

Legislative Rule-Making Review Committee

Senate Judiciary Committee Room

Minutes for Monday, October 3, 2022

9:00 a.m. to 9:00 p.m.

Senate

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

House

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

The Legislative Rule-Making Review Committee met in the Senate Judiciary Committee Room at 9:00 a.m. on Monday, October 3, 2022. The meeting was called to order by the Chair, Senator Sypolt. A silent roll call was taken by the Clerk to establish a quorum, as reflected above. Staff present included: Carl Fletcher, Senate Counsel; Phillip Childs, Joint Committee Counsel; Max Wilkinson, House Counsel; Liz Schindzielorz, Senate Counsel; Jeff Johnson, Senate Counsel; Charlie Roskovensky, House Counsel; Robert Akers, House Counsel; Brian Casto, House Counsel; Will Valentino, House Counsel; and Cindy Dellinger, Senate Counsel; Adair Burgess, Director of Legislative Rule-Making Review Committee; and Felisha Sutherland, Committee Clerk.

Chairman Sypolt recognized Delegate Foster for the purpose of a motion to approve the minutes from September 15, 2022. The motion was adopted.

1. Carl Fletcher, Senate Counsel, explained his abstract on the proposed rule by the Board of Dentistry, Dental Recovery Networks, [5 CSR 15](#).

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

2. Phillip Childs, Joint Committee Counsel, explained his abstract on the proposed rule by the Board of Examiners of Psychologists, Code of Ethics, [17 CSR 06](#), and responded to questions from the Committee.

On motion of Delegate Foster, the rule was approved as filed.

3. Max Wilkinson, House Counsel, explained his abstract on the proposed rule by the Division of Highways, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance, [157 CSR 02](#).

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

4. Max Wilkinson, House Counsel, explained his abstract on the proposed rule by the Division of Highways, Construction and Reconstruction of State Roads, [157 CSR 03](#).

On motion of Delegate Foster, the rule was approved as filed.

5. Liz Schindzielorz, Senate Counsel, explained her abstract on the proposed rule by the Department of Agriculture, West Virginia Apiary Law, [61 CSR 02](#), and responded to questions from the Committee.

With leave of the Committee, Crescent Gallagher, Director of Business Development and Communications/Legislative Liaison for the Department of Agriculture, responded to questions from the Committee.

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

6. Liz Schindzielorz, Senate Counsel, explained her abstract on the proposed rule by the Board of Funeral Service Examiners, Funeral Director, Embalmer, Apprentice, Courtesy Card Holders and Funeral Establishment Requirements, [6 CSR 01](#), and responded to questions from the Committee.

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

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

7. Liz Schindzielorz, Senate Counsel, explained her abstract on the proposed rule by the Board of Funeral Service Examiners, Crematory Requirements, [6 CSR 02](#).

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

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

8. Liz Schindzielorz, Senate Counsel, explained her abstract on the proposed rule by the Board of Funeral Service Examiners, Fee Schedule, [6 CSR 07](#).

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

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

9. Jeff Johnson, Senate Counsel, explained his abstract on the proposed rule by the Insurance Commission, Bail Bondsmen in Criminal Cases, [114 CSR 103](#), and responded to questions from the Committee.

With leave of the Committee, Erin Hunter, Deputy Commissioner and General Counsel for the Insurance Commission, responded to questions from the Committee.

With leave of the Committee, Jonathan Haskins, Owner of A-four-dable Bonding, responded to questions from the Committee.

Delegate Graves moved to amend the rule as follows:

On page on page 1, section 2, by striking from the text of section 2.4.1 the words “also referred to as “surety bondsmen.”;

On page 1, section 2, by striking from the text of section 2.4.2 the words “also referred to as “professional bondsmen.”;

On page 2, section 2, by striking out the text of section 2.9 in its entirety and inserting in lieu thereof the following text: “2.9. “Professional bondsman” means any person who has been approved and licensed by the Commissioner, and who pledges cash, an irrevocable letter of credit, an annuity purchased through an insurance company licensed and in good standing in this State, a bond issued by an insurance company licensed and in good standing in this State, or real estate with the Commissioner as security for bail bonds written in connection with a judicial proceeding, and charges, receives or is promised money or other things of value in exchange for his or her services.”;

On page 2, section 2, by striking out the text of section 2.10 in its entirety and inserting in lieu thereof the following text: “2.10. “Securities” or “approved securities” means cash, an irrevocable letter of credit, an annuity purchased through an insurance company licensed and in good standing in this State, a bond issued by an insurance company licensed and in good standing in this State, a qualified power of attorney issued by an insurer pursuant to a producer underwriting agreement, or real estate located in this State that is unencumbered in, at least, the amount of minimum financial responsibility required as set forth in this rule.”;

