, mathematics, science and social studies and that the child will be assessed annually.
- Requires that the person providing home instruction notify the county superintendent upon termination of home instruction for a child who is of compulsory attendance age.
- Requires that, upon establishing residence in a new county, the person providing home instruction notify the previous county superintendent and submit a new notice of intent to the superintendent of the new county of residence.
- Replaces the requirement that a child enrolled in a public school give notice of intent to provide home instruction at least two weeks prior to withdrawing the child from public school with the requirement that notice be given on or before the date home instruction is to begin.
- Modifies the requirement that the person providing home instruction submit satisfactory evidence of a high school diploma or equivalent by also allowing a person to provide home instruction if he or she possesses a postsecondary degree or certificate from a regionally accredited institution or from an institution of higher education that has been authorized to confer a post-secondary degree or certificate in West Virginia by the Council for Community and Technical College Education or by the Higher Education Policy Commission.
- Removes requirement that the person providing home instruction outline a plan of instruction for the ensuing school year.
- Replaces the requirement that the results of the academic assessment be submitted to the county superintendent annually with the requirement that the results be submitted at grade levels three, five, eight and eleven, as applicable, by June 30 of the year in which the assessment was administered. The requirement that the academic assessment be obtained annually remains.
- Removes the requirement that the parent or legal guardian pay the cost when the academic assessment takes place outside of a public school.
- Relating to the nationally normed standardized achievement test academic assessment option, modifies the requirement that an achievement test be published not more than ten years from the date of administration by also allowing the test to have been normed not more than ten years from the date the test is administered; removes requirement that the test be administered under standardized conditions; requires that the test be administered by a person qualified in accordance with the test's published guidelines; removes prohibition against the child's parent or legal guardian from administering the test; changes the threshold for acceptable progress from meeting or

exceeding the 50th percentile or showing improvement from the previous year to being within or above the fourth stanine or showing improvement.

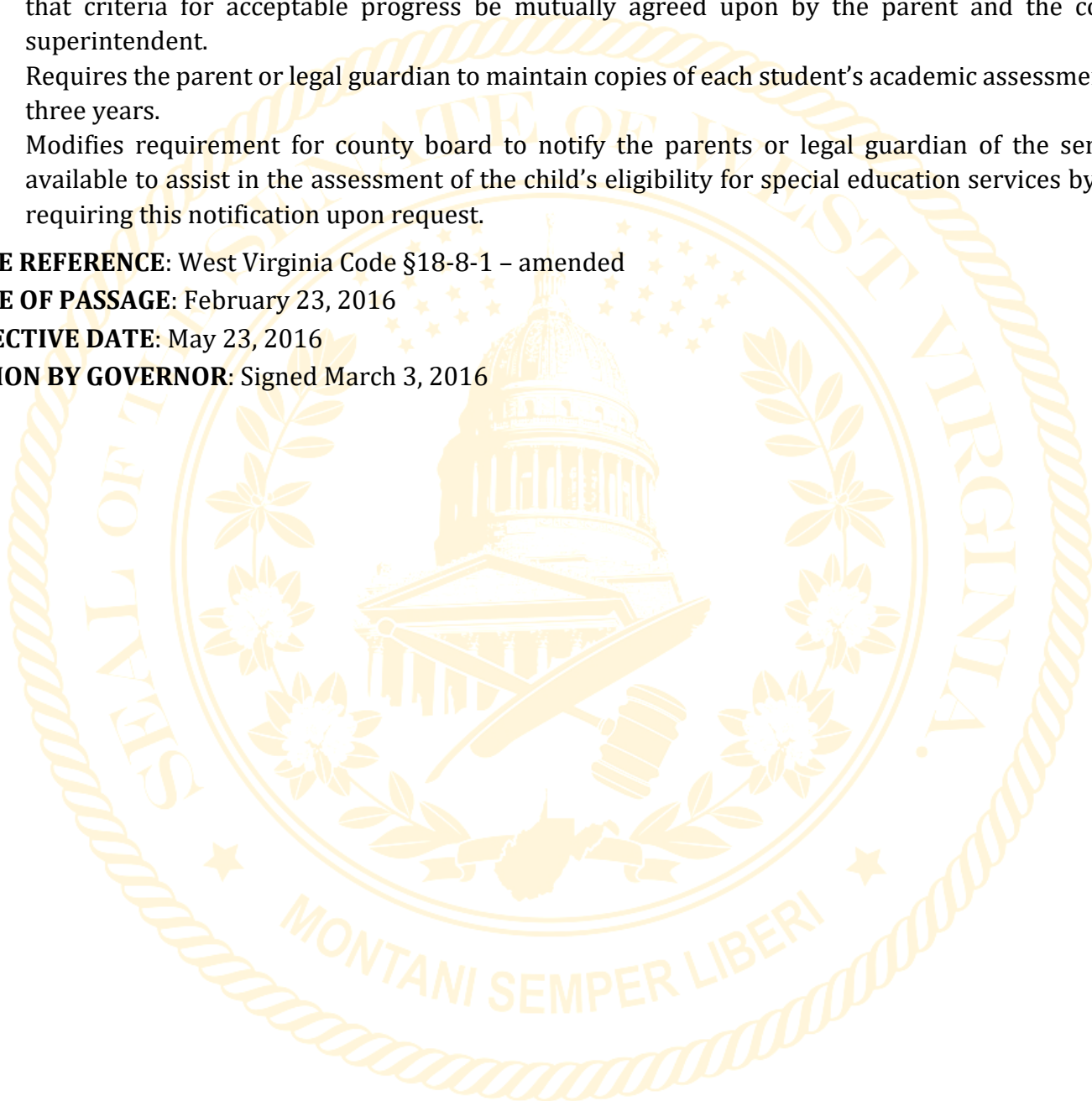
- Relating to the portfolio assessment option, removes requirement that the teacher's certification number be provided.
- Relating to the alternative academic assessment of proficiency option, removes the requirement that criteria for acceptable progress be mutually agreed upon by the parent and the county superintendent.
- Requires the parent or legal guardian to maintain copies of each student's academic assessment for three years.
- Modifies requirement for county board to notify the parents or legal guardian of the services available to assist in the assessment of the child's eligibility for special education services by only requiring this notification upon request.

