

Legislative Rule-Making Review Committee
Minutes for Wednesday, September 15, 2021

Senate Judiciary Committee Room
9:00 a.m. to 9:00 p.m.

Senate

Sypolt, Chair	
Jeffries	Present
Lindsay	Present
Roberts	Present
Rucker	Present
Weld	
Blair, Nonvoting	Present

House

Foster, G., Chair	Present
Fleischauer	Present
Graves	Present
Rowe	
Steele	
Worrell	Present
Hanshaw, Nonvoting	

The Legislative Rule-Making Review Committee met in the Senate Judiciary Committee Room at 12:00 p.m. on Thursday, August 19, 2021. The meeting was called to order by the Chair, Delegate Foster. A silent roll call was taken by the Clerk to establish a quorum, as reflected above. Staff present included: Mark McOwen, House Counsel; Charlie Roskovensky, House Counsel; Carl Fletcher, Senate Counsel; Debra Graham, Senate Counsel; Brian Casto, House Counsel; Cindy Dillinger, Senate Counsel; Adair Sankoff, Director of Legislative Rule-Making Review Committee; Terry Adam, Joint Committee Administrative Assistant; and Felisha Sutherland, Committee Clerk.

Adair Sankoff, Director of Legislative Rule-Making Review Committee, distributed the updated rules and procedures for agency filing of rules with the Legislative Rule-Making Review Committee. Senator Sypolt moved to adopt the updated rules and procedures. The motion was adopted.

1. Mark McOwen, House Counsel, explained his abstract on the rule proposed by the Insurance Commission, *Term and Universal Life Insurance Reserve Financing*, [114 CSR 102](#).

On motion of Senator Rucker, the rule was approved as filed.

2. Mark McOwen, House Counsel, reviewed his abstract on the rule proposed by the **Lottery Commission, *West Virginia Lottery State Lottery Rules*, [179 CSR 01](#)**, and responded to questions from the Committee.

With leave of the Committee, John Myers, Director of the West Virginia Lottery Commission, responded to questions from the Committee.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

3. Mark McOwen, House Counsel, explained his abstract on the rule proposed by the **Lottery Commission, *West Virginia Lottery Limited Video Lottery Rule*, [179 CSR 05](#)**, and responded to questions from the Committee.

With leave of the Committee, John Myers, Director of the West Virginia Lottery Commission, responded to questions from the Committee.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

4. Mark McOwen, House Counsel, reviewed his abstract on the rule proposed by the **State Tax Department, *Sales Tax Holiday*, [110CSR15F](#)**, and responded to questions from the Committee.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

5. Mark McOwen, House Counsel, explained his abstract on the rule proposed by the **State Tax Department, *Vendor Absorption or Assumption of Sales and Use Tax*, [110 CSR 15M](#)**, and responded to questions from the Committee.

On motion of Senator Rucker, the rule was approved as filed.

6. Mark McOwen, House Counsel, reviewed his abstract on the rule proposed by the **State Tax Department, *On-line Bingo and Raffles*, [110 CSR 16A](#)**, and responded to questions from the Committee.

With leave of the Committee, Steve Stockton with the Legal Division of the State Tax Department, responded to questions from the Committee.

On motion of Senator Rucker, the rule was approved as filed.

7. Mark McOwen, House Counsel, explained his abstract on the rule proposed by the **State Tax Department, *Corporation Net Income Tax*, [110 CSR 24](#)**.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

8. Charlie Roskovensky, House Counsel, reviewed his abstract on the rule proposed by the **Board of Pharmacy, *Licensure and Practice of Pharmacy Care*, [15 CSR 01](#)**.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

9. Charlie Roskovensky, House Counsel, explained his abstract on the rule proposed by the **Board of Pharmacy, *Controlled Substance Monitoring Program*, [15 CSR 08](#)**.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

10. Charlie Roskovensky, House Counsel, reviewed his abstract on the rule proposed by the **Board of Pharmacy, *Regulations Governing Pharmacies*, [15 CSR 16](#)**.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

11. Charlie Roskovensky, House Counsel, explained his abstract on the rule proposed by the **Board of Medicine, *Licensing and Disciplinary Procedures: Physicians, Podiatric Physicians and Surgeons*, [11 CSR 01A](#)**.

On motion of Senator Rucker, the rule was approved as filed.

