

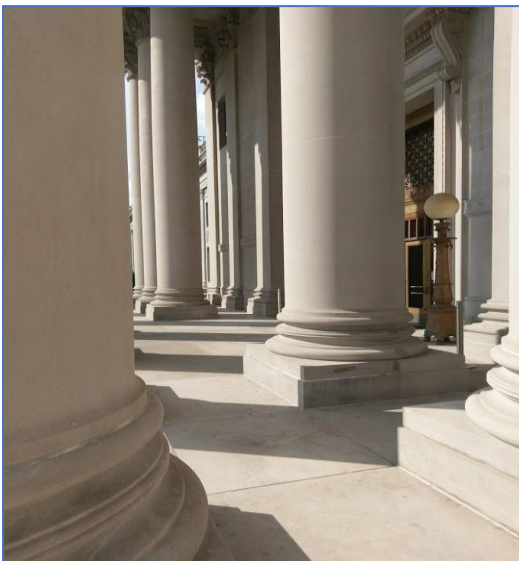
# WEST VIRGINIA LEGISLATURE

## SENATE COMMITTEE ON THE JUDICIARY



WV Legislative Photography, Photo by Will Price

## 2021 BILL SUMMARIES





COMMITTEE ON THE JUDICIARY  
WEST VIRGINIA SENATE

EIGHTY-FIFTH LEGISLATURE  
REGULAR SESSION



APRIL 2021

# SENATE COMMITTEE ON THE JUDICIARY

## 2021 Regular Legislative Session

### Staff Members

The seal of the West Virginia Senate Committee on the Judiciary is a large, circular emblem in the background. It features a central image of the West Virginia State Capitol building, surrounded by a wreath of laurel leaves and a banner at the bottom with the motto "MONTANI SEMPER LIBERI". The words "WEST VIRGINIA SENATE" are inscribed around the top inner edge of the seal, and "COMMITTEE ON THE JUDICIARY" is inscribed around the bottom inner edge. The seal is rendered in a light gold or yellow color.

<u>Name</u>	<u>Title</u>	<u>Employment Status</u>
Liz Schindzielorz	Counsel	Full Time
Beverly Douglas	Committee Clerk	Full Time
Adair Sankoff	Analyst/LRMRC	Full Time
<hr/>		
Leslie Smith	Administrative Assistant	Per Diem
Debra A. Graham	Counsel	Per Diem
Laura Goins	Counsel	Per Diem
Mark Dean	Counsel	Per Diem
Amber Wooten	Herndon Fellow	Per Diem
Samuel Godschalk	Herndon Fellow	Per Diem
Tom Smith	Chief Counsel	Per Diem

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**Rupie Phillips**  
(D – Logan, 07)



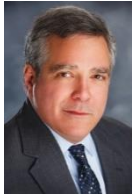
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(R – Jefferson, 16)



**Richard Lindsay**  
(D – Kanawha, 08)



**Mike Azinger**  
(R – Wood, 03)



**Mike Romano**  
(D – Harrison, 12)



**Mark Maynard**  
(R – Wayne, 06)



**Robert Beach**  
(D – Mongolia, 13)



**Ryan Weld**  
Vice Chair  
(R – Brooke, 01)

85<sup>th</sup> Legislature  
West Virginia Senate

# COMMITTEE ON THE JUDICIARY



**Tom Takubo**  
Majority Leader  
(R – Kanawha, 17)



**Craig Blair**  
(R – Berkeley, 15)



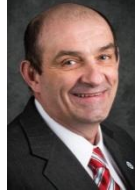
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(R – Summers, 10)



**Mike Caputo**  
(D – Marion, 13)



**Randy Smith**  
(R – Tucker, 14)



**David Stover**  
(R – Wyoming, 09)



**Amy Grady**  
(R – Mason, 04)



**Mike Woelfel**  
(D – Cabell, 05)



## 2021 COMMITTEE MEMBERS



**CHAIRMAN**  
**Charles Trump**  
(R – Morgan, 15)

**WEST VIRGINIA LEGISLATURE**  
**SENATE COMMITTEE ON THE JUDICIARY**  
**STATISTICS 2021**

**TOTAL NUMBER OF BILLS AND RESOLUTIONS INTRODUCED  
DURING THE 1<sup>st</sup> SESSION OF THE 85<sup>th</sup> LEGISLATURE:**

BILLS:	2,039
RESOLUTIONS:	77
CONCURRENT RESOLUTIONS:	195
<u>JOINT RESOLUTIONS:</u>	<u>41</u>
<b>TOTAL:</b>	<b>2,352</b>

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

SENATE BILLS:	722
SENATE RESOLUTIONS:	50
SENATE CONCURRENT RESOLUTIONS:	81
<u>SENATE JOINT RESOLUTIONS:</u>	<u>11</u>
<b>TOTAL:</b>	<b>864</b>

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

HOUSE BILLS:	1,317
HOUSE RESOLUTIONS:	27
HOUSE CONCURRENT RESOLUTIONS:	114
<u>HOUSE JOINT RESOLUTIONS:</u>	<u>30</u>
<b>TOTAL:</b>	<b>1,488</b>

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

BILLS:	3
<u>CONCURRENT RESOLUTIONS:</u>	<u>3</u>
<b>TOTAL:</b>	<b>6</b>

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

SENATE BILLS:	324
HOUSE BILLS:	74
SENATE CONCURRENT RESOLUTIONS:	6
SENATE JOINT RESOLUTIONS:	11
HOUSE CONCURRENT RESOLUTIONS:	2
<u>HOUSE JOINT RESOLUTIONS:</u>	<u>3</u>
<b>TOTAL:</b>	<b>420</b>

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

SENATE BILLS:	37
HOUSE BILLS:	44
RULES BILLS:	98
JOINT RESOLUTIONS:	9
<u>CONCURRENT RESOLUTIONS:</u>	<u>5</u>
<b>TOTAL:</b>	<b>193</b>

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

SENATE BILLS:	122
<u>HOUSE BILLS:</u>	<u>160</u>
<b>TOTAL:</b>	<b>282*</b>

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

SENATE CONCURRENT RESOLUTIONS:	11
<u>HOUSE CONCURRENT RESOLUTIONS:</u>	<u>28</u>
<b>TOTAL:</b>	<b>39</b>

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

SENATE BILLS:	42
<u>HOUSE BILLS:</u>	<u>47</u>
<b>TOTAL:</b>	<b>89</b>

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

<u>SENATE JOINT RESOLUTION:</u>	<u>3</u>
<b>TOTAL:</b>	<b>3</b>

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

SENATE BILLS:	42
<u>HOUSE BILLS:</u>	<u>47</u>
<b>TOTAL:</b>	<b>89**</b>

(Senate Judiciary Totals include Rules Bundles as a single bill)

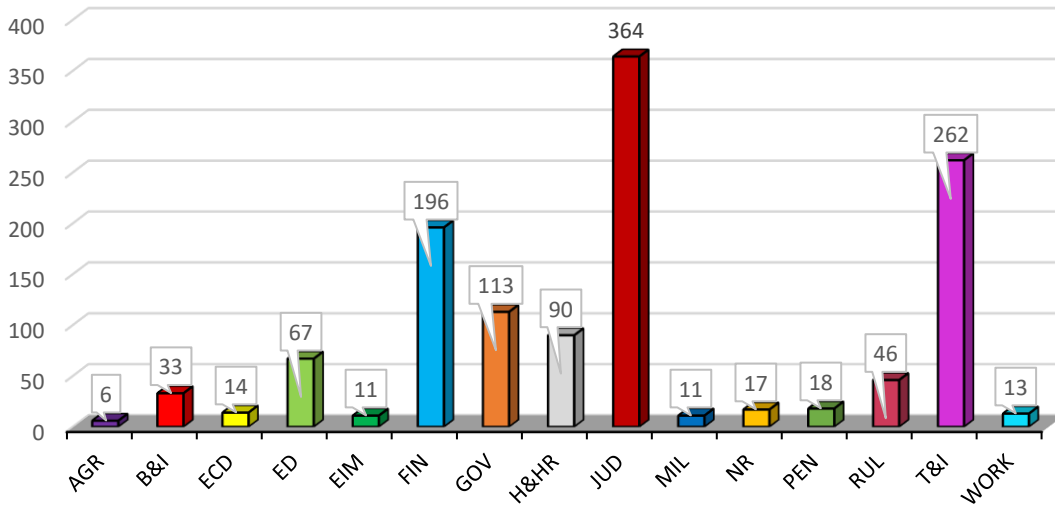
(\*Of the 282 Bills that Completed Legislative Action, there were no vetoes)

(\*\*Of the 89 Bills reported that Completed Legislative Action, there were no vetoes.)

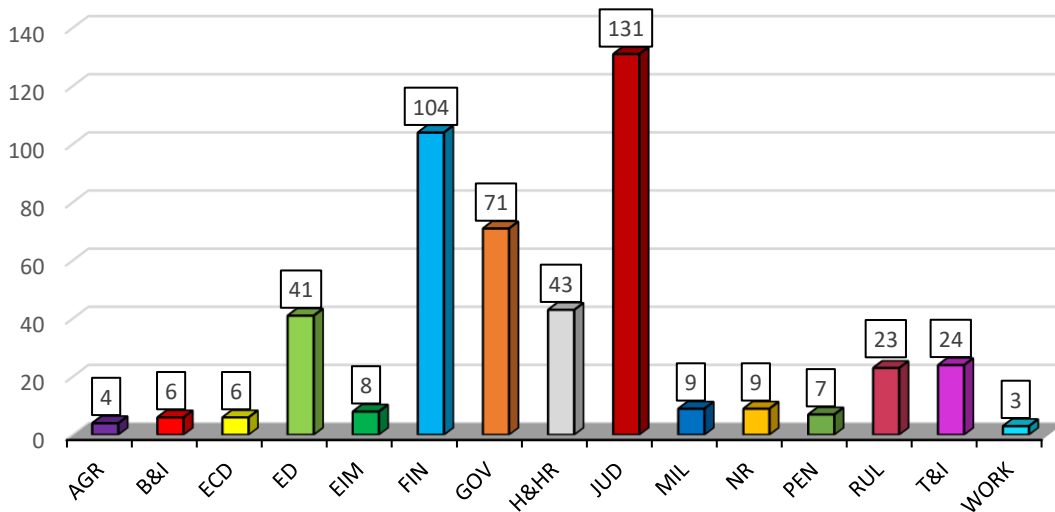


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# Senate Bill 5

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to claims arising out of WV Consumer Credit and Protection Act.

**CODE REFERENCE:** §46A-5-104, §46A-5-108, §46A-6-106, and §46A-8-101 (Amends and reenacts); §46A-5-109 (New)

### **SUMMARY:**

This bill creates an offer of settlement/judgment mechanism under the Consumer and Credit Protection Act (CCPA). Either party may send an offer to the other at any time between 30 days after service of a complaint and 30 days before trial. The offer can be amended up to two times. If a plaintiff rejects an offer made by the defendant, and either judgment is entered in favor of the defendant or the plaintiff's recovery is less than 75% of the defendant's offer, the plaintiff is not entitled to recover attorney fees. If the final judgment does not exceed 75% of a defendant's offer, the defendant may petition the court for attorney fees and expenses, which the court may grant if it finds that the plaintiff acted in bad faith in rejecting the offer.

This bill codifies the "lodestar" criteria as guidelines for a court in determining the reasonableness of attorney fees and expenses to be awarded in CCPA claims, and provides that the court may disallow an award of attorney's fees related to an offer to settle or allow judgment if it determines that the offer was not made in good faith.

Additionally, this bill allows a court to award attorney's fees to either party if, upon motion, the court finds that a claim or defense is frivolous.

This bill also unifies the process for pre-suit submission of a notice of violation and offer to cure for all CCPA claims (previously separate) and provides that cure offers are not admissible at trial, except for post-judgment proceedings before the court to determine attorney's fees, if any.

**DATE OF PASSAGE:** March 18, 2021

**EFFECTIVE DATE:** June 16, 2021

**ACTION BY GOVERNOR:** Signed March 29, 2021

# Senate Bill 78

## COMMITTEE SUBSTITUTE

---

**SHORT TITLE:** Relating to rehabilitative spousal support.

**CODE REFERENCE:** § 48-8-105 (Amends and Reenacts)

**SUMMARY:**

This bill corrects erroneous cross-references within §48-8-105 relating to rehabilitative spousal support, and authorizes the court consider the factors set forth in §48-6-301 for awarding spousal support and separate maintenance.

**DATE OF PASSAGE:** April 5, 2021

**EFFECTIVE DATE:** July 4, 2021

**ACTION BY GOVERNOR:** Signed April 15, 2021

# Senate Bill 80

## COMMITTEE SUBSTITUTE

---

**SHORT TITLE:** Allowing for administration of certain small estates by affidavit and without appointment of personal representative.

**CODE REFERENCE:** § 44-1-28 (Amends and Reenacts); §44-1A-1, §44-1A-2, §44-1A-3, §44-1A-2 4; and §44-1A-5 (New)

### **SUMMARY:**

This bill adds a new article, §44-1A-1 et seq., called the “West Virginia Small Estate Act”. The Act provides for the following:

- 1) Defines Terms including but not limited to those summarized below:
  - a. Small asset defined as personal property belonging to the decedent valued not more than \$50,000; and
  - b. Small estate defined as probate estate in which the total value of small assets does not exceed \$50,000 and the total value of real estate or interests in real property subject to probate does not exceed \$100,000.
- 2) Authorizes the administration of a small estate upon affidavit and without the appointment of a personal representative.
- 3) Identifies the information required by affidavit and provides a form that may be used as the affidavit.
- 4) Gives the authorized successor the right to obtain and pay or deliver the small assets to the successor or successors of the decedent entitled to the small assets or in payment of the decedents funeral expenses or claims of the decedent’s creditors.
- 5) Makes decedents’ real estate subject to the provisions of §41-5-19 and §41-5-20 relating to production, probate, and record of wills with respect to title to real estate and title of bonafide purchasers of real estate from heirs.

The amendment to §44-1-28 provides for payment of small assets or property that does not exceed \$5,000 to the spouse or distributees of decedents upon whose estates there have been no qualifications.

**DATE OF PASSAGE:** April 2, 2021

**EFFECTIVE DATE:** July 1, 2021

**ACTION BY GOVERNOR:** Signed April 15, 2021

# Senate Bill 81

## COMMITTEE SUBSTITUTE

---

**SHORT TITLE:** Making technical corrections to WV Directed Trust Act.

**CODE REFERENCE:** §44D-1-105, §44D-8A-809, and §44D-8A-1008 (Amends and Reenacts)

**SUMMARY:**

The general purpose of this bill is to amend certain sections of the West Virginia Uniform Directed Trust Act which was enacted in 2020. The bill corrects cross references and also amends the standard of liability for a directed trustee from willful misconduct to breach of fiduciary to be consistent with other similar laws.

**DATE OF PASSAGE:** April 2, 2021

**EFFECTIVE DATE:** April 2, 2021

**ACTION BY GOVERNOR:** April 15, 2021

# Senate Bill 126

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Authorizing Department of Administration to promulgate legislative rules.

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

### **SUMMARY:**

This bill is a Department of Administration Rules bundle which authorizes and directs the promulgation of four rules which constitutes Bundle 2.

#### **Department of Administration – Purchasing, 148 CSR 01**

This rule adds a 10-year sunset date. Without the extension, the rule expires in 2021.

#### **Board of Risk and Insurance Management – Mine Subsidence Insurance, 115 CSR 1**

This rule is promulgated pursuant to W. Va. Code § 33-30-1 *et seq.* which requires that mine subsidence insurance be made available in a reasonable and equitable manner to residents through the office of State Board of Risk and Insurance Management (BRIM).

The rule implements a statutory requirement (§33-30-8) that insurers licensed to sell fire insurance policies make mine subsidence insurance available. The rule establishes, in Appendix C the rates for the coverage.

The rule was last amended to increase rates as a result of a 2016 bill that increased the reinsurance limits from \$75,000 to \$200,000. The increase in insured values up to \$200,000 and the current rate schedule for mine subsidence insurance went into effect on October 1, 2016.

BRIM has monitored claims activity since the 2016 increase and has determined current premium rates exceed projected mine subsidence losses. BRIM, in consultation with its actuary, has determined that the rates may be reduced by approximately 20%.

The rule reduces the premiums contained in Appendix C. A fixed dollar amount of \$10 has been subtracted from the premiums in each defined category. This rate reduction is approximately a 20% overall reduction.

Additionally, at the request of Office of the Insurance Commission language was added to in the rule to require insurance companies to retain subsidence waiver documentation for five years.

### **Board of Risk and Insurance Management – Public Entities Insurance Program, 115 CSR 2.**

This rule sets out a procedure for programs of liability and property insurance for public subdivisions, charitable organizations, and emergency medical services agencies under the Board of Risk and Insurance Management (BRIM). It updates the rule to modern underwriting procedures and methods of submission of information. The changes also clarify the manner in which producer commissions are calculated.

The rule updates definitions. More specifically, the definition of “Agent” has been replaced with “Producer” which is a more modern usage. Some unnecessary definitions have been eliminated.

Section 3 of the rule regarding designation of a producer of record has been entirely rewritten. Provisions regarding policy renewal have been added, including notice requirements to the producer of records regarding potential renewal. There are also provisions for deadlines for renewal materials, late submissions, fees for a late submission, and a date and time when coverage will cease for failure to submit necessary documentation required for renewal. There is also a provision for reapplication following non-renewal and a \$500.00 penalty.

Section 4 related to a service fee has been deleted.

In current Section 5, now Section 4 of the rule, the process whereby a producer’s commission is calculated has been revised for greater specificity. Current rule language sets the commission at no more than 8% of the earned annual premium. New language provides for a timeframe for calculation of this amount and provides that the 8% commission is based upon the premium paid by an entity. There is also a provision for calculation should the coverage be discontinued during the term of the coverage. Language has also been added to allow for a change in the producer of record or the commission amount and the manner in which the commission is paid should there be either a producer change or modification of the commission amount.

Section 6 has been amended to allow an entity to procure liability insurance without procuring property insurance, but requires an entity procuring property insurance to procure liability insurance. The Board’s administrative costs are to be included in the actuarial model for determination of premium due from insured entities.



**Board of Risk and Insurance Management – Procedure for Providing Written Notification of Claims of Potential Liability to the State or It’s Employees, 115 CSR 5**

The purpose of this rule is to establish a form to allow insurance entities to place BRIM on notice of potential liability of claims against the state of West Virginia or any of its employees. The rule was developed following a mandamus decision from the West Virginia Supreme Court of Appeals which required BRIM to develop a formal procedure for notification of potential liability.

This is a repeal of a legislative rule. The rule was not promulgated as a result of any statutory authority and is more properly promulgated as a procedural rule. That will allow BRIM to more routinely modify the rule to account for the dynamic nature of the insurance industry and for advances in technology.

**DATE OF PASSAGE:** March 11, 2021

**EFFECTIVE DATE:** March 11, 2021

**ACTION BY GOVERNOR:** Signed March 19, 2021

# Senate Bill 156

## COMMITTEE SUBSTITUTE

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**SHORT TITLE: S. B. 156** - Authorizing Department of Homeland Security to promulgate legislative rules.

**CODE REFERENCE:** §64-6-1 (Amends and Reenacts)

### **SUMMARY:**

This bill is a Department of Homeland Security rules bundle, known as Bundle 6, containing four rules.

#### **Fire Commission- Standards for the Certification and Continuing Education of Municipal, County, and Other Public Sector Building Code, 103 CSR 7**

Senate Bill 586, which passed during the 2020 Legislative Session, reorganized and redesignated the Department of Military Affairs and Public Safety as the Department of Homeland Security. The provisions of this rule are being repealed because the duties have been moved from the Fire Commission to the State Fire Marshal.

#### **Fire Marshal- Standards for the Certification and Continuing Education of Municipal, County, and Other Public Sector Building Code, 103 CSR 6**

The rule sets forth licensing requirements for building code officials, including continuing education and complaint procedures. The rule is moved from Series 87 to Series 103. It contains clean up to reflect recent statutory changes in Senate Bill 586 and incorporates changes allowing journeymen electricians to become licensed as a residential or commercial electrical inspector building code official. Language has been added providing that if no resolution is made during the independent informal dispute process the State Fire Marshal is to issue a formal complaint setting forth a statement of violations along with a notice of hearing. The rule has a new section addressing appeals from a final order.

The rule now requires any person conducting an inspection to have and maintain a copy of provisions. It also requires the inspector to inform the building owner or agent of the specific alleged violation in writing.

## **State Emergency Response Commission (SERC)- Emergency Planning and Community Right to Know, 55 CSR 1**

The rule currently establishes fees for the implementation of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 which was subsequently addressed in W. Va. Code §§15-5A-1, *et seq.* (West Virginia Emergency Response and Community Right to Know Act (1989)) for the collection of information on certain hazardous and toxic chemicals in communities throughout West Virginia.

The current rule amends a rule that was last updated in 1993 by bringing it in to compliance with the statute and updating the fee structure. It deletes the following sections in their entirety:

- §55-1-5, Requests for Information General Provisions;
- §55-1-6, Requests for MSDS Information;
- §55-1-7, Requests for Hazardous Chemical Inventory Forms;
- §55-1-8, Trade Secrets and Confidential Information; and
- §55-1-10, Grants.

Section 5 has been amended to delete the one-time emergency planning notification fee. It establishes base inventory fee of \$25 for each facility with additional fees depending on the facility. Language providing the judicial venue for enforcement actions has been deleted.