CODE REFERENCE: West Virginia Code §18-8-1 – amended

DATE OF PASSAGE: February 23, 2016

EFFECTIVE DATE: May 23, 2016

ACTION BY GOVERNOR: Signed March 3, 2016



House Bill 4225

Relating to patriotic displays at public buildings

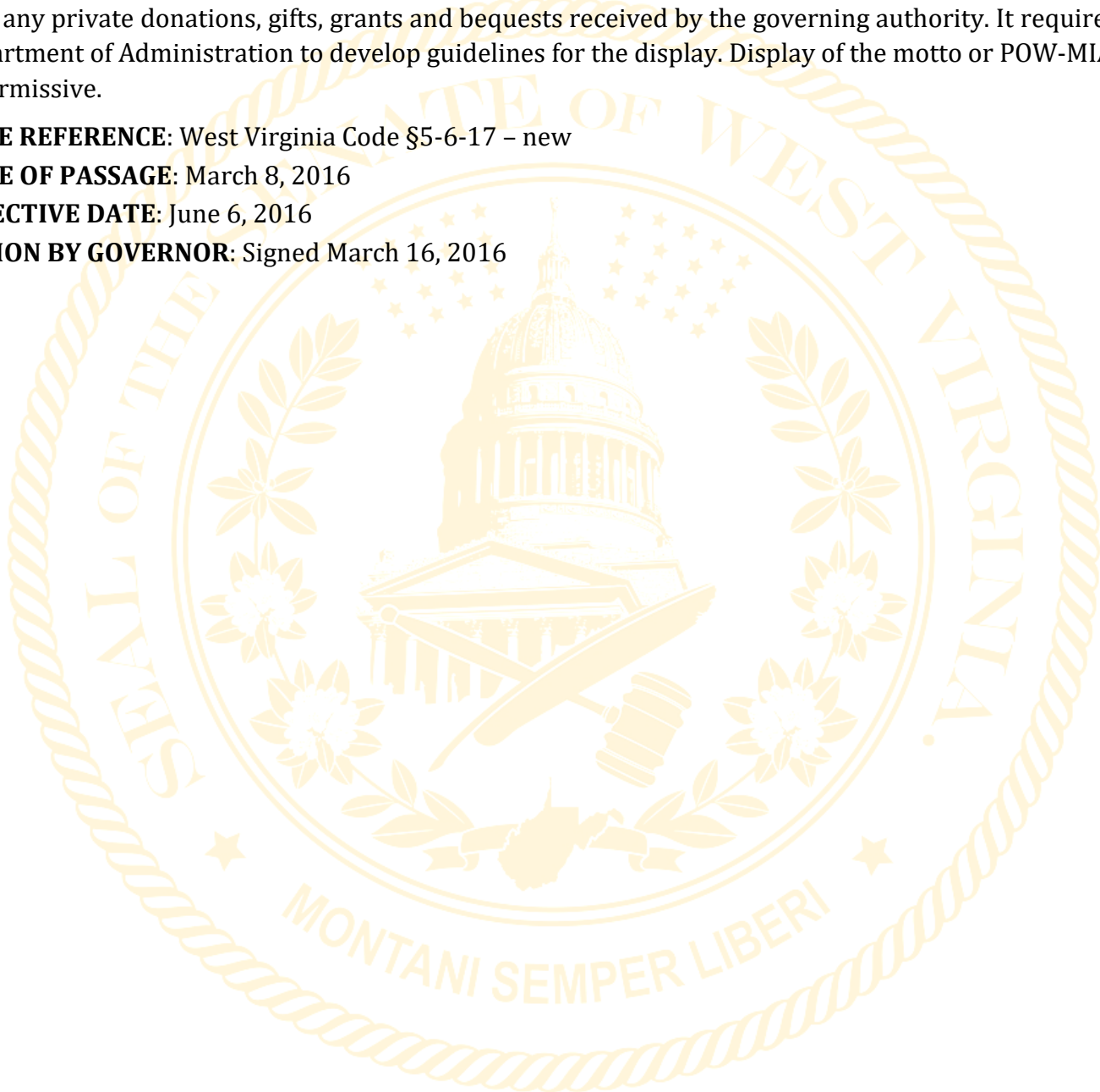
This bill authorizes the governing authority of any public property, public building and any buildings designed, constructed and maintained with public funds display the national motto, "In God We Trust," and the POW-MIA flag. Costs associated with the display of the motto and the POW-MIA flag may be paid for with any private donations, gifts, grants and bequests received by the governing authority. It requires the Department of Administration to develop guidelines for the display. Display of the motto or POW-MIA flag is permissive.

CODE REFERENCE: West Virginia Code §5-6-17 – new

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: June 6, 2016

ACTION BY GOVERNOR: Signed March 16, 2016



House Bill 4237

Supporting and Strengthening Families Act

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.

CODE REFERENCE: West Virginia Code §49-8-1 through §49-8-6 – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

House Bill 4279

Relating to disposition of seized firearms

This bill clarifies the procedure for disposition of seized firearms. DNR officers are empowered to impound property found in the possession of an accused and susceptible of use in committing the offense. If the accused is not acquitted or fails to pay any fines and penalties, the law directs that the property shall be sold at public auction as the director prescribes. Also, when a person is convicted of a second violation, the property seized at the time of the arrest is declared forfeited to the state and may be sold. Under this bill, the director is required to dispose of firearms in accordance with the Unclaimed Stolen Property Held by Law-Enforcement Agencies statute, §36-8A-1 et seq. This statute allows the Treasurer to dispose of firearms after a determination that the firearm does not need to be returned to an innocent owner. The Treasurer can trade the firearms or sell them at public auction to collectors, dealers, importers or manufacturers only (in accordance with federal law).