On page 2, section 2, by striking out the text of section 2.11 in its entirety and inserting in lieu thereof the following text:

“2.11. “Surety bondsman” means a person who:

2.11.1. Has been approved and licensed by the Commissioner as an insurance producer with a property and casualty line of authority and appointed by an insurer to execute or countersign bail bonds for the insurer through a qualified power of attorney in connection with judicial proceedings and charges, receives or is promised money or other things of value in exchange for his or her services; or

2.11.2. Posts approved security by providing the Commissioner with a qualified power of attorney issued by an insurer pursuant to a producer underwriting agreement and being approved and licensed by the Commissioner as an insurance producer with a limited lines surety line of authority and appointed by an insurer to execute or countersign bail bonds for the insurer in connection with judicial proceedings and charges, receives or is promised money or other things of value in exchange for his or her services.”

And,

On page 3, section 3, by striking from the text of section 3.2.1.b the words “is a licensed insurance producer with a property and casualty line of authority, and”.

With leave of the Committee, Delegate Adam Burkhammer, Lewis County, District 46, explained the amendment offered by Delegate Graves and responded to questions from the Committee.

Discussion on the amendment ensued.

The amendment was adopted.

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified and amended.

10. Jeff Johnson, Senate Counsel, explained his abstract on the proposed rule by the Board of Pharmacy, Licensure and Practice of Pharmacy, [15 CSR 01](#).

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

11. Jeff Johnson, Senate Counsel, explained his abstract on the proposed rule by the Board of Pharmacy, "Rule of the Board of Pharmacy for the Uniform Controlled Substances Act", [15 CSR 02](#), and responded to questions from the Committee.

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

12. Jeff Johnson, Senate Counsel, explained his abstract on the proposed rule by the Board of Pharmacy, Board of Pharmacy Rules for Registration of Pharmacy Technicians, [15 CSR 07](#), and responded to questions from the Committee.

With leave of the Committee, Krista Capehart, Director of Professional and Regulatory Affairs with the Board of Pharmacy, responded to questions from the Committee.

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

13. Jeff Johnson, Senate Counsel, explained his abstract on the proposed rule by the Board of Pharmacy, Regulations Governing Pharmacy Permits, [15 CSR 15](#).

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

14. Jeff Johnson, Senate Counsel, explained his abstract on the proposed rule by the Board of Pharmacy, Inspections, [15 CSR 19](#).

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

15. Jeff Johnson, Senate Counsel, explained his abstract on the proposed rule by the Board of Pharmacy, Donated Drug Repository Program, [15 CSR 20](#), and responded to questions from the Committee.

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

Recess at 1:03 p.m.

Called to order by Senator Sypolt at 1:38 p.m.

The meeting was called to order by the Chair, Senator Sypolt.

With leave of the Committee, Delegate Graves moved that the Insurance Commission update their emergency rule, Bail Bondsmen in Criminal Cases, [114 CSR 103](#), with the Secretary of State's Office.

Jeff Johnson, Senate Counsel, responded to questions from the Committee.

The motion was adopted.

16. Charlie Roskovensky, House Counsel, explained his abstract on the proposed rule by the Department of Health and Human Resources, Medical Cannabis Program - Grower/Processors, [64 CSR 110](#), and responded to questions from the Committee.

On motion of Delegate Foster, the rule was approved as filed.

17. Charlie Roskovensky, House Counsel, explained his abstract on the proposed rule by the Department of Health and Human Resources, Medical Cannabis Program – Dispensaries, [64 CSR 112](#), and responded to questions from the Committee.

On motion of Delegate Foster, the rule was approved as filed.

18. Charlie Roskovensky, House Counsel, explained his abstract on the proposed rule by the Department of Health and Human Resources, Child Care Centers Licensing, [78 CSR 01](#), and responded to questions from the Committee.

With leave of the Committee, Michelle Platt, Program Manager II, Child Care Regulations with the Department of Health and Human Resources, responded to questions from the Committee.

With leave of the Committee, Cammie Chapman, Associate General Counsel for the Bureau of Children and Families with the Department of Health and Human Resources, responded to questions from the Committee.

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

19. Charlie Roskovensky, House Counsel, explained his abstract on the proposed rule by the Department of Health and Human Resources, Minimum Licensing Requirements for Residential Child Care and Treatment Facilities for Children and Transitioning Adults and Vulnerable and Transitioning Youth Group Homes and Programs in West Virginia, [78 CSR 03](#).