## **State Emergency Response Commission (SERC) - Emergency Planning Grant Program, 55 CSR 2**

The rule establishes the procedures to apply for and award emergency planning grants. The provisions of this rule were contained in Series 1. The rule splits out this program and contains the provisions of Series 1, Section 10. This rule also deletes all of Subsection 2.4 which contains obsolete language.

**DATE OF PASSAGE:** March 23, 2021

**EFFECTIVE DATE:** March 23, 2021

**ACTION BY GOVERNOR:** Signed March 31, 2021

# Senate Bill 160

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Authorizing Department of Revenue to promulgate legislative rules.

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

### **SUMMARY:**

This is a Department of Revenue rules bundle containing 16 rules.

### **Alcohol Beverage Control Commissioner – Private Club Licensing, 175 CSR 2**

The rule amends a current legislative rule to reflect significant changes to state alcohol laws affecting “private clubs” over the past eight years. Private clubs are establishments in West Virginia that may legally serve alcohol for on-premises consumption, such as bars and restaurants. Among the major statutory changes reflected in the rule amendment are: the 2016 “Brunch Bill,” allowing earlier hours for Sunday sales if a county does not opt-out by local election; a number of new alcohol licenses for private clubs (e.g. private fairs or festivals), private golf courses, growlers, bottle service, and private hotels and resort hotels; and many other significant changes detailed in the analysis below.

#### **§175-2-3. Licenses.**

Language requiring a private club licensee to have been a resident of West Virginia for two years or to have an on-site manager who has been a resident of West Virginia for two years has been deleted. Senate Bill 610, which passed during the 2020 Regular Legislative Session, removed these residency requirements in response to the U.S. Supreme Court case of *Tennessee Wine and Spirits Retail Assn. v. Thomas*, 139 S.Ct. 2449 (2019). That case invalidated many state law residency requirements for licenses and permits on interstate commerce clause grounds. The amendment further clarifies certain requirements for private club managers that are prerequisites to licensure. The amendment also updates and reiterates the licensing fees set forth in code.

The amendment to this section addresses private club licenses created by recent legislation that are now available to certain types of businesses, including: private hotels (\$4,000/year); a license for a private resort hotel with five or fewer designated areas (\$7,500/year), private resort hotels with six to ten designated areas (\$12,500/year), private resort hotels with 11-15 designated areas (\$17,500/year), private resort hotels with 15-20 designated areas (\$22,500/year); private golf clubs (\$4,000/year); private nine-hole golf clubs (\$4,000/year); and private fair and festival (\$750/festival). (See §60-7-6).

This section addresses a number of new privileges available to certain licensees. A business with a Class A license (on-premises consumption) and Class B license (off-premises consumption) may now operate on the same premises, under one owner, at the Commissioner's discretion. (*See* §60-7-6a). A private club in good standing can pay a \$1,000 for "bottle service privilege," which is the ability to sell liquor by the bottle for on-premises consumption. (*See* §60-6-8). A licensed private resort hotel may pay \$150 per day to designate an additional area of the hotel for consumption, not to exceed a seven-day period. (*See* §60-7-6). A licensed private club may now sell growlers of beer for off-premises consumption by paying a \$100 annual fee, functioning as a "brewpub." (*See* §11-16-6b). A private club that sells a customer wine for on-premises consumption accompanying a food purchase of \$15.00 or more may allow the customer to recork or reseal up to two bottles of unconsumed wine for off-premises consumption. (*See* §60-8-3(j)). A private club may also sell one unopened bottle of wine to a customer who has purchased at least \$15 of food for off-premises consumption, if the club pays a \$1,000 annual fee for the privilege. (*See* §60-8-3(j)).

#### **§175-2-4. Operation of private club.**

This section has been amended to require posting of the newly required human trafficking posters that contain hotline information to assist victims. (*See* §15A-2-5). It also incorporates recent changes to the Code regarding the hours during which alcohol may be sold at private clubs. The amendment clarifies that state licensed gaming is lawful in a private club and allows casinos to serve alcohol during the casino's lawful hours of operation. (*See* §60-7-12). The amendment also reflects the changes made to the law by the "Brunch Bill" and subsequent legislation, allowing alcohol sales to start at 10 a.m. on Sundays unless a county holds an option election, and the citizens vote to only allow alcohol sales after 1 p.m. on Sundays. (*See* §7-1-3ss).

The rule creates an exception to the general rule that private club entrances and exits must be open only to members and their guests, by allowing a club in good standing to obtain permission from the Commissioner to allow a deck or other outdoor area to have open doors from 11.a.m. to midnight.

A new subsection 4.15 contains the Code's requirements for private fairs and festivals. The Code allows a licensed private club to hold an event for up to 10 days, and no more than six times per year, where alcohol is served. Private fairs and festivals must be approved by the Commissioner prior to the event and meet a number of specific restrictions and requirements, including providing food and restrooms for attendees. (*See* §§60-7-2, 60-7-8a).

#### **§175-2-5. Violations.**

This section sets forth the exceptions, created by recent legislation, to the general rule that alcohol be served at private clubs by the drink and from the original packaging. These exceptions include provisions allowing bottle service by clubs with a bottle service license; wine by the bottle with food; the filling of a beer growler; and operation of a frozen drink machine. (*See* §§11-16-6a-6b, §60-6-8, §60-8-3(j)).

This section has also been amended to update the list of prohibited acts to reflect recent legislation. The amendment prohibits the sale or tender of carbon dioxide, cyclopropane, ethylene, helium, or nitrous oxide for human consumption. (*See* §60-712(a)(9)). The amendment clarifies age restrictions for persons who may serve (at least 18) or supervise (at least 21) the service of alcohol. (*See* §60-7-12(a)(9)–(10)). The amendment addresses the requirements in the Code for a private club to notify law enforcement and emergency services if a life-threatening medical emergency occurs on the premises. (*See* §60-7-13(d)–(f)). The amendment also affirms the Commissioner’s statutory authority to take action on a license and impose a \$1,000 penalty for violation of the Code or rules. (*See* §60-7-13).

### **Alcohol Beverage Control Commissioner – Distilleries, Mini-Distilleries, and Micro-Distilleries, 178 CSR 10**

Although this is a new rule, most of the language is identical to a previous rule that was approved by Legislative Rule Making Review Committee (LRMRC) and passed by the Legislature in 2016 as part of the Department of Revenue rules bundle. That bundle was then vetoed by the Governor for reasons unrelated to the Alcohol Beverage Control Administration (ABCA) rules.

House Bill 4697 passed during the 2020 Regular Session of the Legislature authorized a new type of distillery in this state, a micro-distillery. The bill created a new license for “micro-distilleries,” in order to facilitate urban distilleries that cannot grow at least 25% of raw materials on site, which is currently required to qualify for a mini-distillery license. A micro-distillery is defined as a distiller where in any one year, no more than 10,000 gallons of alcoholic liquor is manufactured and no more than 25% of raw agricultural products used in distillation may originate from outside this state. Production is limited to 50,000 gallons annually for a mini-distillery and 20,000 gallons annually for a micro-distillery. There is no on-site growing requirement for a micro-distillery.

The rule provides the procedures whereby a distillery, mini-distillery, or micro-distillery must comply with bailment procedures, on-premises sampling, retail operations, production, retail sales, and reporting of activities. The following is an overview of the substantive sections of the rule.

#### **§175-10-2. Definitions.**

The only new term that does not appear elsewhere is “proof gallons” which is an industry term and the definition used is consistent with the U.S. Department of the Treasury’s Alcohol and Tobacco Tax and Trade Bureau.

### **§175-10-3. Bailment Policy and Procedures - Actual Bailment and Constructive Bailment.**

Generally, the Commissioner takes either actual or constructive bailment of all liquor. Actual bailment rules apply to all liquor purchases to retail outlets. Constructive bailment applies to bottles sold for consumption off-premises by the distillery and complimentary samples and allows the distillery to retain possession of the alcohol rather than physically moving it to an ABCA warehouse and back to the distillery. The constructive bailment rules contain reporting requirements to the ABCA to calculate the appropriate markup fee and bailment fee, as required by code.

### **§175-10-4. On-premises Free Complimentary Sampling and Retail Sales for Off-premises Personal Consumption.**

This section permits up to three separate one-ounce samples of liquor, per customer, per day. It prohibits all other on-premises consumption. The rule also requires that the products for off-premises consumption be sold at no less than the price that other retailers can sell the product. It prohibits resale of the off-premises bottles purchased.

### **§175-10-5. Market Zone Fee Payment and Taxes.**

This section requires distilleries to submit gross sales information to the ABCA and submit the 2% market zone fee, as required by code, on a monthly basis. Pursuant to code, the total annual amount cannot exceed \$15,000, which is equivalent to 2% of \$750,000 in annual sales from the distillery. The Commissioner then distributes the fee, at least quarterly, to each retail outlet located in the market zone of the distillery.

### **§175-10-6. Licensing.**

This section lists the annual license fees for a standard distillery (\$1,500), a mini-distillery (\$50), a micro-distillery (\$750), and a representative/broker fee (\$100 per distillery). The rule also provides for a limited retail outlet number and prohibits distilleries from obtaining private club, wine restaurant, or tavern licenses. The rule authorizes the Commissioner to conduct investigations, background checks, and request additional information necessary upon receipt of an application. The rule prohibits distilleries from locating within 100 feet of a school or church, as current code prohibits retail outlets in such a vicinity.

### **§175-10-7. Reports.**

The rule requires monthly reports on retail sales by distilleries to the ABCA, along with remittance of the 2% market zone fee mentioned in section five, no later than the 15th day of the month. In addition, the monthly report requires information on the total gallons of alcoholic liquor produced.

### **§175-10-8. Informational Signs.**

The rule requires distilleries selling alcohol, giving tours, or offering samples to post signs related to the dangers of alcohol and the blood-alcohol chart, both available from the ABCA. The section also contains the general prohibition on advertisements encouraging intemperance or underage consumption.

### **§175-10-9. Days and hours distillery, mini-distillery, or micro-distillery may conduct off-premises retail sales for personal consumption and serve on-premises free complimentary samples.**

The hours are consistent with retail establishments, prohibiting sale on Christmas and Easter Sunday, as well as between midnight and 8 a.m. on all other days. On-premises sampling may take place after 10 a.m. on Sundays, unless the county has exercised the local option to forbid on-premises consumption until 1 p.m.

### **§175-10-11. Manufacturer, distillery, mini-distillery, and micro-distillery prohibitions.**

This section restates the federal and state prohibition on distilleries to provide inducements to retailers, such as holding an interest in any license or property of the retailer, to purchase their product. There is an explicit exception permitting a manufacturer to furnish a retailer with items of nominal value for in-store display. The rule also requires non-alcoholic things of value sold to retailers by distilleries to be sold at market value. The rule prohibits distilleries from negotiating quotas with retailers requiring a certain amount of product be sold.

### **§175-10-12. Advertising.**

The section reiterates the standards set forth in 175 CSR 1, Section 6, which restricts the advertising of alcohol to billboards, newspapers, magazines, and similar publications. In addition, it prohibits advertising that encourages intemperance, induces minors, or tends to mislead. The rule has mandatory statement requirements, including the name and address of the responsible advertiser, the alcohol designation, alcohol content, percentage of neutral spirits, and class of distilled spirit. The rule also contains a list of restrictions on the advertisements.

### **§175-10-13. Transportation.**

The first subsection of this section authorizes standard distilleries and mini-distilleries to sell and ship alcoholic liquors for wholesale sales, which are for re-sale, outside the state, but not by U.S. mail or another mail or package service. The rule states that micro-distilleries are not authorized to sell and ship alcoholic liquors outside the state. The section then reiterates the transportation permits requirements and other transportation restrictions found in code and other rules.



#### **§175-10-14. Violations, Penalties and Hearings.**

This section lists a number of actions that are prohibited in code for distilleries to take and sets them forth in a single location. Any violation can be penalized with up to a \$1,000 civil penalty, as authorized in rule. The section sets forth the notice requirements, hearing rights, and appeal procedures.

#### **§175-10-15. Revocation, hearing and appeals.**

This section reiterates the authority of Commissioner to revoke a license, sets forth the required notice provisions, and notes the appeal process.

#### **Financial Institutions – Rule Pertaining to the Fintech Regulatory Sandbox, 106 CSR 21**

The new rule implements the provisions of §31A-8G-1, *et seq.*, which were newly enacted by House Bill 4621 passed during the 2020 Regular Session of the Legislature. The act establishes a new program through which the West Virginia Division of Financial Institutions (DFI) may allow persons to provide “innovative” financial products or services to persons in the state during a temporary period of up to two years without obtaining a license or other authorization that might otherwise be required under state laws that regulate financial products or services. “Innovation” means the use or incorporation of a new or emerging technology or a new use of existing technology, including distributed ledger, to address a problem, provide a benefit, or otherwise offer a product, service, business model, or delivery mechanism that is not known by the Division of Financial Institutions to have a comparable widespread offering in the state.” The act names this new program the “West Virginia FinTech Regulatory Sandbox Program”.

This rule is not substantively different from the emergency rule that has been in effect since July 1, 2020. The rule provides the objectives of, and processes for, applying to participate in the new program (Section 2); provides for a bond required of participants in the new program (Section 3); allows the Commissioner of the DFI to “enter into information sharing agreements with other governmental agencies or self-regulatory organizations,” and to “participate in multijurisdictional agreements” (Section 4); provides that certain administrative procedural laws apply to the new program (Section 5); provides for a regulatory sandbox participant’s partnerships with financial institutions (Section 6); and addresses any regulatory sandbox program testing by a participant in a jurisdiction outside this state (Section 7).

#### **Insurance Commission – Fingerprinting Requirements for Applicants for Insurance Producer and Insurance Adjuster License, 114 CSR 2A**

This rule amends a current legislative rule which establishes procedures for obtaining fingerprints for a criminal background check required for insurance producers. The rule also requires criminal background checks for insurance adjusters. This was made necessary by passage of House Bill 4502 during the 2020 Regular Session of the Legislature.

## **Insurance Commission – Insurance Adjusters, 114 CSR 25**

This rule amends a current legislative rule and pertains to the licensing and regulation of insurance adjusters. The rule amends an existing rule to make changes necessitated by the passage of House Bill 4502 during the 2020 Regular Session of the Legislature. That bill updated and rewrote the article in the insurance code on insurance adjusters. The rule modifies licensure requirements to allow for three nationally recognized types of adjuster (independent, company, and public adjusters). West Virginia did not have a license for independent adjusters until the passage of House Bill 4502. The need for the additional type of adjusters was to eliminate the negative affects to reciprocity for West Virginia resident adjusters with the many states who license independent adjusters separately. Consistent with the statute, the rule also exempts from the public adjuster licensure requirement various groups and people, including attorneys and claim investigators and exempts from the independent adjuster and company adjuster's licensure requirement various groups and people, including attorneys and persons who negotiate or settle claims under life or health insurance policies.

The National Association of Insurance Commissioners' (NAIC) "Public Adjusters Licensing Model Act (Model 228) amended provisions regarding an emergency adjuster license. This license allows adjusters not licensed in this state to receive an emergency license in cases of insurance emergencies. The rule sets out certain information which is required to be provided to the Insurance Commissioner to allow them to receive an emergency license.

The rule also adds language regarding adjuster's lines of authority that mirrors the statutory provisions. The portion of the rule that sets out the qualifications required for resident adjuster's licenses has been modified slightly to reflect changes to the statute.

## **Insurance Commission – Credit for Reinsurance, 114 CSR 40**

This rule amends a current legislative rule. The changes are necessary to incorporate changes made to the West Virginia Code by the passage of House Bill 4146 during the 2020 Regular Session of the Legislature needed for the West Virginia Offices of the Insurance Commissioner (OIC) to remain accredited. The bill added language to West Virginia's credit for reinsurance code from the National Association of Insurance Commissioners (NAIC) Model, Credit for Reinsurance Model Law (Summer 2019), Model No. 785. The language expanded the group of assuming insurers to which reinsurance may be ceded.

The purpose of the rule is to regulate reinsurance described by NAIC as insurance of insurance companies. It is an indemnity between a reinsurer and an insurer, and it operates as a transfer of risk from an insurer (the cedent) to the reinsurance company which contractually assumes all or part of the risk of one or more insurance policies issued by the insurance company. This is an essential part of the insurance industry to manage risks.

The rule incorporates the provisions of West Virginia Code §33-4-15a. It requires assuming insurers have their head office or be domiciled in a reciprocal jurisdiction and defines “reciprocal jurisdiction.” It specifies assuming insurers’ minimum capital and surplus requirements and minimum solvency or capital ratios. The rule further requires assuming insurers to inform the Insurance Commissioner if such minimum requirements are no longer met. Assuming insurers would have to consent to the jurisdiction of courts in West Virginia, agree to the OIC as agent for service of process, and would be bound to pay any final judgments.

In addition to the list of reciprocal jurisdictions published by NAIC, the OIC would be required to publish a list. The rule incorporates statutory provisions which provide when the OIC may add or subtract a jurisdiction from the list in specified circumstances. The OIC would also be required to publish a list of assuming insurers that have met all requirements. If an assuming insurer’s eligibility is suspended, a reinsurance agreement with it would not qualify for credit. Likewise, the rule adopts statutory provisions which provide that if an assuming insurer’s eligibility is revoked, no reinsurance credit would be granted.

### **Insurance Commission – Continuing Education for Individual Producers and Individual Insurance Adjusters, 114 CSR 42**

The current rule provides the requirements for continuing education for insurance producers. The rule provides that individual insurance adjusters are subject to the same continuing education requirements as the producers. This change incorporates the statutory changes adopted pursuant to House Bill 4502 passed during the 2020 Regular Session of the Legislature. Consistent with the authorizing statute, the rule requires the Board of Insurance Agent Education to develop the continuing education program which is submitted to the Insurance Commission. The continuing education requirements are biennial and are effective with the reporting period beginning July 1, 2021.

### **Insurance Commission – Mental Health Parity, 114 CSR 64**

This rule is a repeal and replace of a current legislative rule. The rule establishes procedures and requirements to ensure mental health parity among the various types of insurance plans offered in West Virginia. The changes were necessitated by the passage of Senate Bill 291 during the 2020 Regular Session of the Legislature.

The rule defines key terms including the term behavioral, mental health and substance use disorder. The provisions of 45 CFR 146(c) are incorporated by reference.

The rule provides for the required coverage for mental health services including substance use disorders. The coverage applies to the Public Employees Insurance Agency (PEIA) and all other types of enumerated insurance carriers. All carriers are required to:

- 1) Include coverage for behavioral health screenings with coverage and reimbursement no less extensive than coverage and reimbursement for the annual physical examination;

- 2) Comply with nonquantitative treatment limitations requirements specified in federal regulations. It precludes PEIA and the carriers from applying nonquantitative treatment limitations to behavioral health, mental health or substance use disorder that do not apply to medical and surgical benefits;
- 3) Comply with financial requirements and quantitative treatment limitations in federal regulations. It precludes carriers from applying quantitative limitations to behavioral health, mental health or substance use disorder that do not apply to medical and surgical benefits;
- 4) Establish procedures to authorize treatment with a nonparticipating provider if a service is not available-network adequacy issues; and
- 5) Authorize payment at the same rate used to pay for medical and surgical benefits.

A carrier may not apply any nonquantitative treatment limitations to benefits to behavioral health, mental health, and substance abuse that are not applied to medical and surgical benefits within the same class of benefits.

The rule sets forth the process for denial and provides that, unless the claim is denied for nonpayment of premium, a denial for reimbursement for the prevention of, screening for, or treatment of behavioral, mental health or substance use disorder by PEIA and the insurance carriers must contain specified language.

Consistent with the provisions of the authorizing statute, the rule requires the Insurance Commissioner submit an annual parity report to the Joint Committee on Government and Finance. The first report will be submitted by June 21, 2021, and submitted annually thereafter. The report contains data to demonstrate parity compliance, medical necessity criteria used in determining benefits for behavioral health, mental health, and substance use disorder and the medical necessity in determining medical and surgical benefits. The report will also include identification of all nonquantitative treatment limitations that are applied to benefits for behavioral, mental health, and substance use disorder and to medical and surgical benefits within each classification of benefits.

### **Insurance Commission – Health Benefit Plan Network Access and Adequacy, 114 CSR 100**

This new rule implements the Health Benefit Plan Network Access and Adequacy Act, House Bill 4061, passed during the 2020 Legislative Session. The legislation requires a health insurer that maintains a network of health care providers for its insureds to ensure that the network is sufficient in numbers and has appropriate types of providers in order for all covered services to be accessible without unreasonable travel or delay.

The rule sets forth network access plan standards, processing services or other prescription drug or device services, or both, for health benefit plans. This rule was filed pursuant to the passage of Senate Bill 489 during the 2019 Regular Legislative Session.