CODE REFERENCE: West Virginia Code §20-7-8 – amended

DATE OF PASSAGE: March 7, 2016

EFFECTIVE DATE: June 5, 2016

ACTION BY GOVERNOR: Signed March 10, 2016

House Bill 4307

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

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.

CODE REFERENCE: West Virginia Code §20-2-5 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

House Bill 4365

Relating to the certificate of need process

The Certificate of Need program was originally enacted in 1977 to comply with a federal mandate to ensure the state continue receiving federal funds for health planning. 35 states have some form of CON. But for PA all of our border states have some type of CON.

Currently, Certificate of need requires health care providers, to obtain a CON before 1) adding or expanding health care services, 2) exceeding the capital expenditure threshold 3) obtaining major medical equipment valued at or more than the capital expenditures threshold, or 4) developing or acquiring new health care facilities. West Virginia currently requires CON for 26 health services.

The CON review process includes the determination of need, consistency with the State Health Plan, and financial feasibility. Need is determined using CON Standards, which generally include population-based quantifiable need methodologies. Financial feasibility includes the evaluation of the reasonableness of proposed charges to patients and the determination as to whether the expense and revenue projections demonstrate fiscal viability for the proposed project. Other review criteria include quality, accessibility, and continuum of care.

This bill modernizes the Certificate of Need Process.

Specifically, the major change is the establishment of deadlines which will enable to process to proceed to a timely decision. Excluding the number of days an administrative hearing will take the process to obtain a CON from the HCA will conclude in about 205 days. That process is as follows:

- Submit a letter of intent 10 days prior to submitting the certificate of need application.
- The authority shall determine if the submitted application is complete within 10 days of receipt of the application.
- Within 5 days of receipt of a letter of intent, the authority shall provide notification to the public through a newspaper of general circulation in the area where the health service is being proposed and by placing of copy of the letter of intent on its web site.
- The authority may batch completed applications for review on the fifteenth day of the month or the last day of month in which the application is deemed complete.
- When the application is submitted, 10 days after filing the letter of intent, the application shall be placed on the authority's web site.
- An affected party has 30 days starting from the date the application is batched to request the authority hold an administrative hearing.
- A hearing order shall be approved by the authority within 15 days from the last the day an affected person may requests an administrative hearing on a certificate of need application.
- A hearing shall take place no later than 3 months from that date the hearing order was approved by the authority.
- The authority shall render a decision within 45 days of the conclusion of the administrative hearing.
- The hearing shall be held in accordance with the APA.

There is also a new exemption process. The authority has 30 days to review the exemption request. The authority may not hold an administrative hearing to review the application. An affected party may not

file an objection to the request for an exemption. The applicant may request or agree with the authority to a 15 day extension of the timeframe. If the authority does not approve or deny the application within 45 days, then the exemption is immediately approved. If the authority denies the approval of the exemption, the applicant may appeal the authority's decision to the Office of Judges or refile the application with the authority.

A couple of examples of exemptions that are added to the process include:

- A 250K CT scanner;
- Buying or selling skilled nursing facilities;
- Increases the threshold from 3.1M to 5M
- The replacement of major medical equipment with like equipment;
- Renovations within a hospital within its current square footage;
- Renovations to a skilled nursing facility;
- The establishment by a licensed West Virginia hospital of an ambulatory health care facility in the county in which it is located and in a contiguous county within or outside this state;
- The donation of major medical equipment to replace like equipment;
- The Establishment of community mental health and intellectual disability facility;
- Providing behavioral health services;
- The transfer or acquisition of nursing home beds
- Any nonhealth related projects; and
- The establishment of an alcohol or drug treatment facility and drug and alcohol treatment services.

CODE REFERENCE: West Virginia Code §16-2D-4a, §16-2D-4b, §16-2D-5a, §16-2D-5b, §16-2D-5c, §16-2D-5d, §16-2D-5e and §16-2D-7a – repealed; §16-2D-1 through §16-2D-15 – amended; §16-2D-16 through §16-2D-20 – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION OF GOVERNOR: Signed March 24, 2016

House Bill 4561

Creating a special hiring process for West Virginia Division of Highways employees

This bill requires the Commissioner of the West Virginia Division of Highways and the Director of the West Virginia Division of Personnel to collaborate to develop a special merit-based hiring procedure for hourly Division of Highways personnel positions, to go into effect January 1, 2017, which must meet the following requirements:

The new hiring procedure may not require the DOH to post a position to be filled internally for any longer than one week; and, for positions to be filled from outside of the division, for not more than 14 calendar days before selecting an applicant for the position.

The procedure shall allow a new employee to begin work no later than four weeks after the Division offers the position to the employee.

The bill exempts the Division of Highways from Division of Personnel classified service procedures for applications and appointments to hourly personnel positions, except for two provisions in the article:

- §29-6-20, prohibiting favoritism or discrimination and prohibitions relating to political activity; and
- §29-6-20-fraudulent acts relating to testing or appointment, including bribery or extortion to be hired or promoted, etc. obstruction of any person in his or her right to apply for a position, etc.

The bill also provides for the DOH Commissioner and Division of Personnel Director to jointly promulgate emergency as well as legislative rules to carry out the provisions of the section.

The Commissioner of DOH shall report to the Joint Committee on Government and Finance regarding DOH's compliance with this section by October 1, 2016.

CODE REFERENCE: West Virginia Code §29-6-4a – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Vetoed April 1, 2016

House Bill 4618

Relating to limitations on use of a public official's name or likeness

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.

CODE REFERENCE: West Virginia Code §6B-2-5c – repealed; §6B-2B – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

2015 Regular Session



Senate Bill 19

Specifying minimum early childhood education program instruction days.