On motion of Delegate Foster, the rule was approved as filed.

20. Charlie Roskovensky, House Counsel, explained his abstract on the proposed rule by the Department of Health and Human Resources, Family Child Care Facility Licensing, [78 CSR 18](#), and responded to questions from the Committee.

On motion of Delegate Foster, the rule was approved as filed.

With leave of the Committee, Delegate Fleischauer moved to return to the nineteenth order of business. With no objections, the motion was adopted.

With leave of the Committee, Cammie Chapman, Associate General Counsel for the Bureau of Children and Families with the Department of Health and Human Resources, responded to questions from the Committee.

21. Charlie Roskovensky, House Counsel, explained his abstract on the proposed rule by the Department of Health and Human Resources, Family Child Care Home Registration, [78 CSR 19](#).

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

22. Charlie Roskovensky, House Counsel, explained his abstract on the proposed rule by the Department of Health and Human Resources, Informal and Relative Family Child Care Home Registration, [78 CSR 20](#), and responded to questions from the Committee.

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

23. Charlie Roskovensky, House Counsel, explained his abstract on the proposed rule by the Department of Health and Human Resources, Out Of School Time Child Care Center Licensing, [78 CSR 21](#).

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

24. Charlie Roskovensky, House Counsel, explained his abstract on the proposed rule by the Department of Health and Human Resources, Goals for Foster Children, [78 CSR 25](#).

On motion of Delegate Foster, the rule was approved as filed.

25. Charlie Roskovensky, House Counsel, explained his abstract on the proposed rule by the Department of Health and Human Resources, Deemed Head Start Child Care Center Licenses, [78 CSR 28](#), and responded to questions from the Committee.

With leave of the Committee, Lisa Ertl, Director of the Division of Early Child Care Education with the Department of Health and Human Resources, responded to questions from the Committee.

On motion of Delegate Foster, the rule was approved as filed.

26. Charlie Roskovensky, House Counsel, explained his abstract on the proposed rule by the Health Care Authority, Financial Disclosure Rule, [65 CSR 13](#).

On motion of Delegate Foster, the rule was approved as filed.

27. Robert Akers, House Counsel, explained his abstract on the proposed rule by the Department of Environmental Protection, Mining and Reclamation, Rules For Quarrying and Reclamation, [38 CSR 03](#).

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

28. Robert Akers, House Counsel, explained his abstract on the proposed rule by the Department of Environmental Protection, Waste Management, Recycling Assistance Grant Program, [33 CSR 10](#), and responded to questions from the Committee.

With leave of the Committee, Jason Wandling, General Counsel for the Department of Environmental Protection, responded to questions from the Committee.

With leave of the Committee, Niki Davis, Supervisor of REAP Program with the Department of Environmental Protection, responded to questions from the Committee.

On motion of Delegate Foster, the rule was approved as filed.

29. Robert Akers, House Counsel, explained his abstract on the proposed rule by the Department of Environmental Protection, Waste Management, "Reclamation of Abandoned and Dilapidated Properties Grant Program", [33 CSR 13](#), and responded to questions from the Committee.

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

30. Robert Akers, House Counsel, explained his abstract on the proposed rule by the Department of Environmental Protection, Secretary's Office, Reclamation of Solar and Wind Electricity Generation Facilities, [60 CSR 11](#), and responded to questions from the Committee.

On motion of Delegate Foster, the rule was approved as filed.

31. Robert Akers, House Counsel, explained his abstract on the proposed rule by the State Tax Department, Valuation of Producing and Reserve Oil, Natural Gas Liquids, and Natural Gas for Ad Valorem Property Tax Purposes, [110 CSR 01J](#), and responded to questions from the Committee.

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

With leave of the Committee, Jeffery Kern, President of Resource Technologies Corporations, responded to questions from the Committee.

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

32. Brian Casto, House Counsel, explained his abstract on the proposed rule by the Department of Environmental Protection, Requirements for Operating Permits, [45 CSR 30](#), and responded to questions from the Committee.

With leave of the Committee, Jason Wandling, General Counsel for the Department of Environmental Protection, responded to questions from the Committee.

With leave of the Committee, Laura Jennings, Technical Analyst for the Division is Air Quality with the Department of Environmental Protection, responded to questions from the Committee.

On motion of Delegate Foster, the agency agreed to modifications were adopted.

Delegate Foster moved to amend the rule as follows:

On page 41, section 8, subsection 8.4, by striking “150%” and inserting in lieu thereof “110%”

And,

On page 41, section 8, by striking out the text of section 8.6 in its entirety and inserting in lieu thereof the following text:

“8.6. The Secretary shall transition the base fee components under subdivision 8.1.a in accordance with the following, which shall apply when the rule becomes effective.