### **Racing Commission – Thoroughbred Racing, 178 CSR 1**

This rule amends a current legislative rule. Some of the changes incorporate recent changes made to schedules, guidelines and the Model Rule adopted by the Association of Racing Commissioners International (RCI). The amendments:

- 1) Adopt the RCI-revised guidelines that govern foreign substances and a schedule governing endogenous, dietary or environmental substances that are required to be publicly posted in the office of the Racing Commission veterinarian;
- 2) Adopt the RCI Model Rule provisions to require that trainers and assistant trainers complete annual continuing education courses as a new condition of the occupational permits issued to them by the Racing Commission;
- 3) Add the children and grandchildren of jockeys to the list of those children and grandchildren of other horseracing personnel who may qualify for an occupational permit to participate in horseracing issued by the Racing Commission;
- 4) Modify the conditions and manner in which a riding crop may be used by a jockey during a race;
- 5) Adopt the RCI Model Rule provisions to prohibit the administration of bisphosphonates to any horse under four years of age, and impose conditions on bisphosphonates administration to a horse four years of age or older; and
- 6) Adopt the RCI revised guidelines that govern foreign substances and a schedule governing endogenous, dietary, or environmental substances, all related to medications and substances administered to horses, as applicable to racetrack stewards, the Racing Commission and others.

Table 178-1 B, Jockey Mount Fees has been updated at the request of the Jockey's Guild to reflect as the minimum jockey mount fees the fees that are currently negotiated as agreed-to by the jockeys and the horsemen at Mountaineer Racetrack. (See Sec. 28.6.a.) The agency advises that the Mountaineer fees are lower than the fees that are currently negotiated as agreed-to by the jockeys and the horsemen at Charles Town Racetrack.

### **Racing Commission – Greyhound Racing, 178 CSR 2**

The rule amends the existing rule to reduce the number of health inspection certificates that greyhound owners/trainers must obtain for their racing greyhounds. Currently, when a greyhound enters a West Virginia racetrack, it must be accompanied

by a health certificate dated within 15 days prior to the greyhound's arrival. The rule makes two changes:

1. Instead of being accompanied by a health certificate dated within 15 days prior to the greyhound's arrival, the greyhound must be accompanied by a health certificate. New language is added, however, stating that such certificates are valid for 30 days "from the date of inspection."; and
2. A new exemption is created from the requirement that a greyhound be accompanied by a health certificate upon entering a West Virginia racetrack: a greyhound traveling directly from one West Virginia track to another West Virginia track is exempt from the health certificate requirement if the greyhound has "officially raced or has engaged in official schooling at the originating West Virginia Greyhound track within the previous thirty (30) days prior to transport." New language has also been added requiring that, instead of the health certificate, the greyhound "must be accompanied by a copy of its most current race lines providing proof of origin from a West Virginia Greyhound track."

### **Racing Commission – Advance Deposit Account Wagering, 178 CSR 10**

The purpose of this newrule is to regulate the practice of Advance Deposit Account Wagering (ADW) in West Virginia. This practice was authorized by the Legislature with the passage of House Bill 4438 during the 2020 Regular Session of the Legislature.

The rule contains a comprehensive licensing process through the Racing Commission. West Virginia Code §19-23-12e(l) authorized the Commission to set standards, qualifications, and procedures to issue a license. The rule sets forth application requirements, including ownership and control details of an applicant, character information, comprehensive financial materials, and a detailed plan of operation and a budget.

The rule also sets out operational requirements for a licensee. They must be qualified to do business in West Virginia. The rule also provides that any action taken on an ADW license by another jurisdiction may be used as grounds for suspension in West Virginia and requires the licensee to immediately place the Racing Commission on notice of an action in another jurisdiction. There are also provisions in the rule regarding the operation of an ADW account.

The rule requires licensees to maintain specified information on account holders and specifies the types of transactions permitted on an account. Wagers are limited to account holders unless otherwise approved by the Racing Commission. Specified types of account transactions are permitted.

Account records are to be maintained for three years and an ADW licensee may close an account for violation of the terms of the account agreement. The licensee may also close wagering on any specific race or racetrack. The relationship between the licensee and the account holder are determined by the terms of the agreement between

them. This agreement must be approved by the Racing Commission. The rule specifically provides for confidentiality of information regarding an account and any wager. Information may be disclosed as provided by the rule and state or federal law, to the Racing Commission and to the licensee.

All wagers placed via ADW are required to be recorded by electronic means and the tapes are to be maintained for a three-year period. If the electronic media is unavailable, wagers are not permitted.

The Racing Commission may audit, review, or monitor the equipment, staff, and records of any ADW licensee.

The rule provides timeframes for the payment of fees. The source market fee is 4% of the total amount wagered by ADW through the licensee. The application fee is set at \$5000 annually. The regulatory fee is set at one-half percent of the total amount wagered through the ADW licensee as is the additional fee. These are all statutory fees.

There are provisions in the rule for refusal or issue or renew an ADW license and to also allow for the suspension, revocation or to place restrictions on an existing license if certain conditions are present. Due process provisions are provided.

### **Lottery Commission - West Virginia Lottery Interactive Wagering Rule, 179 CSR 10**

The purpose of this new rule is to permit and regulate interactive gaming, or interactive wagering using the internet. Interactive wagering refers to the offering of any games traditionally available on the casino floor through digital or mobile platforms or applications. The rule complies with the requirements of House Bill 2934 passed during the 2019 Regular Session of the Legislature.

The authorizing statute gives the Lottery Commission the power and authority to regulate interactive wagering. Included in this authority is the ability to adopt rules, including emergency rules (by July 1, 2019) regulating interactive wagering. Regulation of interactive wagering operations may include specifications for systems and platforms for interactive wagering, licensing, accounting by operators, record-keeping by operators, payment form for wagers, and promotion of social responsibility in gambling. The Commission is required to established minimum internal control standards (MICS) that operators must implement for all interactive wagering operations.

The rule contains cash reserve requirements, geolocation requirements, and age requirements; patrons must be 21 years of age. It also contains provisions regarding interactive gaming integrity and internal controls which must be filed with the Commission.

The rule requires an operator to have primary and backup gaming equipment. The primary equipment is required to be located in a restricted area on the premises of a licensed operator situate within the state or in another facility situate in this state that is

owned or leased by the operator, secure, inaccessible to the public, and specifically designated to house the equipment. Backup gaming equipment must be located for a 60-day period on the premises of the operators facility or in another facility situate in this state that is owned or leased by the operator, secure, inaccessible to the public, and specifically designated to house the equipment. Backup equipment used to restore data is required to be located within the state, but the backup data may be stored in any location in the United States.

The rule has provisions regarding gaming system requirements, security requirements for patron access, suspension of an account, gaming limits, and bonus games.

The section on patron's wagers has provisions regarding establishment and funding of an account, withdrawal of funds from the account, and account statements.

The rule sets forth standards for server-based gaming systems and server-based games. The operator must ensure continued operation in power failures and continued integrity of hardware, software, and data during shutdowns; ensure system recovery during outages; have controls to ensure only authorized hardware is system connected; ensure that patron devices meet minimum compatibility requirements; and allow Commission approval of all games prior to offering them to the public. Operational rules are required to be approved by the Commissioner. There are specific requirements for peer-to-peer games such as poker. Computerized opponents are prohibited but patrons may select to be randomly placed at a table where parties have been placed randomly.

Interactive gaming networks between one or more operators, tournaments, simulcasting of table games, and progressive jackpots are permissible with Commission approval and prior notice to the Commission.

A number of reports are required to be generated by the system and exported to the Commission. These include daily reports to calculate taxable revenue and ensure integrity of operation as follows: for Patron Account Summary, as Wagering Summary Report, A non-cashable Promotional Account Balance Report, and A Forfeited Bonus Winnings Report. The operator is required to use the Network Wagering Summary Report to calculate interactive gaming gross revenue on a daily basis. Operators must also prepare a Variance Report comparing the Summary Report to the Patron Account Balance Report and show the variance between the two amounts, document the reason for the difference, and do a manual adjustment to increase by the amount of the difference unless the revenue was properly reported. Other reports include a report of dormant accounts, a Performance Report, a daily report of Patron Account Adjustments, a weekly report that identifies problem gamblers, and a monthly West Virginia Bank statement and patron liability report that has the balances of the restricted account. Operators are also required to establish test accounts to various components of the system.

Other sections of the rule relate to geolocation, remote gaming systems, physical and environmental controls for equipment, access to equipment, security requirements,



temporary permits for interactive gaming, reciprocal agreements, limitations on licensed gaming operators, advertising, licensing, and registration.

### **Tax – Valuation of Farmland and structures situated thereon for Ad Valorem Property Tax Purposes, 110 CSR 1A**

The agency is directed to amend the rule to define the term “high tunnel” and to provide high tunnels, as conservation measures, are not subject to assessment as farm building.

### **Tax – Tax Credit for Providing Vehicles to Low-Income Workers, 110 CSR 13FF**

This new rule implements the provisions of §11-13FF-1, *et seq.* which were newly enacted by House Bill 4969 passed during the 2020 Regular Legislative Session, providing a tax credit to:

- 1) Persons who donate a passenger vehicle after December 31, 2020, to a qualifying charitable organization; and
- 2) Licensed used or new motor vehicle dealers that sell passenger vehicles to low-income workers after December 31, 2020, through a qualifying charitable organization’s affordable financing program. To qualify as a charitable organization, it must provide low-income workers in the state with below-market, affordable financing through cooperating financial institutions to purchase vehicles from these licensed dealers for commuting for employment purposes.

The tax credit is applicable against state income taxes in an amount of no more than \$2,000 per vehicle; the aggregate tax credits under the new statutes that may be claimed by all taxpayers in any year is \$300,000.

The new rule provides definitions (Section 2); the amount of and limitations on each tax credit (Section 3); application of state sales taxes on vehicle sales (Section 4); requirement that the charitable organizations, as well as dealers, be licensed in West Virginia as motor vehicle dealer (Section 5); aggregate and distribution of tax credits (Section 6); process and forms for claiming the credit (Section 7); requirements to participate in the program as a low-income person (Section 8); criteria for suitability of vehicles (Section 9); duties of the charitable organizations (Section 10); and debarment and referral for fraud prosecution (Section 11).

### **Tax – Downstream Natural Gas Manufacturing Investment Tax Credit, 110 CSR 13GG**

This new rule is the result of House Bill 4019 enacted during the 2020 Regular Legislative Session. The bill was created to encourage investment in downstream natural gas manufacturing businesses through the use of an income tax credit. This rule

establishes the procedures for claiming the Downstream Natural Gas Manufacturing Investment Tax Credit.

Eligible taxpayers are allowed a tax credit against the portion of income taxes imposed by the state that are a consequence of a taxpayer's qualified investment in a new or expanded downstream natural gas manufacturing facility, provided the investment results in the creation of new jobs. The credit cannot be taken if a taxpayer is also claiming another tax credit for the same investment.

The maximum allowable credit is determined by multiplying the taxpayer's qualified investment as determined by §11-13GG-6 by the new jobs percentage as determined by §11-13GG-7. The qualified investment is a percentage of the cost of the project and is determined by the useful life of the investment. The new jobs percentage is defined by the number of new jobs created by the project. Certain benefits are allowed for construction jobs under defined circumstances.

The amount of the credit accrues over a 10-year period and can be claimed at the rate of one tenth of the amount per taxable year for 10 years, beginning in the taxable year in which the taxpayer places the investment in service unless the taxpayer elects to delay the beginning until the next succeeding taxable year.

The credit amount is allowed against 80 percent of that portion of the taxpayer's state tax liability which is the direct result of the taxpayer's qualified investment. However, if the median salary of the new jobs is higher than the statewide average nonfarm payroll wage, the credit amount is allowed against 100 percent of that portion of the state tax liability which is the result of the investment. The credit will only apply to corporate net income taxes or, if elected, personal income taxes.

If any tax credit remains after a given tax year, the excess amount is carried forward to each following tax year until used or until the expiration of the tenth taxable year subsequent to the end of the initial 10-year credit application period. If any unused credit remains after the twentieth year, the amount is forfeited.

If the investment ceases to be used or is disposed of prior to the end of its useful life, the taxpayer must recalculate and refile for a revised credit. Similarly, if the number of employees falls below the level on which the credit is based, the taxpayer must recalculate the credit allowance.

If circumstances change and qualified investment property is removed from service or the number of employees falls below the number of new jobs required to qualify, there are recapture provisions.

The rule also includes provisions governing transfers, record keeping, and the application process, burden of proof, and reporting provisions. The effective date for qualified investments is July 1, 2020.

## **Tax – High-Wage Growth Business Tax Credit, 110 CSR 13II**

This new rule implements the provisions of §11-13II-1, *et seq.*, which were newly enacted by House Bill 4558 during the 2020 Regular Legislative Session, providing a tax credit to eligible employers who hire eligible employees into new high-wage jobs. “New high-wage job’ means a new job created in West Virginia by an eligible employer on or after July 1, 2020, that is occupied for at least 48 weeks of a qualifying period by an eligible employee who is paid wages calculated for the qualifying period to be at least 2.25 times the state median salary.”

The tax credit is applicable against state income taxes in an amount of no more than 10% of the high wages paid to the employees; the aggregate tax credits under the new statutes that may be claimed by all taxpayers in any fiscal year is \$5 million. A qualified employer may continue to receive tax credits for the jobs created for no more than five successive years. The statutes provide that the West Virginia Development Office may authorize the tax credits and provides the criteria that must be considered before the office may authorize them. The Development Office must forward authorized applications to use the tax credits to the State Tax Division.

The rule provides for the process by which Tax Division will review and allow a tax credit that has been approved by the Development Office; how the tax credit is to be applied against the employer’s income taxes; the allocation of the credit against taxes of equity owners of a pass-through entity employer; and the carry forward, refund, and forfeiture (expiration) of unused tax credits (Section 3); and penalties for any person who willfully submits a false, incorrect, or fraudulent certification required for the tax credit (Section 4).

**DATE OF PASSAGE:** March 23, 2021

**EFFECTIVE DATE:** March 23, 2021

**ACTION BY GOVERNOR:** Signed March 31, 2021

# Senate Bill 182

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Authorizing miscellaneous agencies and boards to promulgate legislative rules.

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

### **SUMMARY:**

This Miscellaneous Rules Bundle 9 contains 34 rules.

### **Department of Agriculture - Animal Disease Control, 61 CSR 1**

This rule amends an existing rule. The amendment incorporates by reference three additional federal regulations, all relating to animal disease spread and control. The amended rule also adds a new subdivision (§8.16.d) that prohibits importing into West Virginia swine that have been fed or have had access to uncooked garbage. It also prohibits individuals and entities from receiving swine that they have reason to believe have had access to uncooked garbage. The new provision is in line with federal regulations.

### **Department of Agriculture-West Virginia Seed Law, 61 CSR 9**

The rule amends an existing rule. It updates a number of aspects of West Virginia seed law to conform with the Federal Seed Act and the Recommended Uniform State Seed Law (RUSSEL). The rule:

- Specifies germination standards (§3);
- Specifies additional labeling for tree and shrub seeds (§4);
- Specifies white sweet clover labeling requirements (§6);
- Specifies relabeling requirements (§15);
- Specifies seed labeling requirements for distribution to wholesalers (§16);
- Establishes labeling requirements for seeds for sprouting for salad or culinary purposes (§17);
- Defines hermetically sealed seed requirements (§18);
- Establishes labeling requirements for flower seeds (§19);
- Establishes an assessment of penalty fees (§21); and
- Establishes a program for analysis of hold-over seed (§22)

### **Department of Agriculture - Inspection of Meat and Poultry, 61 CSR 16**

This rule amends an existing rule by incorporating by reference the pertinent federal regulations through January 1, 2020. It also makes several technical changes.

## **Department of Agriculture - Poultry Litter and Manure Movement into Primary Poultry Breeder Rearing Areas, 61 CSR 28**

This rule adds a 10-year sunset date. Without the extension, the rule expires in 2021.

## **Department of Agriculture - Seed Certification Program, 61 CSR 39**

This rule amends an existing rule which relates to the production, inspection, and certification of seed for the industrial hemp program.

It deletes a statement relating to interagency seed certification process in §36.1 and deletes a statement in §39.1.9 that all fields of industrial hemp grown for seed production are required to undergo the certification process.

The rule reduces the time a field must lay fallow before planting a new crop of industrial hemp based on previous land use. The presence of Broomrape prohibits certified status.

Section 42, which concerns the isolation of industrial hemp plants used in the seed certification program from other plants, was substantially modified.

Sections 43.6.1 and 43.6.2, both of which relate to THC concentration, have been deleted. The maximum impurity standards table in §43.11 has been modified.

## **Department of Agriculture-WV Exempted Dairy Farms and Milk and Milk Products Processing Rules, 61 CSR 40**

This rule amends an existing rule that establishes operating standards and procedures for West Virginia dairy farms that produce pasteurized milk that is acceptable for human consumption but does not meet Grade A milk or manufacture grade milk standards, and which is to be sold only within the state of West Virginia.

The rule itself became necessary as a result of the passage of Senate Bill 496 passed during the 2019 Regular Legislative Session, which transferred the responsibility and authority for milk regulation to the Department of Agriculture (WVDA) from the Department of Health and Human Resources (DHHR) effective January 1, 2020.

The rule contains a new §29, which establishes labeling requirements for this particular type of milk and milk products. Labels must list the product identity, net quantity, names and address of the manufacturer, lot or batch number, dates, animal source, ingredients, and allergen content, if any. Labels must also state that the product must be kept refrigerated, and that the product is a West Virginia exempt dairy product.

## **State Auditor - Standards for Requisitions for Payment Issued by State Officers on the Auditor, 155 CSR 1**

Substantive changes in this rule include:

- Redefining the term "contract" (§2.1);
- Requiring certification of invoices and legible signatures on the invoices (§3.1.3);
- Requiring redaction of personally identifiable information and protected health information from invoices (§3.1.6);
- Authorizing application of prior credit to current invoice with attached explanatory credit memo and requiring agency to manually adjust the final total and initial the change (§3.2);
- Prohibiting agencies and vendors from altering name and address of vendor on invoice and requiring matching name and address of vendor on wvOASIS (§3.5);
- Requiring preauthorization by the Auditor of manual warrants or special handling requests (§3.11);
- Authorizing use of electronic signatures at Auditor's discretion and setting forth procedures for them (§3.12);
- Requiring legible signatures on receiving reports (§5.5);
- Deleting condition that Attorney General authorize prepayment of commodities from exception to requirement that date of record must fall within contract period unless the contract contains terms and conditions to the contrary (§6.1.6);
- Requiring attachment of fully executed contract for certain documents (§6.5);
- Requiring agency acknowledgment for vendor statements with multiple invoices (§6.6);
- Requiring filing of building leases, signatures, and notarization of leases and changes, and terms/conditions for certain leases (§7.2-7.4);
- Creating new procedures for refund requests by GAXR documents (§12.1-12.1.3);
- Requiring Treasurer's nonrecurring wire form for nonrecurring wire payment requests (§13.1); and
- Allowing alternative certifications and documents for use in the process.

## **Board of Funeral Service Examiners - Funeral Director, Embalmer, Apprentice, Courtesy Card Holders, and Funeral Establishments Requirements, 6 CSR 1**

The main purpose of the rule to is remove all fees associated with licensure from this series and reference a new proposed rule, Series 7, relating only to fees. §6.1.3.1.5 has been added to the rules defining a passing score as a 75% on the West Virginia jurisprudence exam for licensure. The rule limits apprenticeships to six years without Board approval and permits persons seeking an apprenticeship to enter an apprenticeship before, during, or after college or mortuary school coursework.

The rule prohibits inspectors from inspecting a competing business located within 25 miles of the inspector's business. The rule has also removed the requirement for businesses to have a separate room to view funeral related items for sale. This rule removes the grace period for licensure renewal and imposes a flat late fee for late renewals. It also removes language requiring the Board of Funeral Service Examiners to send out more than one renewal notice.

New section 18.3.3 permits the Board to exempt in-person continuing education hours when there is a state of emergency that makes obtaining hours a hardship.

## **Board of Funeral Service Examiners - Crematory Requirements, 6 CSR 2**

The main purpose of the rule is to remove all fees relating to crematory operations and place fees in the new, Series 7 rule. It also removes language requiring the Board of Funeral Service Examiners to send out more than one renewal notice. The rule removes the requirement for businesses to have a separate room to view funeral related items for sale. It requires a crematory operator to be at least 18 years of age. The rule adds a sunset provision and adds a definition for the term "fees". Finally, the rule adds a specific renewal due date for all licensees.

## **Board of Funeral Service Examiners - Fee Schedule, 6 CSR 7**

The purpose of the rule is to locate all fees from 6 CSR 01 and 6 CSR 02 into this new rule. It also defines terms. The fees remain the same in most cases.

The rule implements four changes. It:

- 1) Adopts a flat fee of \$150 for any late license renewals per lapsed license. The current rules have late fees ranging from \$100 to \$200

late fee range depending on the number of days past due;

2) Increases a returned check fee from \$15 to \$25;

3) Reduces inactive licensee fees from \$200 to \$50; and

4) Implements a new \$25 fee to change the Licensee-in-Charge or Operator-in-Charge.

### **Hearing Aid Dealers - Rules Governing the West Virginia Board of Hearing Aid Dealers, 8 CSR 1**

This rule increases license application fee, license renewal fee, trainee permit application fee, and trainee permit renewal fee for hearing aid fitters and dealers from \$100.00 (current) to \$120.00; adds late renewal fees; and updates the Board of Hearing Aid Dealers' address for advertising.

### **Landscape Architects - Registration of Landscape Architects, 9 CSR 1**

The rule amends a current legislative rule. Currently, to become licensed in West Virginia, a landscape architect must, among other things, pass a national examination, the Landscape Architect Registration Examination (LARE), and a West Virginia-specific state examination. The Board of Registration of Landscape Architects has determined that passing the LARE is sufficient for licensure in West Virginia and has therefore eliminated the West Virginia examination requirement from the rule.