For school years beginning on and after the 2016-2017 school year, this bill reduces the minimum number of instructional days per week for early childhood education programs from five to four; requires a minimum of 1,200 minutes of instruction per week; and a minimum of 146 instructional days per year. For school years beginning on and after the 2016-2017 school year, State Board of Education policy currently requires an instructional day of 300 minutes and 160 instructional days per year.

CODE REFERENCE: West Virginia Code §18-5-44 – amended

DATE OF PASSAGE: March 13, 2015

EFFECTIVE DATE: June 11, 2015

ACTION BY GOVERNOR: Vetoed April 1, 2015

Senate Bill 30

Permitting shared animal ownership agreement to consume raw milk

This bill permits persons to share ownership in a milk producing animal for the purposes of being able to consume raw milk. It requires a written agreement between both parties when he or she acquires a percentage ownership in the milk producing animal. The agreements shall be reported to the Department of Agriculture. The seller is required to meet state and federal standards set by the state veterinarian for animal health requirements for milk producing animals. A physician who diagnoses an illness related to the consumption of raw milk shall report the instance to their local health department. The Commissioner of Agriculture shall submit legislative rule to implement the provisions of this bill.

CODE REFERENCE: West Virginia Code §19-1-7 – new

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: June 10, 2015

ACTION BY GOVERNOR: Vetoed April 1, 2015

Senate Bill 274

Relating to TANF program

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

CODE REFERENCE: West Virginia Code §9-9-11 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

Senate Bill 284

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

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

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

CODE REFERENCE: West Virginia Code §61-7-16 – new

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: June 10, 2015

ACTION BY GOVERNOR: Signed April 3, 2015

Senate Bill 286

Relating to compulsory immunizations of students; exemptions

This bill updates the compulsory immunizations requirements. The immunizations are required for a child or person to be admitted into a school or a state regulated child care center. These immunizations are chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough. The immunizations required are the same as those that are required by interpretive rule.

The bills changes the appeals process for a child needing to obtain a waiver from an vaccination. The current appeals process goes through the local public health official. This new process will go through an immunization officer within the Bureau for Public. A decision from the immunization officer may be appealed to the State's Chief health officer. His or her decision may be appealed to the circuit courts.

Adds a pharmacist to the Immunization advisory committee. Prohibits a person from voting on an issue in which he or she has direct or predictable effect on his or hers financial interest.

CODE REFERENCE: West Virginia Code §16-3-4 and §16-3-5 (Amended)

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 16, 2015

ACTION BY GOVERNOR: Vetoed March 18, 2015; repassed to meet objections of Governor March 18, 2015

Senate Bill 347

Creating Firearms Act of 2015

This bill creates the Firearms Act of 2015 by:

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

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

CODE REFERENCE: West Virginia Code §20-2-5, §20-2-6a, §61-7-3, §61-7-4 and §61-7-6 – amended; §61-7-7a – new

DATE OF PASSAGE: March 13, 2015

EFFECTIVE DATE: June 11, 2015

ACTION BY GOVERNOR: Vetoed March 20, 2015

Senate Bill 361

Eliminating prevailing hourly wage requirement for construction of public improvements

The bill changes the methodology for determining the prevailing wage rate and transfers the authority over determination and publication of the prevailing wage rate. It removes the definition of locality and adds a definition for “regions of the state”, “public money” and “wages”. The bill transfers the duties to determine and publish prevailing wage rates to Workforce West Virginia and establishes a threshold of \$500,000 in contract cost before prevailing wage rates apply. It removes the requirement that fair minimum rate of wages include a fair minimum overtime and holiday pay.

With respect to determination of the rate, the bill requires Workforce West Virginia, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University, to investigate and determine the prevailing hourly rate of wages based upon the regions of this state using all appropriate economic data, including, but not limited to, the U. S. Bureau of Labor Statistics.

The bill sets out a time line for determining the methodology and calculating the wage rates for 2015 and provides for a review of the methodology by the Joint Committee on Government and Finance.

The bill provides that if the July 1, 2015 deadline for determination of prevailing rates of wages is not met, then no prevailing wage rates will be in place until the determination is made. Beginning in September 2018 and every three years thereafter, Workforce West Virginia is required to review the methodology with WVU and Marshall and make recommendations to the Joint Committee on Government and Finance who will recommend legislative changes if needed.

The bill provides that any confidential, individual proprietor-level data submitted to Workforce West Virginia, the West Virginia University Bureau of Business and Economic Research or the Center for Business and Economic Research at Marshall University for the purpose of determining the prevailing rates may not be used for any purpose other than the calculation of the prevailing wage rates. However, the data must be made available for purposes of the appeals process.

The bill provides for emergency rule making authority and adds that Workforce West Virginia shall include in its rule making the definition of “regions of the state” as provided in the article.

CODE REFERENCE: West Virginia Code §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6, §21-5A-8, §21-5A-10 and §21-5A-11 – amended; §21-5A-12 – new

DATE OF PASSAGE: March 4, 2015

EFFECTIVE DATE: April 13, 2015

ACTION BY GOVERNOR: Signed March 12, 2015

Senate Bill 409

Creating Fair and Open Competition in Governmental Construction Act

This bill creates the “Fair and Open Competition in Governmental Construction Act” which prohibits project labor agreements from being part of the competitive bid process on state and political subdivision construction projects. It also prohibits project labor agreements from being a condition for receiving a grant, tax abatement or tax credit for construction projects. There are definitions, exclusions and an exemption process set out in the bill.