12. Charlie Roskovensky, House Counsel, reviewed his abstract on the rule proposed by the **Board of Medicine, *Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants*, [11 CSR 01B](#)**.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

13. Charlie Roskovensky, House Counsel, explained his abstract on the rule proposed by the Board of Medicine, *Board of Medicine Rules for Dispensing of Prescription Drugs by Practitioners*, [11 CSR 05](#).

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

14. Charlie Roskovensky, House Counsel, reviewed his abstract on the rule proposed by the Board of Medicine, *Continuing Education for Physicians and Podiatric Physicians*, [11 CSR 06](#).

On motion of Senator Rucker, the rule was approved as filed.

15. Charlie Roskovensky, House Counsel, explained his abstract on the rule proposed by the Board of Medicine, *Practitioner Requirements for Accessing the West Virginia Controlled Substances Monitoring Program Database*, [11 CSR 10](#).

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

16. Charlie Roskovensky, House Counsel, reviewed his abstract on the rule proposed by the Board of Medicine, *Establishment and Regulation of Limited License to Practice Medicine and Surgery at Certain State Veterans Nursing Home Facilities*, [11 CSR 11](#).

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

17. Charlie Roskovensky, House Counsel, explained his abstract on the rule proposed by the Board of Medicine, *Registration to Practice During a Declared State of Emergency*, [11 CSR 14](#).

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

18. Charlie Roskovensky, House Counsel, reviewed his abstract on the rule proposed by the Board of Osteopathic Medicine, *Licensing Procedures for Osteopathic Physicians*, [24 CSR 01](#).

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

19. Charlie Roskovensky, House Counsel, explained his abstract on the rule proposed by the **Board of Osteopathic Medicine, *Osteopathic Medicine, Osteopathic Physician Assistants***, [24 CSR 02](#).

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

20. Charlie Roskovensky, House Counsel, reviewed his abstract on the rule proposed by the **Board of Osteopathic Medicine, *Practitioner Requirements for Controlled Substances Licensure and Accessing the West Virginia Controlled Substances Monitoring Program Database***, [24 CSR 07](#), and responded to questions from the Committee.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

21. Charlie Roskovensky, House Counsel, explained his abstract on the rule proposed by the **Department of Health and Human Resources, *Medication-Assisted Treatment - Opioid Treatment Programs***, [69 CSR 11](#).

On motion of Senator Rucker, the rule was approved as filed.

22. Carl Fletcher, Senate Counsel, reviewed his abstract on the rule proposed by the **Division of Motor Vehicles, *Dealer Licensing***, [91 CSR 06](#), and responded to questions from the Committee.

Delegate Graves moved to amend the rule on page 36, subsection 16.2, by striking out the words “and may also be banned from division premises, have his or her dealership license suspended or revoked and be levied civil penalties, at the discretion of the commissioner.” and inserting in lieu thereof the words “for 24 hours.”

The amendment was adopted.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified and amended.

23. Carl Fletcher, Senate Counsel, explained his abstract on the rule proposed by the **Department of Agriculture, *Fresh Food Act***, [61 CSR 10](#).

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

24. Carl Fletcher, Senate Counsel, reviewed his abstract on the rule proposed by the **Department of Agriculture, *Auctioneers*, [61 CSR 11B](#)**.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

25. Carl Fletcher, Senate Counsel, explained his abstract on the rule proposed by the **Department of Agriculture, *Hemp Products*, [61 CSR 30](#)**, and responded to questions from the Committee.

With leave of the Committee, Jennifer Greenlief, Assistant Commissioner and General Counsel for the Department of Agriculture, responded to questions from the Committee.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

26. Carl Fletcher, Senate Counsel, reviewed his abstract on the rule proposed by the **Department of Agriculture, *Rural Rehabilitation Program*, [61 CSR 33](#)**.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

27. Carl Fletcher, Senate Counsel, explained his abstract on the rule proposed by the **Department of Agriculture, *Farm to Food Bank Tax Credit*, [61 CSR 36](#)**.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

28. Carl Fletcher, Senate Counsel, reviewed his abstract on the rule proposed by the **Department of Agriculture, *Farmers Market*, [61 CSR 38](#)**, and responded to questions from the Committee.

With leave of the Committee, Jennifer Greenlief, Assistant Commissioner and General Counsel for the Department of Agriculture, responded to questions from the Committee.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

Recess. 12:14 p.m.