### **Landscape Architects - Application for Waiver of Initial License Fees for Certain Individuals, 9 CSR 4**

This new rule incorporates the provisions of Senate Bill 396 passed during 2019 Regular Legislative Session. That bill, codified at §30-1-23, mandates waiver of initial licensing fees for qualifying low-income individuals and members of military families.

### **Livestock Care Standards Board - Livestock Care Standards, 73 CSR 01**

This is an amendment of an existing rule that governs the care and well-being of livestock in the state. The rule is set to expire in July 2021, and the rule is being amended largely to extend the sunset date for 10 years. It also adds references to several publications regarding euthanasia, equine care, and body scoring.



## **Board of Medicine - Registration to Practice During Declared State of Emergency, 11 CSR 14**

This new rule establishes a registration process to practice during a declared state of emergency. The rule establishes a registration process, sets forth eligibility criteria, and permits practice of registrants during a declared emergency. This allows physicians and Physicians Assistants (PA) licensed in another state to provide medical care in West Virginia under special provisions during the period of a declared state of emergency, and allows physicians and PAs who hold and inactive or expired licenses to provide care during an emergency.

## **Board of Occupational Therapy - Telehealth Practice: Requirements, Definitions, 13 CSR 9**

The purpose of this new rule is to establish procedures for the practice of telehealth by a licensed occupational therapist or occupational therapy assistant.

Practitioner-patient relationships must be initially established by interactive audio store-forward technology, real-time videoconferencing, or similar secure video services. Audio-only or written forms of communication are not permitted to establish the practitioner-patient relationship, however, once the relationship has been established the use of any telehealth technology that meets the standard of care may be used.

Prior to providing occupational therapy services via telehealth, the therapist must determine whether an in-person appointment is necessary and make every attempt to ensure that a therapist is available if an on-site visit is required, and that the therapist and/or therapy assistant will provide the appropriate interventions. Occupational personnel must obtain informed consent for the telehealth appointment from the patient prior to the initiation of these services, maintain documentation of the consent-to-treat process, and keep these records within the patient's health records.

The same standard of care must be exercised by the occupational therapists and assistant as all other mode of service delivery. Confidentiality of medical information must be secured and maintained as required by HIPAA and state and federal law. Assistants working under general supervision can provide services via telehealth. Telehealth cannot be used when direct supervision is required. All supervision requirements must be followed.

## **Board of Osteopathic Medicine - Licensing Procedures for Osteopathic Physicians, 24 CSR 1**

This rule amends a current legislative rule which establishes the operation of the Osteopathic Board and the regulation and licensing of osteopathic physicians.

The amendments to this rule are required as a result of the passage Senate Bill

770 during the 2020 Regular Session of the Legislature. With respect to the issuance of a license (subdivision 4.2.c) the rule strikes language requiring an applicant for license to practice osteopathic medicine to include evidence of the completion of one year of clinical training under one of two options. In lieu of this language, the rule inserts a requirement for evidence of the completion of a minimum of one year of post-doctoral clinical training in a program approved by the American Osteopathic Association or the Accreditation Council for Graduate Medical Education.

The qualifications for the issuance of a license to practice by reciprocal endorsement has been similarly amended to also require the successful completion of a minimum of one year of post-doctoral training in a program approved by the American Osteopathic Association or the Accreditation Council for Graduate Medical Education. This section also adds language requiring an applicant to submit to a state and national background check similar to a licensee.

With respect to the temporary permit to practice osteopathic medicine, the rule requires the same post-doctoral training and inserts language requiring an applicant to submit to a state and national criminal background check.

#### **Board of Osteopathic Medicine - Emergency Temporary Permits to Practice During States of Emergency or States of Preparedness, 24 CSR 9**

This new rule establishes a registration process to practice during a declared state of emergency, sets forth eligibility criteria, and permits practice of registrants during a declared emergency. This will allow physicians and PAs licensed in another state to provide medical care in West Virginia under special provisions during the period of a declared state of emergency; and to allow physicians and PAs who hold and inactive or expired licensed to provide care during an emergency.

#### **Board of Pharmacy- Licensure and Practice of Pharmacy, 15 CSR 1**

The rule amends a current legislative rule. The definition of the term "compounding" has been amended to specify those processes which are not included within the definition. These include: tablet splitting; capsule opening; adding nonallergenic flavoring; and combining commercially manufactured products. The term "electronic supervision" is also defined. Section 14, relating to the sanitary regulation of pharmacies has been completely rewritten.

#### **Board of Pharmacy- Uniform Controlled Substances Act, 15 CSR 2**

The rule updates the reference to Drug Enforcement Administration (DEA) regulations to 2020. The provisions of Subsection 8.15 which relate to the refilling of Schedule III and Schedule IV prescriptions has been amended to also apply to Schedule V prescriptions.

### **Board of Pharmacy - Board of Pharmacy Rules for Continuing Education for Licensure of Pharmacists, 15 CSR 3**

This rule updates continuing education requirements for licensed pharmacists and pharmacy technicians. House Bill 4417 passed during the 2020 Regular Legislative Session permits different types of continuing education (CEs) to qualify for completion of the drug diversion continuing education requirements, best-practice prescribing of controlled substances training and training on prescribing and administration of an opioid antagonist as approved by each professions' licensing board. The Board of Pharmacy lowered the required CEs related to drug diversion training and best practice prescribing of controlled substances from three hours to two hours. The specific requirements of the training have been removed giving the licensees more flexibility in how to obtain the continuing education. In addition, the proposed rule updates the definition of "CPE hour" to permit the acceptance of 15 minute intervals which would count as .25 credit hours; provides that ACPE approved providers do not need to give a statement of credit to pharmacists; provides that the Continuing Pharmacy Education Committee will approve non-accredited ACPE continuing education; deletes section relating to Board approval of providers; states that all activities by ACPE accredited providers are approved continuing education; and removes the specific subjects for continuing education.

### **Board of Pharmacy - Licensure of Wholesale Drug Distributors, Third Party Logistics Providers and Manufacturers, 15 CSR 5**

This rule requires a wholesale distributor who is disciplined in another state to inform the Board of Pharmacy within 30 days after entry of the final order. It also requires a wholesale distributor to submit a list directors and officers at the time of licensure and licensure renewal.

### **Board of Pharmacy - Controlled Substances Monitoring Program, 15CSR 8**

This rule adds schedule V drugs to the schedules of drugs be reported to Monitoring Program and the section relating to confidentiality. The current rule establishes requirements for the recordation and retention in a single repository of information regarding the prescribing, dispensing, and consumption of certain controlled substances, "drugs of concern", and opioid antagonists; this section has been deleted as there are no longer any drugs of concern.

### **Board of Pharmacy - Immunizations Administered by Pharmacists and Pharmacy Interns, 15 CSR 12**

This rule has been updated pursuant to Senate Bill 544 which passed during the 2020 Regular Legislative Session and gave pharmacists the ability to provide all Centers for Disease Control recommended immunizations. Section 13 has been amended to read as follows:

### **§15-12-3. Immunizations.**

A licensed pharmacist or pharmacy intern may administer immunizations in accordance with definitive treatment guidelines for immunizations promulgated by the latest notice from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), including, but not limited to, the CDC's recommended immunization schedule for adults, children, and adolescents.

A licensed pharmacist or pharmacy intern may administer immunizations in accordance with definitive treatment guidelines for immunizations promulgated by the latest notice from the CDC, including, but not limited to, the CDC's recommended immunization schedule for adults, children and adolescents to a person aged 11 through 17, with written informed parental consent when presented with a prescription from a physician and there are no contraindications to that patient receiving that vaccine.

### **Board of Physical Therapy - General Provisions for Physical Therapist and Physical Therapist Assistants, 16 CSR 1**

The rule has been amended as follows:

- 1) Adds new terms and defines "dry needling", "originating site and "telehealth services";
- 2) Expands manual therapy techniques under scope of practice to include without limitation dry needling;
- 3) Incorporates telehealth into requirements for supervision of physical therapist assistants;
- 4) Adds Board of Certification as automatically approved continuing education provider; and
- 5) Adds new section 12 setting forth requirements for telehealth practice including required elements under W. Va. Code §30-1-26.

### **Board of Physical Therapy - Fees for Physical Therapist and Physical Therapist Assistants, 16 CSR 4**

The rule removes the flat \$50 fee for continuing education course providers and replaces it with a dual-fee structure for continuing education course providers of \$25 for a course up to nine hours and \$50 for a ten hour or longer course.

## **Board of Physical Therapy - General Provisions for Athletic Trainers, 16 CSR 5**

This rule has been amended as follows:

- 1) Adds new terms and defines "dry needling", "originating site and "telehealth services";
- 2) Adds CAATE College/University as automatically approved continuing education provider;
- 3) Adds new section 12 setting forth requirements for dry needling; and
- 4) Adds new section 13 setting forth requirements for telehealth practice including required elements under W. Va. Code §30-1-26.

## **Board of Physical Therapy - Fees for Athletic Trainers, 16 CSR 6**

The rule removes the flat \$50 fee for continuing education course providers and replaces it with a dual-fee structure for continuing education course providers of \$25 for a course of up to nine hours and \$50 for a ten hour or longer course.

The rule also adds an athletic trainer delinquent license fee of \$210 and a continuing education non-compliance fee of \$200.

## **Board of Professional Surveyors - Examination and Licensing of Professional Surveyors in West Virginia, 23 CSR 1**

This an amendment of an existing rule. The amendment adds a definition of the term "direct supervision" relating to the oversight of applicants in fulfilling their experience requirements. The definition clarifies that direct supervision does not require the physical presence of the supervising licensee at the site of the survey and that a licensee may supervisemore than one survey at a time.

The amendment eliminates provisions in §3.4 that allowed the substitution of various levels of educational achievement for years of experience, thereby aligning the provisions of the rule with those of the relevant statute, W. Va. Code §30-13A-8, which does not provide for such substitutions.

## **Real Estate Commission - Licensing Real Estate Brokers, AssociateBrokers, and Salespersons and the Conduct of Brokerage Business, 174 CSR 1**

Substantive changes to this rule include:

- 1) Revised requirements for advertisement of property or specific services, brokersupervision, business cards and other promotional items and internet advertising;

- 2) Requiring all members of a team be listed on or attached to any Notice of Agency Relationship form signed by a team member; and
- 3) Adding new subsection 17.6 with requirements for team advertising.

### **Board of Respiratory Care - Criteria for Licensure, 30 CSR 1**

This new rule establishes the criteria for licensure by the Board of Respiratory Care. Respiratory educational programs are going to a four-year Bachelor's degree and will no longer offer a two-year Associate degree.

The rule provides that upon payment of required fees, an applicant for licensure to practice respiratory care shall submit to the board, via official written oath, evidence that the applicant has completed a board approved respiratory care educational program; on or after July 1, 2022, holds a current valid registered respiratory therapist credential from the National Board of Respiratory Care; prior to July 1, 2022, the applicant holds a current valid Certified Respiratory Therapist or Registered credential from the National Board of Respiratory Care or its successor and has successfully passed an exam administered by the state or a national agency approved by the Board. The rule provides that the Board may issue a license by endorsement and provides criteria for reinstatement of a license.

### **Secretary of State - Loan and Grant Programs Under the Help America Vote Act (HAVA) for the Purchase of Voting Equipment, Election Systems, Software, Services and Upgrades, 153 CSR 10**

This rule amends a current legislative rule to provide special procedures, applicable during an emergency, for the management of grants and loans from the County Assistance Voting Equipment Fund, created by the Help America Vote Act (HAVA), 52 U.S.C. §20901 *et seq.* HAVA loans and grants are distributed to counties to fund improvements to the administration of federal elections, such as enhancements to election technology and security.

The amendment allows the Secretary of State to suspend requirements in the rule that would prevent counties from complying with federal law or from being able to prepare for a federal election due to an emergency, such as a pandemic. The requirements that may be suspended include deadlines for applications and application review, reimbursement timelines, and grant matching requirements. The rule clarifies that nothing in the new language of the rule exempts the state or a grantee from the statutory requirements in state and federal law. The rule clarifies that expenditures for security enhancements may include unanticipated purchases of necessary materials, temporary staff, and cleaning or sanitation supplies, so long as the purchases are permitted by the U.S. Election Assistance Commission.

## **Secretary of State - Guidelines and Standards for Electronic Notarization, 153 CSR 5**

This amended rule permits and provides requirements for remote notarization by real time audio and video technology during a State of Emergency, only if the Governor suspends the statutory requirement that notarizations take place in the physical presence of the notary. The Governor has the authority to suspend statutory requirements pursuant to his emergency powers pursuant to W. Va. Code §15-5-1 *et seq.*

The amendment adds a new section to the rule addressing remote notarization (§153-45-27). The new section defines terms. The section specifies that its provisions only apply when an official State of Emergency, declared by the Governor, is in effect and W. Va. Code §39-4-5, which requires notarizations to be in person, has been lawfully suspended. The amendment provides the requirements for conducting a remote notarization, which include: a requirement that the individual and notary can communicate simultaneously by sight and sound through a technological medium; a requirement that the notary comply with the regular identification verification processes for in-person notarization in the Code; and a requirement that the notary create an audio and visual recording of the notarization process and retain the recording for his or her term of office. Once a remote notarization is complete, the individual must mail the signed copy of the documents to the notary for certification and execution with the notary's official stamp and seal.

The amendment requires a notary to be licensed as an Out-of-State Commissioner if the individual requesting the notarization is located outside of the state at the time of the notarization. The rule incorporates requirements in the Code that normally apply to a notarization by an Out-of-State Commissioner into the provisions concerning remote notarizations.

The amendment provides that the expiration of the State of Emergency does not invalidate a remote notarial act performed in compliance with the requirements of the rule.

## **Division of Senior Services - Shared Table Initiative for Senior Citizens, 76 CSR 6**

This new rule implements the Shared Table Initiative for Senior Citizens which was created by House Bill 4447 passed during the 2020 Regular Legislative Session. The purpose of the rule is to establish a statewide initiative to facilitate shared tables at senior centers and similar facilities where meals are provided to seniors in need via contracted providers for the West Virginia Bureau of Senior Services.

Under the program, the preparation, safety, and receipt of donated food and donations of food made available to senior citizens for distribution must comply with and is subject to the Good Samaritan Food Donation Act, W. Va. Code §55-7D-1 *et seq.*

**DATE OF PASSAGE:** March 25, 2021

**EFFECTIVE DATE:** March 25, 2021

**ACTION BY GOVERNOR:** Signed March 31, 2021



# Senate Bill 216

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Authorizing Department of Commerce to promulgate legislative rules.

**CODE REFERENCE:** §64-10-1 (Amends and Reenacts)

### **SUMMARY:**

This is Department of Commerce rules Bundle 4 which includes nine rules.

### **Development Office - Tourism Development Districts, 145 CSR 16**

This rule implements the provisions of Senate Bill 657 passed during the 2020 Regular Legislative Session. The Act allows the West Virginia Department of Commerce and its Development Office to designate a “tourism development district” encompassing the area where a qualified tourism project (or tourism development expansion project) with aggregate projected costs of \$25 million or more is being developed in whole or in part within a municipality with a population of 2,000 or less by a company that is qualified to receive a sales tax credit under the West Virginia Tourism Development Act and otherwise meets the criteria of the bill. The West Virginia Tourism Development Act allows the Development Office to award sales tax credits to qualified companies that are developing two types of tourism projects, known as either a “tourism development project” or a “tourism development expansion project,” with a projected cost of at least \$1 million.

The Act provides that if the Development Office designates a tourism development district for a qualified project, the municipality is restricted from regulating the project in certain ways specified in the bill, and the act also lists the state and municipal laws that the developer must comply with. The Development Office may designate not more than five districts in the state, none of which may exist longer than 99 years.

The rule defines terms, specifies the contents of an application, sets refundable application fees of not less than \$10,000 nor more than \$100,000, specifies the Development Office’s timeline for processing applications, requires the Office to file notice for public comment and providing for the form of the notice, specifies criteria to be considered in approving an application, specifies the content of the Tourism Development District Agreement, sets forth the duties of the applicant after the District is established, and provides for vested property right and termination of that right.

This rule was amended on the House floor to strike out subsection 4.18.3 in its entirety as it exceeded the statutory requirement by making land-use plan be provided as good faith.

### **Division of Labor – Steam Boiler Inspection, 42 CSR 3**

This rule amends and updates the current Steam Boiler Inspection rule, which has not been significantly updated since 1945. The rule seeks to incorporate national standards applicable to steam boiler and generator inspections. This rule adds an application and enforcement section, and a sunset provision. Numerous terms are newly defined.

The rule incorporates by reference:

1. ASME Boiler and Pressure Vessel Code section 1, “Power Boilers”;
2. Administrative Boiler and Pressure Vessel Safety Rules and Regulations, Part I, “Definitions”, with certain exclusions;
3. Administrative Boiler and Pressure Vessel Safety Rules and Regulations, Part II, Sections 1-29 with certain exclusions and substitutions;
4. Administrative Boiler and Pressure Vessel Safety Rules and Regulations, Part III, “Existing Installation,” Section 1, with certain substitutions; and
5. NBIC Parts 1- 4;

The rule creates an application process for a permit to install a boiler or generator for permanent or temporary use and provides for an application 15 days in advance of any installation. The proposed rule requires the Division of Labor assign West Virginia serial numbers and the numbers must always be visible unless condemned by an inspector pursuant to the proposed rule.

The rule requires annual inspections for 12-month operating permits. The permits must be visible on or near the boiler. The proposed rule also provides for a 60-day operating permit extension before expiring and provides for a maximum extension of 120 days per year.

The rule details when an operating permit may be suspended or revoked or the boiler or generator condemned, such as non-compliance with rules or code or safety concerns. The proposed rule provides for the owner or operator of the boiler or generator to appeal the suspension or revocation and receive a hearing. The proposed rule requires a final decision be reached 15 days after any hearing.

The rule updates inspector and special inspector qualifications and certificates of competency, including requiring inspectors to renew certificates annually. The Division

may revoke an inspector's or special inspector's certificate of competency for the specific reasons in the proposed rule. An appeal process is available for inspectors or special inspectors to contest his or her certificate revocation.

The rule outlines specific responsibilities for owners or operators of boilers or generators, including notifying the Division if a boiler or generator is moved from its current location. Owners or operators must permit access to boilers or generators, within reasonable hours, to inspectors or special inspectors. The proposed rule also includes notification requirements when an insurance company changes coverage to the boiler or generator or ceases coverage by requiring the insurance company to notify the division.

The rule amends several current fees:

### **Miners Health Safety and Training - Rule Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia, 56 CSR 08**

Language set forth in 36 CSR 31, pertaining to a coal mines comprehensive mine safety program, has been moved to 56 CSR §8.

The section has been in effect since 1984 and gives the Director the authority to require a mine operator, who has experienced a substantial number of injuries due to materials handling, to identify a procedure to reduce such injuries and add that procedure to the mines comprehensive mine safety program.

### **Division of Natural Resources - Cabwaylingo State Forest Trail System Two Year Pilot Project Permitting ATV's and ORV's, 58 CSR 36**

This rule adds a sunset provision of three years from rule's effective date.

### **Division of Natural Resources - Defining the Terms Used in all Hunting and Trapping, 58 CSR 46**

This rule modifies the definition of bait to include any edible enticement or any non-edible facsimile of an enticement.

### **Division of Natural Resources - Deer Hunting, 58 CSR 50**

This rule establishes mandatory regulatory requirements when pursuing and taking deer within the state and imposes restrictions on further hunting during the season if a hunter either meets the daily or seasonal bag limit. Language was revised to allow for hunting of coyotes concurrent with the first three days of buck firearms season; clarify that trapping is permissible concurrent with the first three days of buck firearms

season; and clarifies of what concurrent hunting activities, including ammunition restrictions, are permitted during antlerless deer season.

**Division of Natural Resources - Special Migratory Game Bird Hunting, 58 CSR 56**

This rule establishes regulations for hunting migratory game fowl in West Virginia. The definition of “bait” has been modified to include any edible enticement or non-edible facsimile of an edible enticement. The inclusion of drones and unmanned aircraft has been added to the prohibitions of the methods of take.

**Division of Natural Resources – Special Waterfowl Hunting, 58 CSR 58**

This rule establishes provisions for the proper management and hunting of waterfowl within West Virginia. Revisions include the elimination of the definition of permanently disabled in the lower extremities, which is no longer necessary due to the statutory amendments to W.Va. Code §20-2-46e passed during the 2019 Legislative Session regarding Class Q special hunting permits for disabled persons. The definition of “bait” has been modified to include any edible enticement or non-edible facsimile of an edible enticement.

**Division of Rehabilitation Services – Ron Yost Assistance Services Act Board 198 CSR 01**

The rule implements the provisions of §18-10L-5, which was amended by Senate Bill 740 passed during the 2020 Regular Legislative Session to clarify that general revenues appropriated to the Ron Yost Personal Assistance Services Fund may be used to pay for the functional assessment evaluations required by law to determine whether a person with disabilities is eligible for personal assistant services under the Ron Yost Personal Assistance Program, which has been in effect since 1999. To conform the rule to the amended statute, new language is added to Sec. 7.2 of the rule expressly stating that, “[t]he costs of completing the functional assessments may be paid from the Ron Yost Personal Assistance Services Fund.”

**DATE OF PASSAGE:** March 11, 2021

**EFFECTIVE DATE:** March 11, 2021

**ACTION BY GOVERNOR:** Signed March 15, 2021

# Senate Bill 263

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Permitting online raffles to benefit nonprofit organizations.