CODE REFERENCE: West Virginia Code §5-22-3 – new

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: June 10, 2015

ACTION BY GOVERNOR: Signed March 26, 2015

Senate Bill 447

Allowing issuance of diploma by public, private or home school administrator

This bill allows a person who administers a program of secondary education at a public, private, or home school that meets the requirements of chapter 18 to issue a diploma or other appropriate credential to a person who has completed the program of secondary education. The bill declares that the credential is legally sufficient to demonstrate that the person meets the definition of having a high school diploma or its equivalent. State agencies and institutions of higher learning in this state are prohibited from rejecting or otherwise treating a person differently solely on the grounds of the source of the diploma or credential. The bill also provides that nothing prevents any agency or institution of higher learning from inquiring into the substance or content of the program to assess the content of the program for the purposes of determining whether a person meets other specific requirements.

CODE REFERENCE: West Virginia Code §18-8-12 – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 16, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

House Bill 2001

All relating to repealing certain provisions of the Alternative and Renewable Energy Portfolio Act

This bill repeals, in its entirety, the Alternative and Renewable Energy Portfolio Act, Article 2F of Chapter 24; except for one section: §24-2F-8. The provisions to be repealed mandated the Public Service Commission to establish a system of tradable credits stemming from the established, verified and monitored generation and sale of electricity generated from alternative and renewable energy resource facilities, as defined by section three of the article to be available for electrical power generators to trade, sell or otherwise be used to meet the portfolio standards established by section five of the article. Thus, the amount of energy allowed to be generated by non-alternative and nonrenewable means was -capped- and a marketplace to -trade- credits set up; giving rise to the name “cap and trade.”

The effect of the bill as introduced was to completely repeal all of the provisions of this article. This Committee Substitute was drafted to address concerns raised in the Energy Committee regarding the effect of repeal of certain provisions on net metering and interconnectivity.

Accordingly, the Committee Substitute left intact Section 8 of the Article, in order to preserve Public Service Commission rules concerning the provision of a rebate or discount for the electric utilities to provide to customer-generators for any electricity generation that is delivered to the utility under a net metering arrangement. A companion originating bill, HB 2201, adds definitional language back to that section.

CODE REFERENCE: West Virginia Code §24-2F-1 through §24-2F-12

DATE OF PASSAGE: January 22, 2015

EFFECTIVE DATE: January 22, 2015

ACTION BY GOVERNOR: Signed February 3, 2015

House Bill 2004

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

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

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

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

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

CODE REFERENCE: West Virginia Code §22-5-20 – amended

DATE OF PASSAGE: February 19, 2015

EFFECTIVE DATE: February 19, 2015

ACTION BY GOVERNOR: Signed March 3, 2015

House Bill 2005

Relating to alternative programs for the education of teachers

This bill reorganizes and revises current law governing the certification of teachers through an alternative education program. Under current statute, two provisions, §18A-3-1a and §18A-3-1b, govern these alternative programs. This bill reorganizes the alternative certification program into nine provisions, §18A-3-1a through §18A-3-1i. Under current law, the State Superintendent of Schools may issue a professional teaching certificate to a person who meets certain qualifications through what one might call the standard program for teacher education. The State Superintendent may also issue a professional teaching certificate to a person who successfully completes an alternative program for teacher education. The bill revises the processes by which schools and school districts may create and operate these alternative education programs, and makes changes to other provisions governing teacher education programs, in the detail set forth below.

§18A-3-1 - This section, which governs teacher education programs generally, adds language allowing teachers from other states to be awarded a teaching certificate if he or she has graduated from “an educator preparation program,” and deletes language recognizing beginning teacher “internship” programs.

§18A-3-1a - This section is amended to describe the purpose and provide definitions for the reorganized Article 3. The following current law provisions are deleted from this section: the authority of RESAs to offer an alternative program (although a school or school district may still partner with a RESA if approved by the State Board); the preference to applicants who hold a valid West Virginia professional teaching certificate when considering applicants for alternative teacher programs; the requirement that the applicant’s bachelor’s degree be “in a discipline taught in the public schools;” the three-phase period of instruction required of participants during the program; and the specific structure required of professional support teams.

§18A-3-1b - This section authorizes a school district or one or more schools to form a partnership with other entities to provide an alternative program, and set forth the requirements for partnership agreements. A partnership shall include at least one of the following: 1) An institution of higher education with an accredited program for the education of professional educators that has been approved by the State Board; 2) an entity affiliated with an institution of higher education that has an accredited program for the education of professional educators that has been approved by the State Board; 3) the WV Department of Education; or 4) a regional education service agency.

§18A-3-1c - This new section requires a minimum of 6 credit hours or 6 staff development hours in specified courses of instruction during the alternative program teacher’s participation in the program. It permits the State Board of Education to provide a professional support team for the program to train, supervise and evaluate a participating teacher. The section also limits tuition and other charges that may be imposed on participating teachers.

§18A-3-1d - This new section directs the State Board to promulgate legislative rules governing the approval and operation of the alternative programs after consulting with the Secretary of Education and the Arts and the Higher Education Chancellor and submitting its proposed rules to the Legislative Oversight Commission on Education Accountability (LOCEA) for review.

§18A-3-1e - This new section provides the circumstances under which the State Board will approve a partnership's application to operate an alternative program for teachers. Approval would be necessary before a partnership may operate a program or extend an offer of employment to a prospective teacher. Furthermore, employment in a program would not be permitted if the participating teacher is not making satisfactory progress.

§18A-3-1f - This new section establishes the eligibility criteria that must be met to receive an alternative program teacher certificate that would be issued by the State Superintendent of Schools; the participating teacher would need this certificate in order to participate in an alternative program. The section also requires annual renewal of the contract of a participating teacher who is making satisfactory progress in the program, except that if there is a reduction in the school or school district's "overall number of teachers," education providers maintain seniority over alternative program participants.

§18A-3-1g - This section originates from the current §18A-3-1a. The bill reestablishes the current code language, with minor revisions, in this new section. This section establishes guidelines for providing a special type of alternative program known as an "alternative program for highly qualified special education teachers."