8.6.a. The Permitted Source Base Fee (PSBF) is \$ 5000.

8.6.b. The Deferred Source Base Fee (DSBF) is \$ 0.

8.6.c. These base fee components shall remain in effect until revised or superseded.”

With leave of the Committee, Jason Wandling, General Counsel for the Department of Environmental Protection, responded to questions from the Committee.

With leave of the Committee, Delegate Foster responded to questions from the Committee.

With leave of the Committee, Brian Casto, House Counsel, responded to questions from the Committee.

Discussion ensued.

The amendment was adopted.

On motion of Delegate Foster, the rule was approved as modified amend amended.

33. Will Valentino, House Counsel, explained his abstract on the proposed rule by the Governor’s Committee on Crime, Delinquency, and Corrections, Protocol for Law Enforcement Response to Domestic Violence, [149 CSR 03](#).

On motion of Delegate Foster, the rule was approved as filed.

34. Will Valentino, House Counsel, explained his abstract on the proposed rule by the State Fire Commission, Hazardous Substance Emergency Response Training Programs, [87 CSR 03](#).

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

35. Will Valentino, House Counsel, explained his abstract on the proposed rule by the State Fire Commission, Certification of Home Inspectors, [87 CSR 05](#).

On motion of Delegate Foster, the rule was approved as filed.

36. Will Valentino, House Counsel, explained his abstract on the proposed rule by the State Fire Marshal, Certification of Home Inspectors, [103 CSR 07](#).

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

37. Will Valentino, House Counsel, explained his abstract on the proposed rule by the State Fire Commission, Volunteer Firefighters' Training, Equipment, and Operating Standards, [87 CSR 08](#), 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 Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

38. Will Valentino, House Counsel, explained his abstract on the proposed rule by the State Fire Marshal, Certification of Electrical Inspectors, [103 CSR 01](#).

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

39. Will Valentino, House Counsel, explained his abstract on the proposed rule by the State Fire Marshal, Supervision of Fire Protection Work, [103 CSR 03](#), and responded to questions from the Committee.

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

40. Will Valentino, House Counsel, explained his abstract on the proposed rule by the State Fire Marshal, Electrician Licensing Rules, [103 CSR 05](#), 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 Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

41. Will Valentino, House Counsel, explained his abstract on the proposed rule by the State Police, West Virginia State Police Professional Standards Investigations, [81 CSR 10](#), and responded to questions from the Committee.

With leave of the Committee, Major James T. Findley with the State Police, responded to questions from the Committee.

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

Recess at 6:16 p.m.

Called to order by Senator Sypolt at 6:36 p.m.

42. Cindy Dellinger, Senate Counsel, explained her abstract on the proposed rule by the Department of Health and Human Resources, Procedures Pertaining to the Dangerousness Assessment Advisory Board, [64 CSR 26](#), and responded to questions from the Committee.

With leave of the Committee, April Robertson, General Counsel for the Department of Health and Human Resources, responded to questions from the Committee.

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

43. Cindy Dellinger, Senate Counsel, explained her abstract on the proposed rule by the Department of Health and Human Resources, Standards for Local Boards of Health, [64 CSR 73](#), and responded to questions from the Committee.

With leave of the Committee, Amy Atkins, Deputy Commission for the Bureau for Public Health with the Department of Health and Human Resources, responded to questions from the Committee.

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

44. Cindy Dellinger, Senate Counsel, explained her abstract on the proposed rule by the Department of Health and Human Resources, Medical Examiner Requirements for Postmortem Inquiries [64 CSR 84](#).

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

45. Cindy Dellinger, Senate Counsel, explained her abstract on the proposed rule by the Department of Health and Human Resources, "Core Behavioral Health Crisis Services System", [69 CSR 19](#), and responded to questions from the Committee.

With leave of the Committee, Nick Stuchell, General Counsel for the Division of Behavioral Health with the Department of Health and Human Resources, responded to questions from the Committee.

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

46. Senator Sypolt announced that the proposed rule by the Department of Health and Human Resources and Insurance Commission, All-Payer Claims Database - Submission Manual, [114A CSR 03](#), was laid over until the

November 2022 meeting.

47. Cindy Dellinger, Senate Counsel, explained her abstract on the proposed rule by the Health Care Authority Uniform Bill Database, [65 CSR 34](#).

On motion of Delegate Foster, the agency agreed to modifications were adopted.

On motion of Delegate Foster, the rule was approved as modified.

With no further business to come before the Committee, Delegate Foster moved to adjourn. The motion was adopted.