**CODE REFERENCE:** §47-20-2, §47-20-15, §47-21-2, and §47-21-15 (Amends and Reenacts)

**SUMMARY:**

This bill amends the definition of “bingo” to allow organizations to conduct electronic online bingo and for charitable bingo to be operated and played virtually over the Internet using an online bingo software system or web application.

It also amends definition of “raffle” to allow electronic online raffles.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** April 10, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# Senate Bill 272

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to WV Employment Law Worker Classification Act.

**CODE REFERENCE:** §21-5-1; 21-5A-16, and §23-2-1a (Amends and Reenacts); §21-5I-1, 21-5I-2, 21-5I-3, 21-5I-4, and 21-5I-5 (New)

### **SUMMARY:**

This bill creates a consistent standard for classifying workers as independent contractors under state workers' compensation and unemployment compensation laws, as well as the Wage Payment and Collection Act and West Virginia Human Rights Act. Previously, each had different standards.

Workers will be presumed to be employees unless they meet each element of a four-part test:

- 1) The worker signs a written contract with the principal acknowledging certain conditions related to their services;
- 2) The worker has filed or is required to file an income tax return for a business or self-employed entity for the fees earned from the work;
- 3) The worker actually and directly controls the manner and means by which the work is performed (except the final result of the work, orientation or safety measures required by the principal, or other obligations under law); and
- 4) The worker satisfies at least three criteria from a list relating to the workers' ability to control their finances and behavior.

Even if a worker meets the four-part test, a principal is not required to classify the workers as an independent contractor. Workers who do not meet the four-part test may still be classified as an independent contractor if they meet the IRS 20-factor test. Direct sellers as defined by the IRS are also considered independent contractors.

**DATE OF PASSAGE:** March 11, 2021

**EFFECTIVE DATE:** June 9, 2021

**ACTION BY GOVERNOR:** Signed March 19, 2021

# Senate Bill 275

## STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating generally to WV Appellate Reorganization Act of 2021.

**CODE REFERENCE:** §3-1-16, §3-4A-11a, §3-5-7, §3-5-13, §3-10-3, §3-10-3a, §6-5-1, §23-5-1, §23-5-3, §23-5-4, §23-5-5, §23-5-6, §23-5-8, §23-5-9, §23-5-10, §23-5-11, §23-5-12, §23-5-13, §23-5-15, §23-5-16, §29A-5-4, §29A-6-1, §51-9-1a, §58-5-1 (Amends and Reenacts); §3-5-6e, §16-2D-16a, §23-1-1h, §23-5-1a, §23-5-3a, §23-5-5a, §23-5-6a, §23-5-8a, §23-5-8b, §23-5-9a, §23-5-10a, §23-5-11a, §23-5-12a, §23-5-13a, §23-5-16a, §51-2A-24, §51-11-1, §51-11-2, §51-11-3, §51-11-4, §51-11-5, §51-11-6, §51-11-7, §51-11-8, §51-11-9, §51-11-10, §51-11-11, §51-11-12, §51-11-13 (New)

### **SUMMARY:**

The bill amends 24 sections and creates 29 new sections of Code, establishing the West Virginia Intermediate Court of Appeals (“ICA”); eliminating the Workers’ Compensation Office of Administrative Judges (“Office of Judges”); transferring the powers and duties of the Office of Judges to the Workers’ Compensation Board of Review (“Board of Review”); and making other related changes.

The bill creates and amends several sections in the Election Code, W. Va. Code §3-1-1 *et seq.*, to provide general procedures for the election of judges to the ICA. These sections provide for election timing and frequency; nonpartisan election by division; ballots; certificates of announcement of candidacy; and filling vacancies.

The bill amends one section in Chapter 6 (General Provisions Respecting Officers) to provide a start date for terms of office of ICA judges.

The bill creates one new section in Chapter 16 (Public Health) providing for transfer of appellate jurisdiction over final decisions issued by the West Virginia Health Care Authority in certificate of need reviews from the Office of Judges to the ICA; and sets forth effective dates as well as transition procedures.

The bill creates and amends several sections within the Workers’ Compensation Act, W. Va. Code §23-1-1 *et seq.*, to provide for termination of the Office of Judges; transfer of its powers and duties to the Board of Review; transfer of appellate jurisdiction over decisions of the Office of Judges and Board of Review in workers compensation matters; effective dates; and procedures to effectuate the transition.

The bill amends two sections in the State Administrative Procedures Act, §29A-1-1 *et seq.*, to provide for effective dates for the ICA to assume jurisdiction over contested cases as well as procedures to effectuate the transition; provide that circuit courts lack jurisdiction to review contested cases after a date certain; and authorize review of decisions of the ICA under Chapter 29A by the Supreme Court.

The bill creates a new article within Chapter 51 (Courts and their Officers) establishing the ICA which provides as follows:

- Provides a short title, definitions, and legislative findings;
- Creates the ICA as a three-judge court of record;
- Provides qualifications for the office of ICA judge and limitations on their activities;
- Provides for the Clerk of the Supreme Court of Appeals of West Virginia (“Supreme Court”) to act as Clerk of the ICA;
- Provides that the ICA has no original jurisdiction;
- Establishes the court’s appellate jurisdiction over certain matters as well as certain matters over which the ICA is expressly without jurisdiction;
- Provides for discretionary jurisdiction of the Supreme Court over any civil case filed in the ICA;
- Provides for appellate jurisdiction of the ICA over judgments or final orders in criminal matters if the Supreme Court adopts a policy of discretionary review of criminal appeals;
- Sets forth extraordinary circumstances under which the Supreme Court may grant a motion for direct review of a case on appeal to the ICA, and the procedures therefor;
- Provides for initial appointment of the three ICA judges by the Governor from recommended candidates submitted by the Judicial Vacancy Advisory Commission:
- Provides for ICA appointees to begin their duties as judge on July 1, 2022;
- Provides for 10-year terms for ICA judges following initial terms;
- Provides for the filling of vacancies in the judge’s offices and temporary assignments where a judge is temporarily unable to serve;
- Provides for supervisory control by the Supreme Court over the ICA;
- Provides that pleadings, practice, and procedure, including all filings, in all matters before the ICA will be governed by rules promulgated by the Supreme Court;
- Requires appeals to the ICA to be filed with the Clerk of the Supreme Court;
- Authorizes filing and appeal bonds for filing appeals to the ICA;
- Provides for discretion by the ICA whether to require oral argument; authorizes the Chief Justice of the Supreme Court to exercise supervisory control over the ICA;
- Requires the administrative director of the Supreme Court to provide necessary facilities, furniture, fixtures, and equipment necessary for the ICA, and to make existing courtrooms available for its use;



- Authorizes the administrative director to contract with other facilities to provide space suitable for the ICA;
- Requires the administrative director to provide administrative support and authorizes employment of additional staff, as necessary;
- Provides for selection of a Chief Judge of the ICA under rules to be established by the Supreme Court; requires a written decision on the merits “as a matter of right in each appeal that is properly filed and within the jurisdiction of the” ICA, and the court’s opinions, orders and decisions are binding precedent “unless the opinion, order, or decision is overruled or modified by the Supreme Court of Appeals”;
- Provides that while appeals from orders or judgments of the ICA may be made to the Supreme Court, the Supreme Court has discretion to grant or deny any such appeal, and discretion to stay such order or judgment;
- Provides for annual compensation of an ICA judge of \$142,500;
- Requires the Attorney General to appear as counsel for the State in all cases pending in the ICA to the same extent required by law in cases pending in the Supreme Court; and
- Provides a severability clause for the new article.

The bill creates a new section in a separate article of Chapter 51 providing for appeals of family court decisions to the ICA after a date certain and deprive circuit courts of jurisdiction over such matters within the jurisdiction of the ICA after a date certain; and amends another section in a separate article providing for inclusion of ICA judges in the judicial retirement system.

Lastly, the bill amends one section in Chapter 58 (Appeal and Error) to provide for appeals of circuit court decisions after a date certain to the ICA and authorizes the filing of petitions to appeal ICA decisions to the Supreme Court.

**DATE OF PASSAGE:** April 1, 2021

**EFFECTIVE DATE:** June 30, 2021

**ACTION BY GOVERNOR:** Signed April 8, 2021

# Senate Bill 277

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Creating COVID-19 Jobs Protection Act.

**CODE REFERENCE:** §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 §15-19-9 (New)

### **SUMMARY:**

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;
- 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.

**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 296

**SHORT TITLE:** Relating generally to repealing certain rules.

**CODE REFERENCE:** §61-12-1, §61-12-2, §61-12-3, and §61-12-4 (Amends and Reenacts)

## **SUMMARY:**

This bill repeals 16 legislative, procedural, and interpretive rules which are no longer authorized or are obsolete:

- The Board of Risk and Insurance Management legislative rule relating to discontinuation of professional malpractice insurance, 115 CSR 04.
- The Department of Health and Human Resources legislative rule relating to DUI safety and treatment, 64 CSR 98.
- The Department of Health and Human Resources legislative rule relating to incorporation of the social services manual, 78 CSR 04.
- The Department of Health and Human Resources procedural rule relating to operating rules and regulations for the West Virginia Commission on Children and Youth, 79 CSR 01.
- The Department of Health and Human Resources procedural rule relating to state child fatality review team and county multidisciplinary review teams, 64 CSR 20.
- The Insurance Commissioner legislative rule relating to emergency medical services, 114 CSR 50.
- The Insurance Commissioner legislative rule relating to diabetes regulation, 114 CSR 52.
- The Racing Commission procedural rule relating to dispute resolution procedures, 178 CSR 04.
- The State Tax Department interpretative rule relating to tax shelter voluntary compliance program, 110 CSR 10E.
- The State Tax Department interpretative rule relating to preference for determining successful bids, 110 CSR 12C.
- The State Tax Department legislative rule relating to West Virginia Film Industry Investment Act, 110 CSR 13X.
- The State Tax Department procedural rule relating to tobacco products excise tax on floorstocks, 110 CSR 17A.
- The State Tax Department legislative rule relating to residential solar energy tax credit, 110 CSR 21D.

- The State Tax Department legislative rule relating to Business Franchise Tax, 110 CSR 23.
- The Division of Labor legislative rule relating to hazardous chemical substances, 42 CSR 04.
- The Division of Labor legislative rule relating to Commercial Bungee Jumping Safety Act, 42 CSR 23.

**DATE OF PASSAGE:** March 10, 2021

**EFFECTIVE DATE:** June 8, 2021

**ACTION BY GOVERNOR:** Signed March 19, 2021

# Senate Bill 345

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Expanding alcohol test and lock program to include offenders with drug-related offense.

**CODE REFERENCE:** §17C-5A-3a (Amends and Reenacts)

### **SUMMARY:**

This bill amends and reenacts §17C-5A-3A relating to expansion of the alcohol test and lock program to offenders with a drug related offense. The bill renames the program as the “Motor Vehicle Alcohol and Drug Test and Lock Program”; and authorizes the following:

- The commissioner to require drug testing;
- Deferral of the revocation period for a participant with a drug offense; and
- An offender of driving while license suspended or revoked, driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of eight hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents, to participate in the Motor Vehicle Alcohol and Drug Test And Lock Program.

**DATE OF PASSAGE:** March 5, 2021

**EFFECTIVE DATE:** June 3, 2021

**ACTION BY GOVERNOR:** Signed March 16, 2021

# Senate Bill 361

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Extending supervision for conviction of soliciting minor and using obscene matter with intent to seduce minor.

**CODE REFERENCE:** §62-12-26 (Amends and Reenacts)

### **SUMMARY:**

This bill requires extended supervised release, up to 50 years, of those convicted of distribution of obscene matter to a minor, use of obscene matter to seduce a minor, and soliciting a minor via computer.

**DATE OF PASSAGE:** April 6, 2021

**EFFECTIVE DATE:** July 5, 2021

**ACTION BY GOVERNOR:** Signed April 21, 2021

# Senate Bill 392

## COMMITTEE SUBSTITUTE AS AMENDED

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**SHORT TITLE:** Creating penalty for impersonation of law-enforcement officer or official.

**CODE REFERENCE:** §61-1-9 (Amends and Reenacts)

**SUMMARY:**

This bill amends impersonation of law-enforcement officer or official penalty section by adding to the current penalty of a fine of not less than \$100 nor more than \$1,000, possible confinement in jail for not more than six months, or both fine and confinement.

**DATE OF PASSAGE:** April 8, 2021

**EFFECTIVE DATE:** July 7, 2021

**ACTION BY GOVERNOR:** Signed April 19, 2021



# Senate Bill 401

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to WV Consumer Credit and Protection Act.

**CODE REFERENCE:** §46A-6-105 and §46A-8-101 (Amends and Reenacts)

**SUMMARY:**

This bill exempts checking, savings, and other depository accounts offered by banks from claims under the general consumer protection provisions of the West Virginia Consumer Credit and Protection Act.

**DATE OF PASSAGE:** April 6, 2021

**EFFECTIVE DATE:** July 5, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021

# Senate Bill 419

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Redefining "firearm" to match federal code.

**CODE REFERENCE:** §61-7-2 (Amends and Reenacts)

**SUMMARY:**

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.

**DATE OF PASSAGE:** April 9, 2021

**EFFECTIVE DATE:** July 8, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021

# Senate Bill 434

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Requiring training for law-enforcement officers specific to interviewing victims of sexual assault.

**CODE REFERENCE:** §30-9-3 (Amends and Reenacts)

### **SUMMARY:**

This bill adds to duties of the Law Enforcement Professional Standards Subcommittee of the Governor's Committee on Crime, Delinquency, and Correction requiring establishment of standards and procedures for initial and ongoing training for law-enforcement officers responsible for investigating sexual assault cases involving adult victims. It also provides that the required training shall include instruction on the neurobiology of trauma, trauma-informed interviewing, and investigative techniques.

**DATE OF PASSAGE:** April 6, 2021

**EFFECTIVE DATE:** July 5, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021

# Senate Bill 439

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Allowing use or nonuse of safety belt as admissible evidence in civil actions.

**CODE REFERENCE:** §17C-15-49 (Amends and reenacts); §17C-15-49A (New)

### **SUMMARY:**

This bill allows introduction of evidence of use or non-use of a safety belt in a civil action under the following circumstances:

- If the injured party is a driver or adult passenger, evidence of non-use of a safety belt is not admissible as evidence of negligence, except in product liability claims against the manufacturer of a vehicle or component of it. Evidence of non-use of a safety belt is admissible to show that the failure to wear a safety belt exacerbated or contributed to damages. Presentation of this evidence would require expert testimony.
- If the injured party is a child passenger, evidence of non-use of a safety belt is not admissible to show negligence of the child or reduce his/her damages. Evidence that the child was not wearing a safety belt is admissible to show comparative fault of the driver.

The protections of this bill do not apply if the driver at fault was under the influence of drugs or alcohol, or committed the felony offense of fleeing from a law-enforcement officer's directions to stop and caused bodily injury, death, or did so while under the influence.

The bill also redefines "passenger vehicles" in which safety belts are mandatory as a vehicle designed to transport 15 people (up from 10) or fewer, including the driver.

**DATE OF PASSAGE:** April 7, 2021

**EFFECTIVE DATE:** July 6, 2021

**ACTION BY GOVERNOR:** Signed April 19, 2021

# Senate Bill 458

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to possession of firearms by individuals during state of emergency.

**CODE REFERENCE:** §15-5-19a (Amends and Reenacts)

### **SUMMARY:**

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.

**DATE OF PASSAGE:** April 9, 2021

**EFFECTIVE DATE:** July 8, 2021

**ACTION BY GOVERNOR:** Signed April 21, 2021

# Senate Bill 469

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Permitting appearance by video for purpose of notarial act.

**CODE REFERENCE:** §39-4-6, §39-4-6a, §39-4-37 and §39-4-38 (Amends and Reenacts)

### **SUMMARY:**

This bill amends and reenacts the West Virginia Revised Uniform Law on Notarial Acts to incorporate provisions relating to the performance of notarial acts by means of audio-visual technology from of the Revised Uniform Law on Notarial Acts from the Uniform Law Commission (RULONA). This bill authorizes a notary public to perform notarial acts for remotely located individuals using communication and identify-proofing technology provided certain requirements have been fulfilled.

Previously, an individual was required to physically appear before a notary public. Current technology and commercially available identification services make it possible to perform notarial acts for persons who are not in the physical presence of a notary public. RULONA (2018) authorizes remote notarization without geographic limits on the location of the signer.

Before the effective date of this law, the COVID-19 pandemic made it unsafe to physically appear before a notary. Thus, this law also provides that acknowledgements and notarizations performed by means of remote communication technology pursuant to section 6 of Executive Order 11-20 effective March 25, 2020, by which the Governor suspended the provisions of this section of the code applicable to court reporters and other notaries, are deemed to be valid and cured of any defect from failure to comply with section 6 of this article, if the acknowledgements and notarizations were performed in accordance with the emergency rules promulgated by the West Virginia Secretary of State (§153 CSR 45)

**DATE OF PASSAGE:** March 19, 2021

**EFFECTIVE DATE:** June 17, 2021

**ACTION BY GOVERNOR:** Signed March 30, 2021

# Senate Bill 470

## COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE, AS AMENDED

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**SHORT TITLE:** Limiting release of certain personal information maintained by state agencies.

**CODE REFERENCE:** §5A-8-21 and §5A-8-22 (Amends and Reenacts) and §5A-8-24 (New)

### **SUMMARY:**

The bill amends two sections of the Code in the Public Records Management and Preservation Act, W. Va. Code §5A-8-1 *et seq.*

The bill establishes that disclosure of certain personal information of state officers, employees, retirees, or legal dependents by state executive, legislative, or judicial branch agencies to non-governmental entities is an “unreasonable invasion of privacy” and provides that such information is confidential and exempt from disclosure under the Freedom of Information Act (FOIA), W. Va. Code §29B-1-1, *et seq.*; which includes any former name of an individual as personal information protected thereunder.

It also establishes that disclosure of certain personal information of individuals and their dependents by state executive branch agencies to non-governmental entities is an “unreasonable invasion of privacy” and provides that such information is confidential and exempt from disclosure under FOIA.

The bill creates a new section known as “Daniel’s Law” which enhances the safety and security of officials in the justice system to allow them to carry out their official duties without fear of personal reprisal. Daniel’s Law provides as follows:

- Prohibits disclosure, re-disclosure, or otherwise making available certain personal information of an active, formerly active, or retired judicial officer, prosecutor, public defender, assistant public defender, or law-enforcement officer by a state or local government agency, a person, business, or association without first obtaining the individual’s permission, with separate standards for governmental and private actors.
- Provides for civil action by a covered individual or an individual who resides in his or her home against private actor for violation and specifies relief that may be granted.
- Provides a process for requesting removal of information disclosed by a private actor and requires immediate removal.

- Provides for civil action by a covered individual or immediate family member against a private actor for violation and specifies relief that may be granted.
- Provides for misdemeanor offense for violation and establishes penalties.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021



# Senate Bill 483

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Allowing oaths be taken before any person authorized to administer oaths.

**CODE REFERENCE:** § 44-1-1, §44-1-3, and §44-1-6, (Amends and Reenacts); §44-1-31 (New)

### **SUMMARY:**

This bill amends the law relating to the qualifications of a personal representatives in §44-1-1, §44-1-3, §44-1-6, and creates a new section §44-1-31 providing that an oath may be taken before any person authorized to administer oaths under the laws of this state or any other state, and that a bond may be executed, if not in person before the county clerk, before any person authorized to administer oaths under the laws of this state or any other state.

**DATE OF PASSAGE:** April 7, 2021

**EFFECTIVE DATE:** July 6, 2021

**ACTION BY GOVERNOR:** Signed April 19, 2021

# Senate Bill 496

## INTRODUCED BILL

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**SHORT TITLE:** Relating to punishment for second or third degree felony.

**CODE REFERENCE:** §61-11-18 (Amends and Reenacts)

**SUMMARY:**

The purpose of this bill is to allow for implementation of the habitual offender statute when predicate offenses from other jurisdictions are “substantially similar” to a qualifying offense under our law.

**DATE OF PASSAGE:** April 7, 2021

**EFFECTIVE DATE:** July 6, 2021

**ACTION BY GOVERNOR:** Signed April 19, 2021

# Senate Bill 518

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to grounds for administrative dissolution of certain companies, corporations, and partnerships.

**CODE REFERENCE:** § 31B-8-809, §31E-13-1320, §31D-14-1420, and §47-9-10a (Amends and Reenacts)

### **SUMMARY:**

The purpose of this bill is to provide a more efficient process for the Secretary of State to administratively dissolve fraudulent businesses registered in the State of West Virginia, while protecting and maintaining due process rights for reinstatement or appeal for business owners.

This bill amends §31B-8-809, §31E-13-1320, §31D-14-1420, and §47-9-10a by adding an additional grounds for administrative dissolution, authorizing the Secretary of State to commence a proceeding to administratively dissolve a registered business if a misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the company.

This bill also preserves the process for reinstatement or appeal. A registered business administratively dissolved may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution pursuant to the existing procedure set forth in the code or appeal the Secretary of State's denial of reinstatement pursuant to the existing procedure set forth in the code.

This bill amends code sections of codes pertaining to limited liability companies (§31B-8-809), nonprofits (§31E-13-1320), corporations (§31D-14-1420), and limited partnerships (§47-9-10a).