§18A-3-1h - This section originates from the current §18A-3-1a. The bill reestablishes the current code language, with minor revisions, in this new section. This section establishes guidelines for providing a special type alternative program known as an "additional alternative program to prepare highly qualified special education teachers."

§18A-3-1i - This new section requires the alternative program partnership, also referred to as the approved education provider, to prepare and submit to the State Superintendent of Schools a comprehensive evaluation report on the alternative program teacher's performance, including a recommendation as to whether or not a professional teaching certificate should be issued to the participating teacher. If the teacher disagrees with the recommendation, the teacher may appeal to the State Board. This language is current law that the amendment would move to this new section from where it is currently set forth in §18A-3-1b, which the amendment would rewrite as described above.

§18-3-2a - This section permits the State Superintendent of Schools to issue state professional teaching certificates to those licensed by other states, and to those who have completed alternative programs of other states, if these applicants meet other requirements. The section is gives schools authority to hire the most qualified athletic coaches to serve in the best interest of student-athletes.

CODE REFERENCE: West Virginia Code §18A-3-1, §18A-3-1a, §18A-3-1b and §18A-3-2a – amended; §18A-3-1c, §18A-3-1d, §18A-3-1e, §18A-3-1f, §18A-3-1g, §18A-3-1h and §18A-3-1i – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

House Bill 2008

Auditing the Division of Highways

The bill requires an independent audit of the Division of Highways. The final report of the audit would be due to the Governor, House of Delegates and Senate by December 31, 2015. The audit would be performed by a firm selected on a competitive bid basis and having not been under contract with the state for the preceding 5 years. The performance audit may include but not be limited to: vehicle usage, compensation and staffing, procurement practices, and performance benchmarks. The cost of the audit would come from Joint Committee. The audit would encompass all districts within the agency.

CODE REFERENCE: West Virginia Code §17-2A-6a – new

DATE OF PASSAGE: February 20, 2015

EFFECTIVE DATE: April 21, 2015

ACTION OF GOVERNOR: Signed February 25, 2015

House Bill 2128

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

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

CODE REFERENCE: West Virginia Code §61-6-19 – amended

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: June 10, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

House Bill 2157

Relating to absentee ballot fraud

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

CODE REFERENCE: West Virginia Code §3-9-19 – amended

DATE OF PASSAGE: March 3, 2015

EFFECTIVE DATE: June 1, 2015

ACTION BY GOVERNOR: Signed March 11, 2015

House Bill 2187

Encouraging public officials to display the national motto on all public property and public buildings

The bill encourages the prominent display of the national motto, "In God We Trust" and the display of POW-MIA flags on all public buildings. The costs associated with the display of the motto and POW-MIA flags may be paid for with any private donations, gifts, grants and bequests received by the governing authority. The bill specifies that the State Building commission shall develop guidelines for the display.

CODE REFERENCE: West Virginia Code §5-6-17 – new

DATE OF PASSAGE: March 12, 2015

EFFECTIVE DATE: June 10, 2015

ACTION BY GOVERNOR: March 26, 2015

House Bill 2223

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

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

CODE REFERENCE: West Virginia Code §29A-3-16 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

House Bill 2502

Possessing deadly weapons on school buses or on the premises of educational facilities

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

This bill:

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

CODE REFERENCE: West Virginia Code §61-7-11a – amended

DATE OF PASSAGE: March 11, 2015

EFFECTIVE DATE: June 9, 2015

ACTION BY GOVERNOR: Signed March 27, 2015

House Bill 2568

The Pain-Capable Unborn Child Protection Act

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

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

§16-2M-2 defines a number of terms used throughout the article.

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

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

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

§16-2M-6 delineates penalties for violations of this article. For physicians and licensed medical practitioners, violating the article would be treated as acting outside the scope of practice, making them subject to discipline from the applicable licensure board. For non-licensed medical practitioners, violations of this article would be considered the unauthorized practice of medicine, which would be a misdemeanor. The penalties for that unauthorized practice could a \$5,000 fine and/or up to twelve months

in jail. The bill does not limit available remedies by a patient, and further ensures that the patient herself is not subject to any penalties or criminal sanctions.