29. Debra Graham, Senate Counsel, explained her abstract on the rule proposed by the **Department of Agriculture, *Feeding of Untreated Garbage to Swine*, [61 CSR 01A](#)**, and responded to questions from the Committee.

With leave of the Committee, Crescent Gallagher, Communications Director for the Department of Agriculture, responded to questions from the Committee.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

30. The **Department of Agriculture, *Commercial Feed*, [61 CSR 05](#)**, rule was moved to a future agenda.

31. The **Department of Agriculture, *Livestock Care Standards*, [61 CSR 31](#)**, rule was moved to a future agenda.

32. Debra Graham, Senate Counsel, reviewed her abstract on the rule proposed by the **Department of Agriculture, *Seed Certification*, [61 CSR 39](#)**, and responded to questions from the Committee.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

33. The **Board of Examiners in Counseling, *Licensing Rule*, [27 CSR 01](#)**, was moved to a future agenda.

34. The **Board of Examiners in Counseling, *Licensed Professional Counselors Fees Rule*, [27 CSR 02](#)**, was moved to a future agenda.

35. The **Board of Examiners in Counseling, *Marriage and Family Therapist Licensing Rule*, [27 CSR 08](#)**, was moved to a future agenda.

36. The **Board of Examiners in Counseling, *Marriage and Family Therapist Fee Rule*, [27 CSR 09](#)**, was moved to a future agenda.

37. Debra Graham, Senate Counsel, reviewed her abstract on the rule proposed by the **Governor's Committee on Crime, Delinquency, and Correction, *Law Enforcement Training and Certification Standards*, [149 CSR 02](#)**.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

With leave of the Committee, Delegate Fleischauer, ask unanimous consent to return to the rule proposed by the **Department of Agriculture, *Seed Certification*, [61 CSR 39](#)**, for additional questioning. Leave was granted.

Debra Graham, Senate Counsel, responded to questions from the Committee.

Agenda items 38 through 48 were moved to the foot of the agenda.

- **38. Board of Dentistry, *Rule for the West Virginia Board of Dentistry*, [5 CSR 01](#).**
- **39. Board of Dentistry, *Formation and Approval of Professional Limited Liability Companies*, [5 CSR 02](#).**
- **40. Board of Dentistry, *Formation and Approval of Dental Corporation and Dental Practice Ownership*, [5 CSR 06](#).**
- **41. Board of Dentistry, *Continuing Education Requirements*, [5 CSR 11](#).**
- **42. Board of Dentistry, *Administration of Anesthesia by Dentists*, [5 CSR 12](#).**
- **43. Board of Dentistry, *Expanded Duties of Dental Hygienists and Dental Assistants*, [5 CSR 13](#).**
- **44. Funeral Service Examiners, *Fee Schedule*, [6 CSR 07](#).**
- **45. Bureau for Public Health, *Childhood Lead Screening*, [64 CSR 42](#).**
- **46. Bureau for Public Health, *Sewage Treatment and Collection System Design Standards*, [64 CSR 47](#).**
- **47. Bureau for Public Health, *Maternal Risk Screening*, [64 CSR 97](#).**
- **48. Bureau for Public Health, *Expedited Partner Therapy*, [64 CSR 103](#).**

49. Brian Casto, House Counsel, reviewed his abstract on the rule proposed by the **State Fire Commission, *Volunteer Fire Department Equipment and Training Grant Funding Disbursement*, [87 CSR 10](#)**, and responded to questions from the Committee.

With leave of the Committee, Stacy Nowicki, Deputy General Counsel for WV Department of Homeland Security, responded to questions from the Committee.

With leave of the Committee, Ken Tyree, State Fire Marshal, responded to questions from the Committee.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

50. Brian Casto, House Counsel, reviewed his abstract on the rule proposed by the **Fire Commission, *Specialized Membership*, [87 CSR 11](#)**.

On motion of Senator Rucker, the rule was approved as filed.

51. Brian Casto, House Counsel, reviewed his abstract on the rule proposed by the **State Fire Commission, Junior Firefighters, [87 CSR 12](#)**, and responded to questions from the Committee.

With leave of the Committee, Ken Tyree, State Fire Marshal, responded to questions from the Committee.

With leave of the Committee, Stacy Nowicki, Deputy General Counsel for WV Department of Homeland Security, responded to questions from the Committee.