**DATE OF PASSAGE:** April 5, 2021

**EFFECTIVE DATE:** July 4, 2021

**ACTION BY GOVERNOR:** Signed April 15, 2021

# Senate Bill 537

## INTRODUCED BILL

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**SHORT TITLE:** Clarifying elements of kidnapping.

**CODE REFERENCE:** §61-2-14a (Amends and Reenacts)

**SUMMARY:**

This bill clarifies the elements of kidnapping to include transporting, pursuant to a recent West Virginia Supreme Court case.

**DATE OF PASSAGE:** April 9, 2021

**EFFECTIVE DATE:** July 8, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# Senate Bill 542

## COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating generally to public electric utilities and facilities fuel supply for existing coal-fired plants.

**CODE REFERENCE:** §24-1-1c, §24-2-1q, and §24-2-21 (New)

### **SUMMARY:**

This bill requires that public electric utilities must maintain a minimum 30-day aggregate fuel supply under contract for the remaining life of their coal-fired generating plants.

It also requires that public electric utilities must provide advance notice to the Office of Homeland Security and Emergency Management, the Public Service Commission, and the Legislature's Joint Committee on Government and Finance, before announcing retirement, closure, or sale of an electricity generating unit.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# Senate Bill 562

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to juvenile competency proceedings.

**CODE REFERENCE:** §49-4-712 (Amends and reenacts) §49-4-727, §49-4-728, §49-4-729, §49-4-730, §49-4-731, §49-4-732, §49-4-733, §49-4-734, and §49-4-735 (New)

### **SUMMARY:**

The purpose of this bill is to create procedures and statutory policies to deal with minors charged as juveniles who have mental competency issues.

Current law does not distinguish between adults and juveniles as to competency procedures and this contributes to possible constitutional problems. This issue was raised by the West Virginia Supreme Court in *State v. J.C.*, 241 W.Va. 712 (2019).

The issues were first addressed during the 2020 session and a work group of Department of Health and Human Resources, the judicial branch, prosecutors, defense counsel, and advocates worked to draft the legislation over the past year.

The bill provides as follows:

- §49-4-712 - Establishes that DHHR is the primary service provider/facilitator for evaluating competency, competency attainment, and provision of services to the juvenile.
- §49-4-727 - Establishes procedures for raising competency and creates a rebuttable presumption that children under 14 years of age are incompetent. Those 14 and older are presumed competent.
- §49-4-728 - Sets out definitions used in provisions related to juvenile competency.
- §49-4-729 - Sets out procedures to begin competency determination proceedings for respondents 14 and older. Establishes time frames.
- §49-4-730 - Establishes qualifications for competency evaluators.
- §49-4-731 - Establishes evaluation procedures.
- §49-4-732 - Establishes time frames and requirements for tests.

- §49-4-733 - Requires evaluation and competency attainment services to be performed in the least restrictive environment given the child's best interests and public safety.
- §49-4-734 - Juveniles charged with acts which would constitute a misdemeanor or non-violent felony if committed by an adult may not be required to undergo competency attainment services beyond their 19th birthday. Those charged with what would constitute a felony crime of violence not beyond 21 years of age. A juvenile may be referred to mental hygiene for civil commitment or be referenced to the department for services upon a determination of incompetence and not restorable.
- §49-4-735 - This section makes clear these procedures apply whether the case is under juvenile jurisdiction of the court or a matter which could invoke adult jurisdiction.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# Senate Bill 587

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Making contract consummation with state more efficient.

**CODE REFERENCE:** § 5A-3-62 (New)

### **SUMMARY:**

This bill creates a new code section which contains a list of contract provisions that are prohibited in contracts with the state. The bill provides that these prohibitions may not be waived, and that even a signature by a state representative on a contract containing any of the prohibited terms will not operate to waive them.

The bill is intended to make contract consummation more efficient by eliminating the need to change vendor forms to strike out provisions prohibited in the bill or to negotiate or prove to vendors that the state may not agree to any of the terms listed in the bill. The issue is particularly acute with respect to technology vendors, who often include most, if not all, of the prohibited terms in their “boilerplate” form documents for the sale of technology products.

**DATE OF PASSAGE:** April 2, 2021

**EFFECTIVE DATE:** April 2, 2021

**ACTION BY GOVERNOR:** Signed April 15, 2021



# Senate Bill 626

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Updating regulation for purchase of automobile catalytic converters

**CODE REFERENCE:** §61-3-49 (Amends and Reenacts); §61-3-49c (New)

### **SUMMARY:**

The purpose of this bill is to enhance regulation of scrap catalytic converters due to a recent rash of thefts of them around the state. The bill provides for the following:

- 1) Reduce the number of convertors from five to one which triggers a seller of a convertor to fill out a document attesting to lawful possession and providing a fingerprint.
- 2) Requires scrap metal dealers to pay for convertors by check. Payment is delayed for five days.
- 3) Requires scrap metal dealers to hold convertors received for 14 days. This is reduced to five days if law enforcement is provided transaction documentation within that five-day period.
- 4) Requires recordation by dealers should a convertor be imprinted with identifying information and prohibits purchase of convertors with altered to obliterated identification.
- 5) Creates misdemeanor offense of possession of convertors without proof of ownership or authority to possess.
- 6) Requires persons advertising in the state to buy or sell convertors to meet the requirements for being a scrap metal dealer.
- 7) Provides a fine of not more than \$1,000 or one year in jail or both fine and confinement.
- 8) Provides that each convertor equals a separate offense.

**DATE OF PASSAGE:** April 8, 2021

**EFFECTIVE DATE:** July 7, 2021

**ACTION BY GOVERNOR:** Signed April 19, 2021

# Senate Bill 634

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Requiring training of certain officers for persons with autism spectrum disorder.

**CODE REFERENCE:** § 30-29-5a (New)

### **SUMMARY:**

This bill adds a new section providing authority for criminal justice training regarding individuals with autism spectrum disorders.

The Law-Enforcement Special Standards subcommittee may establish, within the basic training curriculum, a course for the training of law-enforcement officers and correction officers in appropriate interactions with individuals with autism spectrum disorders.

The Law-Enforcement Special Standards subcommittee may development guidelines for law enforcement response to individuals on the autism spectrum who are victims or witnesses to a crime or suspected or convicted of a crime.

The course of instruction and guidelines must be developed and delivered by the West Virginia Autism Training Center, located at Marshall University, and may stress positive responses to such individuals, de-escalating potentially dangerous situations, understanding of the different manner in which such individuals process sensory stimuli and language, social communication and language difficulties likely to affect interaction, and appropriate methods of interrogation.

Training instructors must include adults with autism spectrum disorders and/or a parent or primary caretaker of an individual diagnosed with autism spectrum disorder.

This new section defines terms.

The bill identifies procedures and techniques that may be included in the basic training course.

The bill provides that all law-enforcement officer recruits and correction officer recruits may receive the course of basic training, established in this section, as part of their required certification process.

The Commissioner of Corrections and the Law-Enforcement Professional Standards subcommittee periodically may include within the in-service training curriculum a course of instruction on individuals with autism spectrum disorder.

**DATE OF PASSAGE:** April 7, 2021

**EFFECTIVE DATE:** July 6, 2021

**ACTION BY GOVERNOR:** Signed April 19, 2021

# Senate Bill 655

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Eliminating sunset and legislative audit provisions for certain PSC rules.

**CODE REFERENCE:** §24A-2-2b (Amends and Reenacts)

### **SUMMARY:**

This bill amends the statute on rules of the Public Service Commission relating to the rates a carrier may charge for the recovering, towing, hauling, carrying, or storing of a wrecked or disabled vehicle. It reschedules an audit of the rules by the Legislative Auditor from December 31, 2020, to December 31, 2022. It also moves a sunset date for the rules from July 1, 2021, to July 1, 2023.

**DATE OF PASSAGE:** April 9, 2021

**EFFECTIVE DATE:** July 8, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# Senate Bill 657

## COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Forming Open and Robust University Minds Act.

**CODE REFERENCE:** §18B-20-1, §18B-20-2, §18B-20-3, §18B-20-4, §18B-20-5, §18B-20-6, §18B-20-7, §18B-20-8, and §18B-20-9 (New)

### **SUMMARY:**

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.

**DATE OF PASSAGE:** April 9, 2021

**EFFECTIVE DATE:** July 8, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021

# Senate Bill 658

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Requiring sheriff's departments to participate and utilize Handle With Care Program for trauma-inflicted children.

**CODE REFERENCE:** § 7-26-2 (Amends and Reenacts)

### **SUMMARY:**

This bill amends and reenacts the West Virginia Sheriffs' Bureau of Professional Standards general power and duties to authorize the Bureau to assist the sheriffs of each county of the state to provide "Handle With Care" program training to law-enforcement supervisors and patrols, and to actively participate in and use all law enforcement related components of the "Handle With Care" program to help trauma-inflicted children in the public or private school system.

The West Virginia Defending Childhood Initiative Handle With Care Program promotes school and community partnerships to protect children with the goal of helping traumatized children heal and thrive. Under the Handle With Care program, if a law enforcement officer encounters a child during a call, that child's information is forwarded to the school before the school bell rings the next day. The school implements individual, class and whole school trauma-sensitive curricula to that traumatized children are "Handled With Care". If a child needs more intervention, on-site trauma-focused mental healthcare is available at the school.

The program requires law enforcement supervisors to attend training and to provide training to patrols on department policy to identify, document, and report children encountered on the scene of calls. Officers must be familiar with appropriate on-scene response when children are present to ensure the impact of trauma is minimized.

**DATE OF PASSAGE:** April 9, 2021

**EFFECTIVE DATE:** July 8, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021



# Senate Bill 660

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Providing for cooperation between law-enforcement agencies and military authorities.

**CODE REFERENCE:** §15-10-7 (New)

### **SUMMARY:**

The purpose of this bill is to allow civilian law enforcement agencies to assign law-enforcement personnel to provide assistance, cooperation, and information to the West Virginia National Guard or any component of the U. S. Department of Defense located in West Virginia upon the written request of the Adjutant General or commanding officer of the unit or facility.

The assistance may be provided, but not limited to:

1. Alleged violations of the federal and state Codes of Military Justice;
2. Alleged violations of the federal and state criminal laws;
3. Investigations and other actions related to reports of sexual assault or sexual harassment, including cases of reprisal or retaliation;
4. Violations of military directives, regulations, or instruction;
5. Other reasonable requests by the National Guard.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021

# Senate Bill 673

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to venue for bringing civil action or arbitration proceedings under construction contracts.

**CODE REFERENCE:** §56-1-1b (New)

**SUMMARY:**

This bill requires that construction contracts entered into after July 1, 2021, involving a contractor whose principal place of business is in West Virginia, must provide that any civil action or arbitration permitted by the contract must take place in West Virginia.

**DATE OF PASSAGE:** April 6, 2021

**EFFECTIVE DATE:** July 1, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021

# Senate Bill 674

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Clarifying that unpaid restitution does not preclude person from obtaining driver's license.

**CODE REFERENCE:** § §8-10-2a; §8-10-2b; §50-3-2a; §62-4-17 (Amends and Reenacts)

### **SUMMARY:**

This bill amends and reenacts the law relating to municipal corporations (§8-10-2a) to authorize the municipal court to accept electronic payment, credit cash, money order, or certified checks for restitution; and amends §8-10-2b to allow the clerk to establish a payment plan for restitution, authorize the clerk to record a lien against unpaid restitution, and allow a person whose driver's license was suspended prior to July 1, 2020 for the nonpayment of restitution to have his or her driver's license reinstated.

The bill similarly amends and reenacts the law relating to magistrate courts costs and fines (§50-3-2a) to authorize the clerk to address restitution as it does costs, fines, forfeitures, and penalties, and to clarify that unpaid restitution does not preclude a person from obtaining a valid driver's license.

The bill also amends and reenacts the law relating to criminal procedure recovery of fines (§62-4-17) to address restitution as it does costs, fines, forfeitures, and penalties, and to clarify that unpaid restitution does not preclude a person from obtaining his or her driver's license.

**DATE OF PASSAGE:** April 9, 2021

**EFFECTIVE DATE:** July 8, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021

# Senate Bill 677

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating generally to miners' safety, health, and training standards.

**CODE REFERENCE:** §22A-1-2, §22A-1-12, §22A-2-40, §22A-2-46, §22A-2-70, and §22A-9-1 (Amends and Reenacts)

### **SUMMARY:**

This bill authorizes the Director of the Office of Miners' Safety, Health, and Training to discharge a tenured underground mine inspector without first petitioning the Board of Coal Mine Health & Safety. After removal from employment, the inspector may request a hearing before the Board to challenge his discharge; however, the hearing is no longer mandatory.

The bill also provides technical cleanup to several sections of code, and replaces outdated terminology related to use of flame safety lamps for detection of gas with approved gas detectors.

**DATE OF PASSAGE:** April 9, 2021

**EFFECTIVE DATE:** July 8, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# Senate Bill 702

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to involuntary hospitalization, competency, and criminal responsibility of persons charged or convicted of certain crimes.

**CODE REFERENCE:** §27-6A-12 (Repealed); §27-6A-1, §27-6A-2, §27-6A-3, §27-6A-4, §27-6A-5, §27-6A-6, §27-6A-8 and §27-6A-10 (Amends and Reenacts); §27-6A-13 (New)

### **SUMMARY:**

This bill modifies the law pertaining to a criminal defendant's competency to stand trial and criminal responsibility as follows:

- 1) Defines several new terms used in Article 6A;
- 2) Modifies the requirements, procedures, and timeframe for initial forensic evaluations as to a criminal defendant's competency to stand trial;
- 3) Addresses certain non-state-operated mental health facilities' obligations to admit and treat criminal defendants and ability to purchase liability coverage from the Board of Risk and Insurance Management;
- 4) Authorizes rulemaking by the Department of Health and Human Resources to implement the provisions of Article 6A;
- 5) Modifies the requirements, procedures, and timeframe for a court's determination of competency to stand trial, and subsequent competency restoration, release, and review of a defendant's circumstances;
- 6) Imposes requirements, procedures, and timeframe for review and subsequent disposition of certain individuals currently under commitment;
- 7) Modifies the requirements, procedures, and timeframe for forensic evaluations of criminal responsibility or diminished capacity and for dangerousness evaluations of defendants found not guilty by reason of mental illness;
- 8) Modifies the requirements, procedures, and timeframe for disposition of defendants found not guilty by reason of mental illness and subsequent oversight of acquittees who are either involuntarily hospitalized or conditionally released;
- 9) Extends sentence credit to time spent in a state hospital;

- 10) Requires the Department of Health and Human Resources to pay for all competency restoration services not covered by other government, third-party funding sources, or other grant agreements;
- 11) Extends the right to receive treatment to individuals who are court ordered to a state hospital;
- 12) Provides that treatment includes medication management intended to treat an individual's condition that causes or contributes to incompetency; and
- 13) Establishes a Dangerousness Assessment Review Board to provide opinion, guidance, and informed objective expertise, at the request of a circuit judge, as to the appropriate level of custody or supervision necessary to ensure that persons who are judicially determined to be incompetent to stand trial and not restorable or not guilty by reason of mental illness are in the least restrictive environment available to protect the person, other persons, and the public generally.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# Senate Bill 713

## ORIGINATING BILL

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**SHORT TITLE:** Relating to modifying inmate good time provisions.

**CODE REFERENCE:** §15A-4-17 (Amends and Reenacts)

### **SUMMARY:**

This bill:

1) Allows eligible inmates to receive good time credit prior to October 21, 2020 (with no good time credit granted thereafter). There are cases presently before the Supreme Court.

2) Granting the Commissioner of the division and employees immunity for the good time calculations and actions related to the lawsuits.

3) Expanding the availability of earned good time in the discretion of the commissioner for actions taken in emergencies and for successfully completing non-required academic and vocational programs.

**DATE OF PASSAGE:** April 6, 2021

**EFFECTIVE DATE:** April 30, 2021

**ACTION BY GOVERNOR:** Signed April 19, 2021

# Senate Joint Resolution 4

## INTRODUCED VERSION

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**SHORT TITLE:** Incorporation of Churches or Religious Denominations Amendment

**CODE REFERENCE:** §47, Article VI of the West Virginia Constitution (Amends)

### **SUMMARY:**

This resolution removes a Constitution prohibition against the incorporation of churches or religious denominations.

The West Virginia Constitution has contained this prohibition, and only the West Virginia and Virginia Constitutions have included such a prohibition, since 1863.

In a case brought by Thomas Road Baptist Church, the U. S. District Court for the Western District of Virginia found that the provision violates the Free Exercise Clause of the First Amendment of the U. S. Constitution.

Ratification of the amendment would serve to conform law to practice. The proposed amendment will be on the general election ballot in November 2022.

**DATE OF ADOPTION:** April 10, 2021



# House Bill 2009

## STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to limitations on the use of wages and agency shop fees by employers and labor organizations for political activities.

**CODE REFERENCE:** §8-5-12, §12-3-13b, §18A-4-9, §21-5-1, §21-5-3, §46A-2-116 (Amends and Reenacts); §7-5-25 (New)

### **SUMMARY:**

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; authorizing 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.

**DATE OF PASSAGE:** March 19, 2021

**EFFECTIVE DATE:** June 17, 2021

**ACTION BY GOVERNOR:** Signed March 30, 2021

# House Bill 2025

## STRIKE AND INSERT AMENDMENT TO STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Provide liquor, wine, and beer licensees with some new concepts developed during the State of Emergency utilizing new technology to provide greater freedom to operate in a safe and responsible manner.

**CODE REFERENCE:** §7-1-3ss, §11-16-9, §11-16-18, §60-1-5a, §60-3A-25 §60-4-3a, §60-4-3b, §60-6-8, §60-7-2, §60-7-6, §60-7-12, §60-8-2, §60-8-3, §60-8-4, §60-8-18, §60-8-29, §60-8-34, and §61-8-27 (Amends and Reenacts); 11-16-6d, §11-16-6e, §11-16-6f and §11-16-11c, §19-2-12 and §19-2-13, §60-3-3b, §60-4-3c, §60-7-8b, §60-7-8c, §60-7-8d, §60-7-8e, §60-7-8f, §60-8-6c, §60-8-6d, §60-8-6e, §60-8-6f and §60-8-32a, §60-8A-1, §60-8A-2, §60-8A-3, §60-8A-4, §60-8A-5, and §60-8A-6 (New)

### SUMMARY:

This bill incorporates new concepts developed during the State of Emergency into the law governing liquor, wine, and beer licenses utilizing new technology to provide greater freedom to operate in a safe and responsible manner, and additionally to provide new licenses to reflect societal requests. The bill provides:

- Considering COVID-19, and its impact on the hospitality industry, there is a reduction in license fees beginning July 1, 2021. The licensee shall pay one-third of the fee the first year, two-thirds of the fee the second year, and full fees the third year.
- The ability to begin sales of beer, wine, and liquor at 6:00 a.m.
- Permitting a 16-year-old to be employed in the sale and service of alcohol when supervised by a person 21 years of age or older.
- The ability to offer sealed liquor drinks in a craft cocktail, sealed wine, and sealed beer by a Class A licensee or a third party, who obtains a third-party delivery license, with a food order utilizing telephone, mobile ordering app, or web-based software; there is no fee for the existing licensee. The third-party license fee is \$200 to deliver each type of alcohol.
- A nonintoxicating beer or nonintoxicating beer retail transportation permit, a private wine delivery permit, and craft cocktail delivery permit to transport a food order and beer, wine, and liquor in a vehicle to a purchasing patron; The convenience fee may not exceed five dollars.
- Outdoor dining and outdoor street dining areas when authorized by a municipality for beer, wine, and liquor; there is no fee for either.

- Authorizing in-person or in-vehicle delivery while picking up food and sealed nonintoxicating beer, nonintoxicating craft beer, wine, or craft cocktail growler orders-to-go.
- Allows offering pre-mixed alcoholic drinks for sale to the public.
- The nonintoxicating beer floor plan extension fee was reduced from \$100 to \$50.
- An unlicensed brewer or home brewer temporary license to attend a limited number of fairs and festivals in West Virginia and provide nonintoxicating beer to patrons which allows market testing in the state,
- Permitting distilleries, mini-distilleries, micro-distilleries, wineries, and farm wineries to operate a private manufacturer club on their licensed premises which can include outdoor spaces in the defined floor plan.
- Permitting owners of distilleries, mini-distilleries, and micro-distilleries to operate wineries farm wineries, brewers, and resident brewers, and vice versa for wineries and farm wineries.
- Expanded definitions and requirements for pre-mixing alcoholic drinks not in the original container with public health and safety issues addressed.
- A new license for a private caterer which is already licensed as a private club restaurant to caterer food and alcohol to unlicensed venues.
- A new license for a private club bar which only provides pre-packaged or basic food in a limited kitchen.
- A new license for a private club restaurant which provides freshly prepared food in a restaurant style kitchen.
- A new license for a private tennis club bar where the facility has tennis courts and other grounds which could encompass the licensed premises.
- A new license for a private wedding venue or barn where food and alcohol are provided on limited basis and the licensee does not operate with daily bar hours.
- A new license for a one-day license for a charity to conduct a liquor auction in conjunction with a private club.
- A new license for a multi-vendor fair and festival license where multiple vendors may share liability and responsibility when conducting a joint alcohol event authorized by a municipality.
- A new license for a private professional sport stadium for alcohol sales, where professional sports are played.
- A new license for a private multi-sport complex for alcohol sales of substantial acreage where multiple sports are played.
- A new license for a private farmers market where multiple vendors and retailers can share liability and responsibility for alcohol sales throughout the property.
- Facilitating the economic development of hard cider in West Virginia by reclassifying hard cider in code, establishing a hard cider tax rate; tax collection; creating a new fund for the Agriculture Department to facilitate fruit production for use in hard cider, and additional hard cider requirements.
- Authorizing the ability to offer sealed wine growlers from wineries, farm wineries, and various wine retailers.