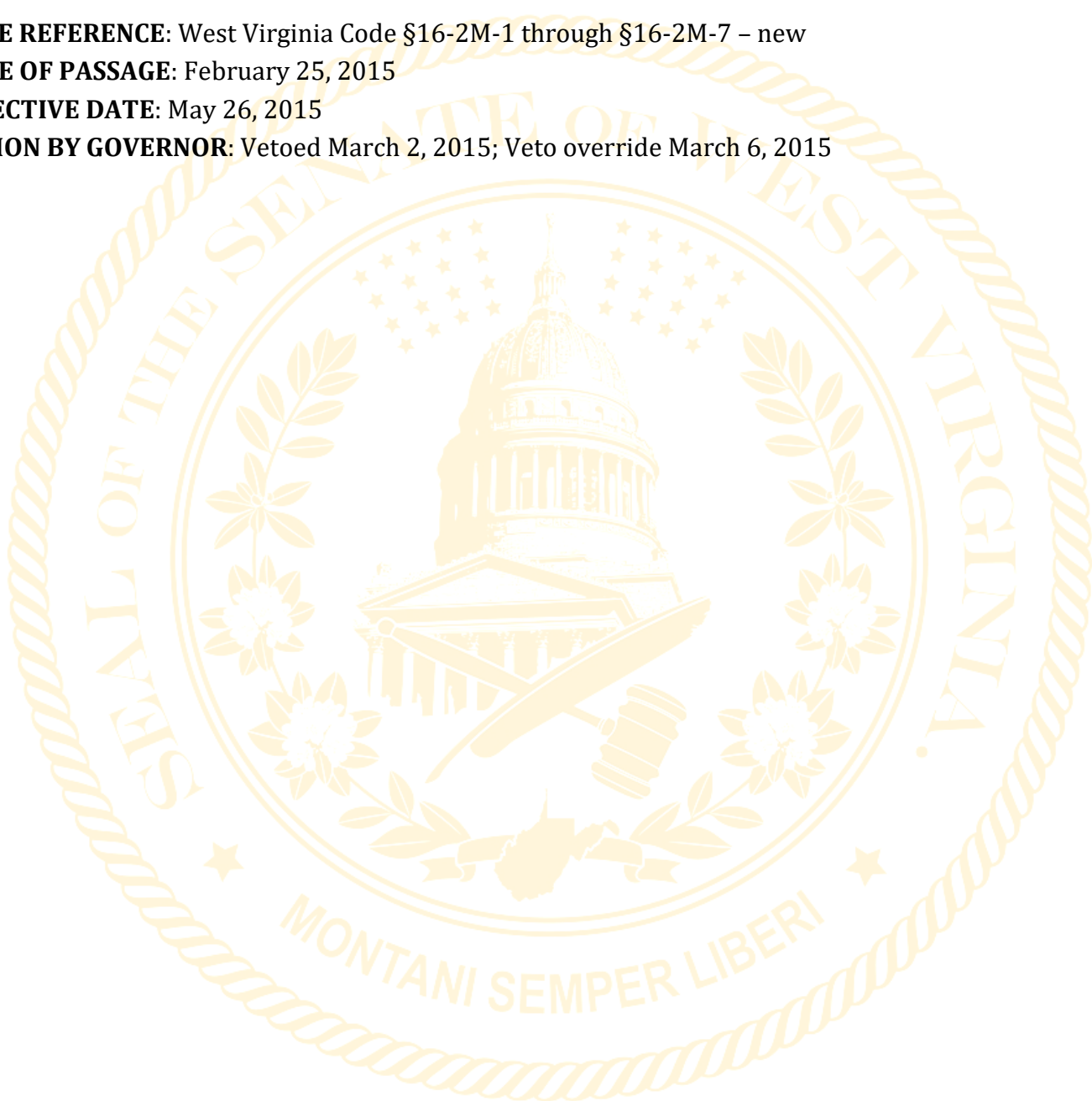
Finally, §16-2M-7 provides explicitly for severability of any portion of the article that is “found to be unconstitutional or temporarily or permanently restrained or enjoined by judicial order, or both,” and to allow for the remainder of the article to remain in effect.

CODE REFERENCE: West Virginia Code §16-2M-1 through §16-2M-7 – new

DATE OF PASSAGE: February 25, 2015

EFFECTIVE DATE: May 26, 2015

ACTION BY GOVERNOR: Vetoed March 2, 2015; Veto override March 6, 2015



House Bill 2636

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

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

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

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

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

CODE REFERENCE: West Virginia Code §29B-1-2, §29B-1-3, §29B-1-4 and §61-7-4 – amended; §29B-1-3a – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed April 1, 2015

House Bill 2674

Making home schooled students eligible for a PROMISE scholarship without taking the GED test

Previous code required home school students to obtain a general equivalency degree in order to qualify for the PROMISE scholarship. The bill removes this requirement for home school students and extends PROMISE scholarship eligibility to any student who earns a “high school equivalency certificate” and timely applies for the scholarship. The bill substitutes “high school equivalency certificate” for “general equivalency degree” in order to reflect the fact that the accepted term for this educational attainment may change from time to time.

The effect of this bill is to place home school students and students who earn a high school equivalency certificate on the same plane as students who graduate from public or private schools. All students must satisfy the general requirements for eligibility, including the objective criteria established by the Higher Education Policy Commission. The commission presently requires successful applicants to score at least 22 on the ACT or 1020 on the SAT.

CODE REFERENCE: West Virginia Code §18C-7-6 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: March 14, 2015

ACTION BY GOVERNOR: Vetoed April 1, 2015

House Bill 2793

Relating to exemptions from mandatory school attendance

This bill makes the following changes relating to the home school exemption:

- Provides that a parent or legal guardian of a child who is exempt from compulsory school attendance is not subject to prosecution nor is the child a status offender.
- Requires leave of the circuit court and a showing of probable cause before the county superintendent can petition the circuit court of the county for an order denying home instruction.
- Changes requirement that notice to provide home instruction be provided annually to requiring that the notice be provided upon commencing home instruction.
- Removes requirement that notice include the grade level of the child.
- Removes requirement that if the child is enrolled in a public school, notice of intent to provide home instruction be given at least two weeks prior to withdrawing the child from public school.
- Requires notice to include assurance that the child shall receive instruction in reading, language, mathematics, science and social studies and that the child be assessed annually.
- Requires that the person providing home instruction notify the county superintendent or county board upon termination of home instruction for a child who is of compulsory attendance age.
- Requires that, upon establishing residence in a new county, the person providing home instruction notify the previous county superintendent or county board and submit a new notice of intent to the superintendent or county board of the new county of residence.
- Modifies requirement for submitting satisfactory evidence of a high school diploma by requiring the evidence to be submitted with the notice to provide home instruction and explicitly allowing the high school diploma to be from a public school, private school, or a homeschool.
- Removes requirement that home instructor outline a plan of instruction for the ensuing school year.
- Removes the requirement that when the academic assessment takes place outside of a public school, the parent or legal guardian pay the cost.
- Amends provisions relating to meeting the assessment requirement through a nationally normed standardized achievement test as follows:
 - Replaces the requirement that the publication date of the chosen test not be more than ten years from the date the test is administered with the requirement that the test be normed not more than ten years from the date of administration.
 - Requires that the test be administered by a person qualified in accordance with the test's published guidelines.
 - Removes prohibition against the child's parent or guardian administering the test.
 - Replaces the requirement that the child's test results meet or exceed the 50th percentile with the requirement that the test results be within or above the average range for that test.
- Relating to meeting the assessment requirement through a portfolio of samples of the child's work, removes requirement that a written narrative be provided to the county superintendent relating to the child's academic progress. The bill also removes language providing that if the narrative indicates that the child's academic progress for the year is in accordance with the child's abilities, the child is considered to have made acceptable progress.