On motion of Senator Rucker, the rule was approved as filed.

52. Brian Casto, House Counsel, reviewed his abstract on the rule proposed by the **State Fire Commission, Certification of Fire Chiefs, [87 CSR 13](#)**.

With leave of the Committee, Stacy Nowicki, Deputy General Counsel for WV Department of Homeland Security, responded to questions from the Committee.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

53. Brian Casto, House Counsel, reviewed his abstract on the rule proposed by the **State Fire Commission, Use of Aqueous Film-Forming Foam (AFFF) for Fire Training Program Purposes, [87 CSR 14](#)**.

With leave of the Committee, Ken Tyree, State Fire Marshal, responded to questions from the Committee.

On motion of Senator Rucker, the rule was approved as filed.

54. Brian Casto, House Counsel, reviewed his abstract on the rule proposed by the **State Fire Marshal, Regulation of Fireworks and Related Explosive Materials, [103 CSR 04](#)**, and responded to questions from the Committee.

With leave of the Committee, Ken Tyree, State Fire Marshal, responded to questions from the Committee.

On motion of Senator Rucker, the rule was approved as filed.

38. Debra Graham, Senate Counsel, reviewed her abstract on the rule proposed by the **Board of Dentistry, Rule for the West Virginia Board of Dentistry, [5 CSR 01](#)**.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

39. Debra Graham, Senate Counsel, reviewed her abstract on the rule proposed by the **Board of Dentistry, Formation and Approval of Professional Limited Liability Companies, [5 CSR 02](#)**.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

40. Debra Graham, Senate Counsel, reviewed her abstract on the rule proposed by the **Board of Dentistry, Formation and Approval of Dental Corporation and Dental Practice Ownership, [5 CSR 06](#)**.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

41. Debra Graham, Senate Counsel, reviewed her abstract on the rule proposed by the **Board of Dentistry, Continuing Education Requirements, [5 CSR 11](#)**, and responded to questions from the Committee.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

42. Debra Graham, Senate Counsel, reviewed her abstract on the rule proposed by the **Board of Dentistry, Administration of Anesthesia by Dentists, [5 CSR 12](#)**, and responded to questions from the Committee.

With leave of the Committee, Susan Combs, Executive Director of the Board of Dentistry, responded to questions from the Committee.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

43. Debra Graham, Senate Counsel, reviewed her abstract on the rule proposed by the **Board of Dentistry, Expanded Duties of Dental Hygienists and Dental Assistants, [5 CSR 13](#)**.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

44. Debra Graham, Senate Counsel, reviewed her abstract on the rule proposed by the **Board of Funeral Service Examiners, Fee Schedule, [6 CSR 07](#)**, and responded to questions from the Committee.

With leave of the Committee, Eugene Fahay, President of the Board of Funeral Service Examiners, responded to questions from the Committee.

With leave of the Committee, Linda Lyter, Executive Director of the Board of Funeral Service Examiners, responded to questions from the Committee.

Delegate Foster suggested a 25% increase on all fees from their original amounts, with the two new fees remaining as is set forth in the rule. Delegate Foster also suggested changing the sunset provision from 10 years to 5 years. The agency agreed to those modifications.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

45. Cindy Dillinger, Senate Counsel, reviewed her abstract on the rule proposed by the **Bureau for Public Health, Childhood Lead Screening, [64 CSR 42](#)**, and responded to questions from the Committee.

With leave of the Committee, Britt Ludwig, General Counsel for the Bureau for Public Health, responded to questions from the Committee.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

46. Cindy Dillinger, Senate Counsel, reviewed her abstract on the rule proposed by the **Bureau for Public Health, Sewage Treatment and Collection System Design Standards, [64 CSR 47](#)**.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

47. Cindy Dillinger, Senate Counsel, reviewed her abstract on the rule proposed by the **Bureau for Public Health, Maternal Risk Screening, [64 CSR 97](#)**.

On motion of Senator Rucker, the agency agreed to modifications were adopted.

On motion of Senator Rucker, the rule was approved as modified.

48. Cindy Dillinger, Senate Counsel, reviewed her abstract on the rule proposed by the **Bureau for Public Health, Expedited Partner Therapy**, [64 CSR 103](#).

On motion of Senator Rucker, the rule was approved as filed.

With no further business to come before the committee, Senator Rucker moved to adjourn. The motion was adopted.