- Providing additional exceptions to the criminal penalty for the unlawful admission of children to dance house for certain private clubs with approved age verification systems.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** May 10, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# House Bill 2094

## STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to the juvenile restorative justice programs.

**CODE REFERENCE:** §49-1-206 and §49-4-725 (Amends and Reenacts)

### **SUMMARY:**

This bill:

- Defines a new term, “restorative justice program”, as a voluntary, community based program which utilizes evidence-based practices that provide an opportunity for a juvenile to accept responsibility for and participate in setting consequences to repair harm caused by the juvenile against the victim and the community. This can occur by means of facilitated communication including to mediation, dialogues, or family group conferencing, attended voluntarily by the victim, the juvenile, a facilitator, a victim advocate, community members, or supporters of the victim or juvenile.
- Expands eligibility for participation in a voluntary restorative justice program to any time prior to disposition, and to any nonviolent offense.
- Clarifies that the juvenile or victim or both may decline to participate in a restorative justice program, and that declining does not preclude future participation during the current or a subsequent proceeding.
- Clarifies restorative justice program must include measures agreed to by the victim and the juvenile which are designed to provide redress to the victim and the community.
- Clarifies that completion of a restorative justice program includes completion of all measures agreed to by the victim and the juvenile.
- Protects juvenile from self-incriminating information obtained from the juvenile through the restorative justice program being used against him or her in a subsequent proceeding.

**DATE OF PASSAGE:** April 1, 2021

**EFFECTIVE DATE:** June 30, 2021

**ACTION BY GOVERNOR:** Signed April 15, 2021

# House Bill 2195

## STRIKE AND INSERT FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to motor vehicle crash reports.

**CODE REFERENCE:** § 17C-4-7 (Amends and Reenacts)

### **SUMMARY:**

This bill adds a new requirement that within 24 hours of a motor vehicle crash, the investigating law-enforcement officer shall provide the owner, operator, and insurance information for all the involved parties to each of the other involved parties, and to each party's respective insurance agents. This information must be made available, at no cost, whether or not the accident report has been completed.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021

# House Bill 2221

## STRIKE AND INSERT FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to the establishment of an insurance innovation process.

**CODE REFERENCE:** § 33-53-1; §33-53-2; §33-53-3; §33-53-4; §33-53-5; §33-53-6; §33-53-7; §33-53-8; §33-53-9; §33-53-10 (New)

### **SUMMARY:**

This bill creates a new article in the insurance code, relating to “Insurance Innovation.”

In effect, the bill creates a “sandbox” meant to be a regulatory safe space for entrepreneurs to test and launch insurance-related products not yet contemplated by the state insurance code. Companies wishing to participate in the sandbox would apply to the Offices of the Insurance Commissioner (“OIC”) for admission. The applicant would have to explain the product’s innovation, explain the value to customers, and demonstrate financial stability. Participants would be required to report key data to the OIC for ongoing evaluation and oversight. A sandbox law for financial products passed in West Virginia during the 2020 Regular Session (House Bill 4621 West Virginia FinTech Regulatory Sandbox Act).

Specifically, the bill does the following:

In §33-60-1, the bill defines terms, including “applicant”, “beta test”, “client”, “commissioner”, “extended no-action letter”, “innovation’s utility”, “innovation”, “limited no-action letter” or “limited letter”, “participant”, “qualified United States financial institution”, and “regulatory sandbox”.

In §33-60-2, the bill details the requirements for application to the OIC for admission into the regulatory “sandbox”. The deadline for application is December 31, 2025, and the fee is \$750. The application, on a form prescribed by the OIC, must include the following:

- An explanation on the value of the innovation to the public; its economic viability; and its safety;
- A detailed description of the statutory and regulatory issues that prevents the innovation from being made available currently;
- A certification that no like innovation is available in West Virginia;
- Contact information for the applicant’s insurance regulatory counsel;
- A detailed description of the specific conduct that the applicant proposes should be permitted by the limited no-action letter (a letter detailing what



- conduct will not result in regulatory action by the OIC during the testing phase or “beta test”);
- Proposed terms and conditions to govern the applicant’s beta test;
  - Proposed metrics by which the commissioner may reasonably test the innovation’s utility during the beta test;
  - Disclosure of certain interested parties;
  - A statement that the applicant has funds of at least \$25,000 available to guarantee its financial stability; and
  - A statement confirming that the applicant authorized to make an application.
  - Certain persons would be prohibited from making application for admission to the regulatory sandbox. (See §33-60-2(b)).

In §33-60-3, the bill contains the criteria for OIC’s acceptance or rejection of an application, which must be made within 60 days, but may be extended for an additional 30 days with notice to the applicant. If the OIC does not act on the application, it is deemed accepted. The OIC may request information from the applicant as necessary to evaluate the application and must review the application based on various criteria. If the application is rejected, the OIC would have to explain the defects. If accepted, the OIC would have to issue a notice of acceptance that sets forth requirements and conditions. The notice would expire unless accepted in writing within 60 days. The applicant would be entitled to request a hearing on the decision of the OIC.

In §33-60-4, the bill provides that the OIC is required to issue a “limited no action letter” within 10 days of acceptance. Such letter would describe the OIC enforcement exemptions that the participant will secure so long as the participant operates within the terms and conditions set forth in the letter. The OIC would be required to publish all such letters on its website.

In §33-60-5, the bill provides that the beta test period would be for three years unless extended for another year. This section also sets forth the penalties for non-compliance with the limited no action letter or failure to provide the OIC with requested information, which includes termination of the beta test and safe harbor of the limited no action letter and fines of up to \$2,000 per violation. If the beta test is causing consumer harm, the OIC may order a stop. A participant or client could request a OIC hearing on any penalty.

In §33-60-6, the bill provides that the OIC must issue an extended no-action letter within 60 days of the conclusion of the beta test (unless extended up to 30 days) or a letter declining to extend such a letter. The OIC would be required to review the results of the beta test considering factors such as utility, publishing the result on its website. If certain criteria are met, the OIC could issue and publish an extended no-action letter (permitting continued use of the innovation) for up to three years. An extended no-action letter could be modified only by the Legislature or, upon complaints and a showing of risk of harm to consumers, rescinded by the OIC.

In §33-60-7, the bill requires the OIC to keep documents, materials, or other information in the possession or control of the commissioner that are created, produced,

obtained, or disclosed in relation to this article and that relate to the financial condition of any person or entity confidential and privileged. Such information would not be subject to FOIA, subpoena, or discovery, and not admissible in evidence in any private civil action.

In §33-60-8, the bill requires that the OIC report to the legislature on the program. The bill also specifies content requirements of such reports.

In §33-60-9, the bill allows the OIC to enter into reciprocity agreements with state, federal, or foreign regulatory agencies, making the WV insurance innovation available in other jurisdictions, and vice versa as to innovations from other jurisdictions under standards of this new article.

In §33-60-10, the bill requires rulemaking by the Insurance Commissioner for purposes of administering this article and requires the development of forms, contracts, and other documents as necessary.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 15, 2021

# House Bill 2253

## STRIKE AND INSERT AMENDMENT TO INTRODUCED VERSION

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**SHORT TITLE:** Relating to forgery and other crimes concerning lottery tickets.

**CODE REFERENCE:** §29-22-12 (Amends and Reenacts)

**SUMMARY:**

Under current law it is a felony to fraudulently make, alter, forge, utter, or counterfeit a lottery ticket, and punishable by a fine of not more than \$1,000 and incarceration for not less than one year. The bill makes this a misdemeanor offense punishable by a fine of not more than \$1,000, not more than one year in jail, or both fined and confined.

**DATE OF PASSAGE:** April 5, 2021

**EFFECTIVE DATE:** July 4, 2021

**ACTION BY GOVERNOR:** Signed April 15, 2021

# House Bill 2363

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to “Best Interests of the Child Protection Act of 2021”.

**CODE REFERENCE:** §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 (Amends and Reenacts) §48-1-239a, §48-1-239b, §48-1-241a, §48-1-241b, and §48-9-105 (New)

### **SUMMARY:**

§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.*

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# House Bill 2368

## STRIKE AND INSERT FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Mylissa Smith’s Law, creating patient visitation privileges.

**CODE REFERENCE:** §16-39-1, §16-39-2, and §16-39-3 (Amends and Reenacts); §16-39-8 (New)

### **SUMMARY:**

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 “Mylissa 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:

- 1) 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.
- 2) A visitor shall comply with the applicable procedures established by the health care facility.
- 3) 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.
- 4) 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.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** April 10, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021



# House Bill 2370

## STRIKE AND INSERT FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE: H. B.** Provide that Public Service Districts cannot charge sewer rates for filling a swimming pool.

**CODE REFERENCE:** §16-13A-9b (Amends and Reenacts)

### **SUMMARY:**

This bill provides an exemption from sewer charges for swimming pool water that is not discharged into the sewer system. The swimming pool's owner has 30 days from when the pool is filled to provide the pool's dimensions to the appropriate public service district. The public service district is to calculate the volume of the swimming pool and not charge a corresponding sewer fee for the water necessary to fill the swimming pool. The public service district may inspect the pool. The provisions of this bill only apply to privately owned swimming pools.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** April 10, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021

# House Bill 2372

## STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Allow pre-candidacy papers to be filed the day after the general election.

**CODE REFERENCE:** §3-8-5e (Amends and Reenacts)

### **SUMMARY:**

This bill amends a single section in the Election Code, W. Va. Code §3-1-1 *et seq.* The bill modifies the date on which pre-candidacy papers may first be filed, contributions first received, and expenditures first made for a person undertaking to determine the advisability of becoming or preparing to become a candidate. It also extends the timeframe for pre-candidacy activities authorizing an earlier start date, being the day after a general election, for an office or position with a term of four years or less and imposes a four-year cap on pre-candidacy activities for an office or position with a term of more than four years.

**DATE OF PASSAGE:** March 19, 2021

**EFFECTIVE DATE:** June 17, 2021

**ACTION BY GOVERNOR:** Signed March 30, 2021

# House Bill 2382

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards.

**CODE REFERENCE:** §64-3-1 et seq. (Amends and Reenacts)

### **SUMMARY:**

This bill is rules Bundle 7, Department of Environmental Protection (DEP) which contains seven Air Quality Rules, two Water and Waste Management Rules, and one Secretary's Office rule.

#### **DEP-Air Quality – Ambient Air Quality, 45 CSR 8**

The rule amends a current DEP rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, incorporating by reference the national primary and secondary ambient air quality standards, as promulgated by the U. S. Environmental Protection Agency (EPA).

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020. The amendments to the rule are necessary to maintain primacy.

#### **DEP-Air Quality – Standards of Performance for New Stationary Sources, 45 CSR 16**

The rule amends a current DEP rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the EPA pursuant to the federal Clean Air Act (CAA).

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020. These amendments to the rule are necessary to maintain primacy.

#### **DEP-Air Quality – Control of Air Pollution from Combustion of Solid Waste, 45 CSR 18**

The rule amends a current DEP rule which establishes and adopts national standards of performance and other requirements for air pollution caused by the

combustion of solid waste, as promulgated by the EPA pursuant to the federal Clean Air Act (CAA).

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020. These amendments to the rule are necessary to maintain primacy.

### **DEP-Air Quality – Control of Air Pollution from Municipal Solid Waste Landfills, 45 CSR 23**

The rule modifies a current DEP rule which establishes and adopts emission standards for controlling air pollution from Municipal Solid Waste Landfills, as promulgated by the EPA in accordance with the federal Resource Conservation and Recovery Act (RCRA).

The amendments incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020. These modifications are necessary to maintain consistency with applicable federal laws and allow West Virginia to maintain primacy.

Section 7 of the rule was amended to allow an owner or operator to meet operational standards for collection and control systems, compliance systems, monitoring requirements, annual reporting requirements, corrective action, and recordkeeping by complying with federal regulations as opposed to state rules. If they choose the federal route, they may not return to regulation under the state rule.

### **DEP-Air Quality – Acid Rain Provisions and Permits, 45 CSR 33**

The rule amends an existing DEP rule which establishes and regulates the Acid Rain Program as promulgated by the EPA pursuant to the Clean Air Act (CAA).

The amendments incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020.

The amendments are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to maintain primacy.

### **DEP-Air Quality – Emission Standards for Hazardous Air Pollutants, 45 CSR 34**

This rule amends a current DEP rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the EPA pursuant to the CAA.

The amendments incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020.

The amendments are necessary are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in this State for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA.

### **DEP-Air Quality – Control of Greenhouse Gas Emissions from Existing Coal-fired Electric Utility Generating Units, 45 CSR 44**

This rule is a new DEP rule which establishes and regulates the Affordable Clean Energy rule, consisting of emission guidelines for greenhouse gas emissions from existing Electric Utility Generating Units (EGUs). The proposed rule implements the federal emission guidelines established at 40 C.F.R. 60, Subpart UUUUa, commonly referred to as the Affordable Clean Energy (ACE) rule.

The federal emission guidelines establish the best systems of emission reduction (BSER) which, in the judgment of the U.S. EPA Administrator, have been adequately demonstrated and provide information on the degree of emission limitation achievable for the designated pollutant. The federal emission guidelines are heat rate improvements which target achieving lower carbon dioxide emission rates at designated facilities. The federal emission guidelines were developed pursuant to section 111(d) of the CAA.

This rule will regulate greenhouse gas emissions, in the form of carbon dioxide, from existing coal-fired EGUs that commenced construction on or before January 8, 2014 that meet the definition of a designated facility. This rule establishes applicability criteria, permit application requirements, permit requirements, standards of performance requirements, and monitoring, recordkeeping, and reporting requirements for designated facilities for control carbon dioxide emission rates based on the heat rate improvements analysis that can be applied to or at the affected steam generating unit.

### **DEP-Water and Waste Management – Requirements Governing Water Quality Standards, 47 CSR 2**

The rule amends a current legislative rule. It establishes requirements governing the discharge of sewage, industrial wastes, and other wastes into the waters of the state and establishes water quality standards for the waters standing or flowing over the surface of the state. The stated public policy of the State of West Virginia is to maintain reasonable standards of purity and quality of water consistent with (1) public health and public enjoyment; (2) the propagation and protection of animals, birds, fishes, and other aquatic life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture, and the provision of a permanent foundation for healthy industrial development.

These changes to the Requirements Governing Water Quality Standards are being made to adhere to the federal requirement for Triennial Review of Water Quality Standards, as required by the Clean Water Act (CWA), Section 303(c)(1).

Subsection 8.6. in the rule required DEP on or before April 1, 2020, to propose updates to the numeric human health criteria found to be presented to the 2021 Legislative Session. These proposed changes include revisions to human health criteria in Appendix E, subsections 8.23 and 8.25, in order to adhere to a mandate from the 2019 Legislature.

In the change, the DEP is revising 24 of the human health criteria. In the proposed rule from 2018/19, the DEP recommended changes to 56 different criteria. If authorized, these 24 criteria will then be consistent with nationally recommended criteria.

The remaining human health criteria will be studied by a work group including DEP personnel and the DEP Advisory Council. This work group began meeting monthly for one year beginning in June 2020. The group will research and recommend additional revisions to the numeric human health criteria, if necessary, to be presented to the 2022 Legislature. The group may also recommend revising bioaccumulation factors, a West Virginia specific fish consumption rate, and other factors which establish state specific criteria.

Finally, the rule is being amended to remove Section 7.2.d.19.2. This provision was disapproved by EPA under its authority in the CWA §303(c)(3) and 40 CFR §131.21(a)(2). The Charleston Sanitary Board submittal was not approved and never went into effect, rendering this subsection unnecessary.

### **DEP-Water and Waste Management – Hazardous Waste Management System, 33 CSR 20**

The rule regulates the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of public health and safety and the environment. The rule adopts and incorporates by reference the federal regulations set forth in 40 CFR Parts 260 through 279 that are in effect as of September 8, 2020. The previous rule adopted regulations in effect on August 21, 2019.

The federal rule amendments adopted by this rule change are:

1. Increased Recycling: Adding Aerosol Cans to the Universal Waste Regulations: Federal Register 84 FR 67202 published December 9, 2019, effective February 7, 2020.
2. Modernizing Ignitable Liquids Determinations: Federal Register 85 FR 40594 published July 7, 2020, effective September 8, 2020.

The amendments add aerosol cans to a classification of hazardous waste known as universal waste. Universal waste also includes batteries, lightbulbs, and pesticides. These materials have lower toxicity levels and are managed differently with a more relaxed regulatory framework. This change will only have an effect on commercial and industrial facilities. Households are exempt.

DEP amended the rule to adopt the most current federal hazardous waste regulations to maintain consistency with the federal program and the state program. The adoption is necessary to maintain primacy.

### **DEP-Secretary's Office – Voluntary Remediation and Redevelopment Rule, 60 CSR 3**

The rule amends a current legislative rule and it establishes the eligibility, procedures, standards, and legal documents required for voluntary remediation activities and brownfield revitalization. The rule sets the administrative process for the Voluntary Remediation Program (VRP), which encourages voluntary cleanup and redevelopment of abandoned or under-utilized contaminated properties by providing certain environmental liability protections.

The rule has two changes. First, the De Minimis Table has been removed from the rule. This table lists the default concentrations of contaminants that may remain in residential soil, industrial soil, and groundwater at a remediation site because the residual contaminants do not present an unacceptable risk to human health.

The table has been relocated to the VRP Guidance Manual. DEP will then be able to update the voluntary remediation standards annually or immediately following significant regulatory changes using the scientific sources outlined within the rule. The time spent requiring the agency to amend the legislative rule every legislative session will be eliminated, streamlining the process. The agency believes this change will lead to increased efficiency and increased responsiveness.

Within Subdivision 9.2.d. of the purposed rule the DEP outlines an updated process to ensure transparency and public participation. The section provides 1) a formal scientific process to calculate and review the changes to the De Minimis Standards, 2) describes a communication process for the updates, 3) requires a public notice and comment period, and 4) provides a means for appeal. The public notice and comment period and appeal section is the subject of an agency agreed to modification which ultimately makes the table part of an interpretive rule.

The method of scientifically determining how the De Minimis Standards are calculated is not changed; however, the process for making changes are rewritten to fall within DEP's authority, no longer requiring legislative approval. The agency believes human health and the environment will remain protected. The rule change simply removes the De Minimis Table from the rule and empowers the DEP to insert it into the VRP Guidance Manual.

The current legislative rule-based process takes over a year when the standards require updating. DEP estimates the proposed process will take less than three months, including review, development, verification, public comment, and final publication. DEP believes this will eliminate the need to amend the legislative rule on an annual basis to remain current with published science.

DEP states that toxicity information evolves over time with research and a faster process will help to ensure that remediation standards reflect current science. The agency indicates that the data in the table can regularly change as often as twice a year and is out of date before a new legislative rule is ultimately approved. Under the current process, voluntary remediators may be required to remediate to a more stringent standard than necessary, burdening the applicant with unnecessary costs and a prolonged cleanup. Alternatively, applicants may receive Certificates of Completion and liability protections even when remediating to a level that current science has proven is not protective of human health and the environment.

In the second rule change, DEP updates the requirements for monitored attenuation. Currently, applicants are required to collect eight (8) semiannual samples to demonstrate successful attenuation. The change allows for the current process, but alternately allows for eight (8) quarterly samples. Data to be used in a statistical attenuation demonstration may be collected more frequently over a shorter period of time. Therefore, applicants will have more flexibility, potentially reducing the amount of time required to ensure a site has been remediated.

Again, the current system of semiannual and longer sampling frequencies is still available, as long as no more than fifty percent (50%) of samples are collected during the same season. This change may prevent unnecessary collection of data when the data is adequate to make a satisfactory demonstration.

**DATE OF PASSAGE:** March 26, 2021

**EFFECTIVE DATE:** March 26, 2021

**ACTION BY GOVERNOR:** Signed April 7, 2021



# House Bill 2400

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Authorizing the Department of Transportation to promulgate legislative rules.

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

### **SUMMARY:**

This bill is the Department of Transportation's rules Bundle 8, containing one Division of Highways (DOH) rule and four Division of Motor Vehicles (DMV) rules.

#### **Division of Highways, Traffic and Safety, 157 CSR 05**

This rule had not been updated since 2008 and various circumstances and statutory authorization has changed since that time. In 2019 the Legislature repealed DOH authority to approve equipment on motor vehicles. DOH has the statutory authority to establish requirements for traffic control, safety, and special permits for oversize or overweight loads. This rule updates requirements in these areas, in part, by deleting the definitions section and the section relating to lighting devices, safety glass, and seat belts. New language has been added allowing the Operations Division to issue timber permits and permits for commodities manufactured for interstate commerce.

#### **Division of Motor Vehicles, Examination and Issuance of Driver's License, 91 CSR 04**

This rule amends a current legislative rule. It reflects passage of House Bill 4522 which passed during the 2020 Regular Session of the Legislature. That bill allowed the DMV to accept documents compliant with the Real ID Act of 2005 as proof of identity, residence, or lawful presence in connection with issuance of driver's licenses. The rule also contains minor changes consistent with other legislative actions since 2015, when the rule was last amended.