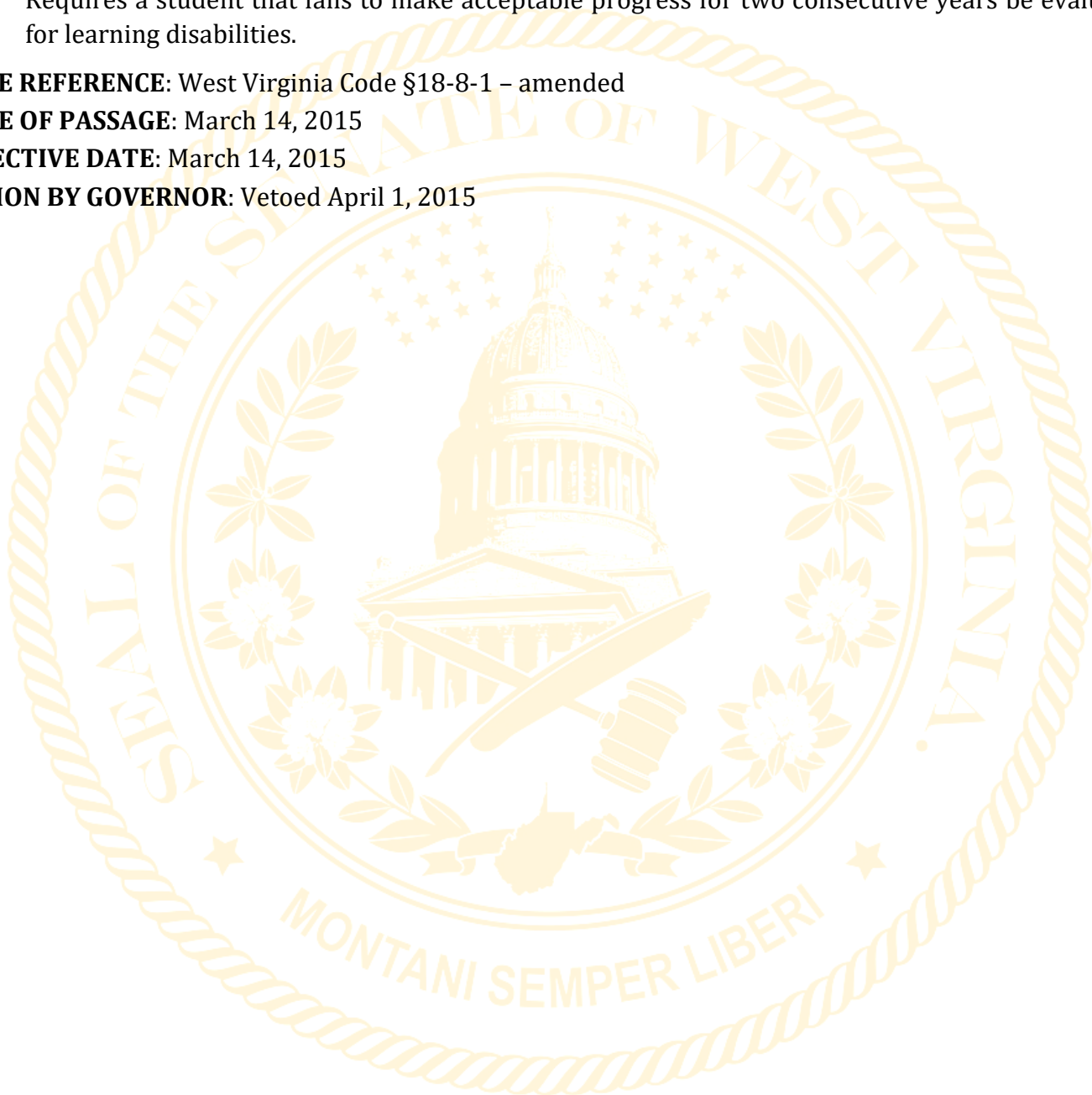
- Relating to meeting the assessment requirement through an alternative academic assessment, removes the requirement that criteria for acceptable progress be mutually agreed upon by the parent or guardian and the county superintendent.
- Requires a parent or guardian maintain copies of each student's academic assessment for three years.
- Requires a student that fails to make acceptable progress for two consecutive years be evaluated for learning disabilities.

CODE REFERENCE: West Virginia Code §18-8-1 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: March 14, 2015

ACTION BY GOVERNOR: Vetoed April 1, 2015



House Bill 2840

Providing an alternative plan to make up lost days of instruction

This committee substitute authorizes county boards of education to provide instruction to students during emergency closures under an alternative plan to make up lost days of traditional instruction in a manner that meets the instructional day and time requirements for not more than 4 instructional days of accumulated time. This allows the board to maintain compliance in reaching the mandatory 180 instructional days without being required to repurpose other days or add additional days of instruction.

An “emergency closure” means hours or days during the instructional term when it is necessary to close schools for disease, epidemic, hazardous weather conditions, law-enforcement emergencies, inoperability of school buses or other equipment necessary to the school’s operation, damage to a school building, or other temporary circumstances due to utility failure rendering the school building unfit for school use.

The committee substitute provides that a county board may submit a plan for providing instruction during emergency closures and sets for the criteria to be included in that plan. These options may include lessons on electronic devices provided to students, lessons posted on a board or school website, distribution of emergency closure day packets of instructional assignments, or any combination of these instructional delivery methods. Implementation of the plan is subject to approval of the State Board of Education.

CODE REFERENCE: West Virginia Code §18-5-45a – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: July 1, 2015

ACTION BY GOVERNOR: Vetoed April 1, 2015