The rule makes changes throughout to reflect expressly that documents compliant with the Real ID Act of 2005 are acceptable in connection with issuance of a driver's license or identification card and with respect to transfer of an out-of-state license, reissuance of a driver's license with changes, or issuance of a duplicate driver's license or identification card. These changes are applicable to motorcycle licenses and endorsements, as well.

The rule also changes “written” examination to “knowledge” examination throughout to reflect that the examination may be taken online. With respect to the road skills examination, the rule no longer limits the number of attempts that may be made on an instructional permit to three.

The rule eliminates the requirement for certified copies of court orders, marriage certificates, and divorce decrees. It also extends the time in which a licensee, whose license has expired, may renew the license without taking the knowledge or road skills examinations from six months to 36 months.

Lastly, the rule allows an applicant to simply provide his or her social security number without actually presenting the card, except for those types of licenses which may require a Social Security card or document under federal law or regulation. Numbers are verifiable electronically through the Social Security Administration.

### **Division of Motor Vehicles Sub, Denial, Suspension, Revocation, Disqualification, Restriction, Nonrenewal, Cancellation, Administrative Appeals and Reinstatement of Driving Privileges, 91 CSR 05**

This rule amends a current legislative rule which reflects the provisions of Senate Bill 130 which passed during the 2020 Regular Session of the Legislature. That bill revamped the license revocation and administrative hearing process for DUI offenses, eliminating the Office of Administrative Hearings in the DMV. The rule strikes out references to the Office of Administrative hearings throughout, substituting reference to circuit courts.

The rule adds a provision requiring a 60-day suspension of the driving privilege for operating a commercial motor vehicle without a valid CDL, pursuant to §17E-1-7 of the code.

In section 7, the offense of failure to yield to an emergency vehicle, pursuant to §17C-9-5 of the code, is added to the list of offenses for which points are assessed. The number of points assigned to the offense is six. It also provides that that a licensee’s accumulation of 20 points or more will result in a 120-day suspension of driving privileges, instead of the indefinite period previously provided by the rule. The rule adds Revocation Waiver Program references in section 16, relating to the Test and Lock Program, which allows a participant in the Program to avoid license revocation by his or her participation in the Program. Also, under this rule, if the DMV finds in reviewing a Test and Lock participant’s data that the participant is exhibiting signs of continuing alcohol abuse, it is required to notify the participant’s Safety and Treatment Program provider.

Lastly, the rule adds as grounds for disqualification from the Test and Lock Program, a participant’s failure to report for a re-evaluation by the Safety and Treatment Program provider when continuing abuse data is found by the DMV.

## **Division of Motor Vehicles, Compulsory Motor Vehicle Liability Insurance, 91 CSR 13**

This rule amends a current legislative rule. It is necessitated in part by Senate Bill 130 which passed during the 2020 Regular Session of the Legislature, and which terminated the Office of Administrative Hearings. The rule strikes out references to the Office of Administrative Hearings and replaces them with references to the DMV.

The rule amends the program to verify insurance coverage to reflect the existence of an electronic database. The DMV will randomly sample actively registered vehicles in the electronic insurance database on a weekly basis. If insurance coverage on a selected vehicle cannot be confirmed, the DMV will send out a letter requesting the owner to verify coverage within 30 days. If the owner does not respond, a notice requiring response within 30 days will be sent by certified mail. Failure of the owner to respond to the notices will result in suspension of the owner's license for 30 days. If the suspension is the second or subsequent suspension within the preceding five years, the suspension is for 90 days, and the vehicle's registration will also be suspended. Reinstatement of the license and registration is contingent upon payment of fees assessed by the DMV and the providing of proof of current liability insurance on the vehicle.

This rule modifies the provisions relating to surrender of a vehicle's registration plate, eliminating the requirement of submitting written forms or statements to accompany the plate surrender. It also adds provisions allowing the owner of a seasonal or periodic use vehicle to maintain liability insurance on that vehicle only for the portion of the year the vehicle is in actual use and retain the vehicle's registration plate.

The rule also amends the provisions regarding traffic citations and crash reports where the vehicle involved is not covered by liability insurance. If the suspension is the second or subsequent offense within the preceding five years, the suspension is for 90 days, and the registration of the vehicle will also be suspended. Reinstatement of the license and registration is contingent upon providing proof of current liability insurance on the vehicle and payment of any fees assessed by the Division.

Under this rule the requirement that insurers canceling policies notify the DMV and that the DMV notify owners of the cancellation is eliminated. The administrative due process provisions of the rule are revised to eliminate hearings on grounds outside the issues of questions of identity and the existence of insurance on the date and time in question, and to provide for notice to the owner of the denial of a hearing where any other grounds are asserted. New language is added expressly stating that judicial review may be sought from any adverse order.

## **Division of Motor Vehicles, Special Purpose Vehicles, 91 CSR 25**

This new rule is promulgated pursuant to Senate Bill 690, which was passed during the 2020 Regular Session of the Legislature. That bill authorizes the registration of special

purpose vehicles and their operation on certain public roads, except where prohibited by local government authorities or the Division of Natural Resources.

The rule largely tracks the provisions of Senate Bill 690. It defines terms, including “special purpose vehicle” (SPV) and “street-legal special purpose vehicle.” Like the bill, the rule essentially provides that owners of SPV’s may make their SPV’s “street-legal,” allowing them to be operated on public roads if they register their SPV’s, and have them inspected. Street-legal SPV’s must also carry liability insurance.

The rule allows out of state owners of vehicles that qualify as street-legal SPV’s to obtain a temporary permit upon payment of \$50; the permit is valid for two weeks. The rule also recognizes reciprocity for out of state street-legal SPV owners so long as the state of residence extends reciprocal privileges to West Virginia residents.

The rule does not affect use of vehicles in the Hatfield-McCoy Recreation Area or on access roads to that Area. The vehicles are not required to be registered but must display a Hatfield-McCoy Recreation Area user permit.

**DATE OF PASSAGE:** April 1, 2021

**EFFECTIVE DATE:** April 1, 2021

**ACTION BY GOVERNOR:** Signed April 15, 2021

# House Bill 2427

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Authorizing the Department of Health and Human Resources to promulgate legislative rules.

**CODE REFERENCE:** §64-5-1 et seq. (Amends and reenacts)

### **SUMMARY:**

This is rules Bundle 5 relating to the Department of Health and Human Resources (DHHR). It contains 14 rules, 13 of which are from DHHR and one from the Health Care Authority.

### **West Virginia Health Care Authority, Behavioral Health Centers Licensure, 64 CSR 11**

The rule amends a current legislative rule. The purpose of the rule is to establish standards for the licensure of behavioral health services and supports. Some of the more substantive changes to the sections are listed below.

#### **§ 64-11-2. Application and Enforcement.**

A new subsection 2.7 provides that if a facility otherwise exempt wants to be licensed, that facility must follow the application procedures in this rule.

#### **§ 64-11-3. Definitions.**

A definition for the term behavioral health center has been added.

#### **§ 64-11-4. State Administrative Procedures.**

A new subdivision 4.5.3 requires new construction to use the most current guidelines for design and construction.

#### **§ 64-11-5. Consumer Rights.**

A new subsection 5.4 requires providers to develop and implement a code of conduct that includes, but is not limited to, provisions regarding informed consent and participation of consumer in decisions about services.

#### **§ 64-11-7. Legal Compliance.**

A new subsection 7.4 is requires a behavioral health center to have a governing body, which is to develop, maintain, and implement a conflict-of-interest policy and procedures for managing conflicts and to evaluate implementation of policies and procedures.

A new subdivision 7.5.9. governs the release of consumer information and records. This section provides that the behavioral health center may release consumer information only in accordance with its written policies and in compliance with applicable federal and state laws. This section sets forth criteria for record maintenance.

#### **§ 64-11-8. Financial Management.**

An amendment to subdivision allows individual consumer funds to be maintained in one account for all consumer funds. However, an individual accounting for each consumer must be maintained and one consumer's funds may not be used for the expenses of another consumer.

#### **§ 64-11-9. Management of Human Resources.**

A new subdivision 9.2.4 requires staff providing direct care to consumers to be 18 years of age or older and capable of performing the duties assigned.

A new subdivision 9.2.12 requires the provider to have an adequate number of qualified personnel to meet the consumers' assessed needs and treatment plan or treatment strategy.

#### **§ 64-11-10. Service Environment.**

Amendments to this section relate to bathrooms, documentation of water temperature, treatment of solid waste, plumbing, vermin, refrigerator and freezer temperature logs, removal of structural barriers, fire drills, housekeeping, storage, infection control, and emergency preparedness.

#### **§ 64-11-11. Compliance with Legal, Health and Regulatory Requirements.**

Amendments to this section relate to changes in a consumer's condition, medication information for the consumer, double locking of controlled substances, and policies and procedures for handling medical and psychiatric emergencies.

#### **§ 64-11-12. Services.**

This section contains provisions relating to the intake process to assess a consumer, requirements for the assessment, written consent prior to initiating treatment, treatment plan requirements, diagnoses, consumer records, review of treatment plans or treatment

strategies, discharge planning, medication services, critical incidents, restraints, and transfer to an appropriate acute care facility for a consumer who poses an imminent physical danger to himself, herself, or others.

### **§ 64-11-13. Administrative Due Process, Administrative Appeals, and Judicial Review.**

This section contains provisions relating to civil monetary penalties for operating an unlicensed facility and the limitation suspension or revocation of a license.

The rule requires that in all new construction and alterations, all plumbing must meet national plumbing codes or in the absence thereof, the National Plumbing Code; removes the requirement that a facility check the water temperature of all mixing faucets daily; requires immediate in-home access for staff to relevant information in a consumer's medical record; and provides that the Secretary may only suspend or revoke a license if the licensee commits a violation that endangers the health, safety or welfare of a person.

### **West Virginia Department of Health and Human Resources, Hospital Licensure, 64 CSR 12**

The rule amends a current legislative rule. The rule establishes standards and procedures for the licensing of hospitals and extended care facilities operated in connection with a hospital. Senate Bill 767 passed during the 2020 Regular Session of the Legislature repealed §16-5B-6a which required all nonprofit and all hospitals owned by any county, city, or other political subdivision to have boards with a 40% consumer representative make-up. References to a Section 6a hospital and the requirements for these hospitals have been deleted through-out the proposed rule.

The rule requires a hospital to post signs in every patient room, patient care area/department and staff rest area containing information outlining the process for reporting patient safety concerns and the process for reporting unresolved concerns to the Office of Health Facility Licensure & Certification (OFLAC) and setting requirements for the signs.

### **West Virginia Department of Health and Human Services, Nursing Home Licensure, 64 CSR 13**

The rule amends a current legislative rule. The purpose of this rule is to implement the state and federal law governing the licensing, operation, and standard of care in nursing homes located in West Virginia.

#### **§64-13-2. Definitions.**

The definition of abuse has been amended. Definitions have been added for chemical restraint, exploitation, involuntary seclusion, mental abuse, physical restraint, sexual abuse, and verbal abuse. Definitions for conviction, deemed status, deficiency, department, direct access, direct access personnel, fitness determination, immediate

jeopardy, negative finding, nursing home, restraint, secretary, and substantial compliance were deleted.

### **§64-13-3. State Administrative Procedures.**

A new subdivision 3.1.3. adds a requirement for a licensee to notify the director if there is a special unit within the same physical environment of the nursing home, or on the same campus or premise which has a different advertised name. A separate license is unnecessary.

A new subdivision 3.2.3. provides that nursing homes certified by Centers for Medicare & Medicaid Services (CMS) under 42 CFR 483 are exempt from the provisions of this rule unless they are part of an express state requirement. Subsection 3.9 relating to availability of reports and records has been deleted.

### **§64-13-4. Residents' Rights.**

A new subdivision 4.3.8 prohibits an employee of a nursing home or a person or his or her spouse having a financial interest in the nursing home from serving as a resident's legal representative unless the employee or person is related to the resident to the degree of a second cousin or unless the nursing home has been named temporary legal representative payee.

### **§64-13-5. Quality of Life.**

Subdivision 5.3.6 has been amended to require residents' access to electronic communications such as access to email and video communications. A new subdivision 5.3.7. provides that the resident has the right to personal privacy regarding accommodations, medical treatment, written communications, personal care, visits, and meetings of family.

### **§64-13-8. Quality of Care.**

New requirements have been added addressing dosing for residents receiving antipsychotic drugs, trauma-informed care, and pain management.

### **§64-13-10. Administration and Human Resources.**

Language regarding criminal background checks has been deleted. New language provides that all direct access personnel are subject to the provisions of the WV Clearance for Access: Registry and Employment Screening Act.

### **§64-13-11. Laboratory, Radiology, and other Diagnostic Services.**

This section has been amended to require a facility to promptly notify the ordering physician, physician assistant, nurse practitioner, or clinical nurse specialist of laboratory results that fall outside of clinical reference ranges.



#### **§64-13-14. Inspections and Investigations.**

This section has been amended to give any person the right to obtain the most recent past state and federal inspection and complaint reports with the nursing home's plan of correction.

#### **§64-13-17. Deemed Status.**

This section has been deleted.

#### **West Virginia Department of Health and Human Resources, Food Establishments, 64 CSR 17**

This rule adopted an amendment to a current legislative rule which was not proposed to the Legislature for promulgation. The rule incorporates the Federal Food Code with certain specified exceptions. The rule adds a new exception to Chapter 6 section 6-501.115 for dogs in a licensed private club, brew pub, or micro distillery, if certain specified conditions are met.

#### **West Virginia Department of Health and Human Resources, Lead Abatement Licensing, 64 CSR 45**

The rule amends a current legislative rule. The rule applies to persons who conduct lead abatement projects in target housing or child occupied facilities and requires licensure of lead contractors, inspectors, risk assessors, workers, supervisors, and designers.

The definition for lead contaminated dust has been amended, effective January 6, 2022, to reduce surface dust containing lead in three instances. First, the rule reduces surface dust containing lead at or more than 40 micrograms to 10 micrograms per square foot for floors. Second, the rule reduces surfaces dust containing lead at or in excess of 250 micrograms to 100 micrograms per square foot for interior windowsills. Third, the rule reduces surface containing lead at or more than 400 micrograms to 100 micrograms per square foot for window troughs and exterior concrete or other rough surfaces.

The rule lowers, effective January 6, 2022, lead abatement project clearance levels from 40 micrograms to 10 micrograms of lead in dust per square foot for interior floors or other horizontal surfaces. It also, effective January 6, 2022, lowers clearance levels from 250 micrograms to 100 micrograms of lead in dust per square foot for interior windowsills. Finally, the rule lowers clearance levels from 400 micrograms to 100 micrograms of lead per square foot for window troughs and exterior concrete and other rough surfaces.

With respect the section 16, the rule updates references to a CFR regulation from 2001 to 2019; updates an OSHA regulation from 1993 to 2019; and updates a HUD reference from 1995 to 2012.

The DHHR is of the opinion that states with lead-based paint programs are required to conform with EPA regulations that went into effect January 2020. They believe that failure to meet these standards could result in decertification of the program and the loss of federal grant funding.

### **West Virginia Department of Health and Human Services, Emergency Medical Services, 64 CSR 48**

The rule amends a current legislative rule. The purpose of the rule is to ensure adequate provision of emergency medical services to the residents of West Virginia to meet the purposes set out in W.Va. Code §16-4C-2 and to provide clear direction emergency medical services personnel and agencies in West Virginia.

A new subdivision 6.2.15 requires personnel to limit bystander presence and maintain a distance of six feet from any member of the public other than patients, and to wear a face mask covering and eye protection. The section is to remain in effect until the Governor's State of Emergency of March 16, 2020, is lifted.

### **West Virginia Department of Health and Human Resources, Client Rights at State-Operated Mental Health Facilities, 64 CSR 59**

The rule amends a current legislative rule. It applies to state-operated mental health facilities that are licensed to provide behavioral health services or inpatient psychiatric services. The rule replaces references to behavioral health with mental health throughout the rule. Numerous definitions are added or amended.

The State Operations Manual Survey Protocol is adopted by reference. With respect to a client's right to treatment provisions the requirements for the Initial Program Plan, Interim Program Plan, Individualized Program Plan, and Minimum Requirements of the Individualized Program Plan were all deleted.

Provisions regarding a patient's rights have been amended relating to a right to treatment in the least restrictive setting, detention in a mental health facility for the sole purpose of confinement, requiring care and treatment be provided by qualified personnel and staff, requiring the initial psychiatric evaluation be conducted within 60 hours of the patient's admission, development of program plans, treatment planning and discharge planning, requiring all care and treatment be provided in accordance with the applicable standard of care, physical examinations and medication, medical records, and informed consent before administration of antipsychotic medication.

Section 10 of the rule relating to seclusion and restraint were amended. Fundamentally, it states that federal regulations control. It prohibits the use of seclusion or mechanical or chemical restraints solely as a means of coercion, discipline, convenience, or retaliation. It requires all personnel who administer or assist in the administration of seclusion or the use of chemical restraint to undergo training. Handcuffs are prohibited. Requirements regarding documentation have been amended.

Section 19, relating to juveniles was amended to reflect that no person under the age of 18 may be admitted to a mental health facility.

### **West Virginia Department of Health and Human Resources, Delegation of Medication and Health Maintenance Tasks to Approved Medication Assistive Personnel, 64 CSR 60**

The rule amends a current legislative rule. This rule sets specific standards and procedures for training, competency testing, and the certification of Approved Medication Assistive Personnel (AMAP) for the limited administration of medications and performance of health maintenance tasks in specified health facilities.

Amendments to this rule are required, in part, because of the passage of Senate Bill 560 during the 2020 Regular Session of the Legislature. This bill permitted a nursing home to use trained individuals to administer medication under the direction of a registered professional nurse.

#### **§64-60-1. General.**

A new subsection has been added that permits the department to grant a variance from any provision of the rule if it determines strict compliance would impose a substantial hardship on the licensee, the licensee will otherwise meet the goal of the rule; and a variance will not result in less protection of the health, safety, and welfare of the residents. The rule provides that the variance must be submitted in writing and to the authorizing agency.

#### **§64-60-3. AMAP Program Approval.**

This section previously related to facility administrative procedures. It now provides that any facility may permit the use of AMAP when supervised by an authorized registered professional nurse. This section of the rule also sets requires the AMAP to successfully complete training retraining and competency testing. The AMAP who have successfully trained and tested in one facility must, prior to being approved to perform AMAP tasks in another facility, be reevaluated for competency by the authorized registered nurse. The authorizing agency may contract with an entity to provide facility trainer or instructor orientation training for the authorized registered nurse. The facility using services shall pay for training and testing. This section also sets forth specific requirements for the authorized registered professional nurse. Each facility must have at least one authorized registered professional nurse. The registered professional nurse is to determine whether the resident is in stable condition relative to the tasks proposed to be delegated. Any facility that uses the program shall, upon request, make a list of AMAPs available.

This section also requires non-nursing homes with an approved AMAP program, to purchase and maintain liability insurance for the coverage of the licensed and unlicensed personnel in the delivery of the services. It provides that nothing in the rule

prohibits any facility staff members from providing prudent emergency assistance to aid any person.

#### **§64-60-5. Curriculum and Competency Evaluation.**

This section sets forth the curriculum for the AMAP program and how this curriculum will be tested. The authorizing agency's training curricula is to be based upon a nationally recognized model for certified medical aides. This section provides any AMAP who successfully completed training and competency prior to the passage of this rule is exempt from the new training requirements. It also requires the prospective AMAP to pass a national medication aide certification examination offered by the National Council of the State Board of Nurses.

#### **§64-60-6. Eligibility Requirements for AMAP to be Trained.**

This section sets forth the eligibility requirements for AMAP to be trained provide the facility may permit a staff member to be trained as an AMAP. Among other criteria, a facility staff member must have at least one-year experience as a nurse aide in a long-term care facility and be certified in CPR.

#### **§64-60-7. Policy Development and Approval Procedures.**

This section provides facilities are not permitted to implement an AMAP program prior to the authorizing agency's approval of the AMAP program's policies and procedures. The rule requires the policies and procedures to be reviewed once a year. It also contains requirements for personnel records, resident medical records, medication administration records, monitoring and supervision, multiple site coverage, review of physician's orders, withdrawal of approval, communication, and a medication delivery system.

#### **§64-60-9. Limitations on Medication Administration and Health Maintenance Tasks Approved Medication Assistive Personnel.**

This section sets forth criteria for distribution of medication by the AMAP. It provides an exception for non-nursing home facilities to use prefilled insulin or insulin pens. First doses of a new medication may not be administered in a nursing home setting. Health maintenance tasks may not be delegated in nursing homes.

### **DHHR, Diabetes Self-Management Education, 64 CSR 115**

This new rule establishes the training requirements and procedures necessary for diabetes self-management education to be provided by properly trained health care practitioners in West Virginia. It provides that all diabetics be provided the opportunity to receive diabetes self-management education. It is to be offered at diagnosis, annually or when not meeting targets, when complications occur, and during transitions in life and care. The education may be offered in a group or provided by a trained health care

practitioner. The Bureau for Public Health is to maintain a current list of trained health care providers. Telehealth is permissible.

### **West Virginia Department for Health and Human Resources, West Virginia Clearance for Access: Registry and Employment Screening, 69 CSR 10**

This rule amends a current legislative rule. The purpose is to protect West Virginia's vulnerable population by requiring registry prescreening and state and federal criminal background checks for all direct access personnel of the DHHR, covered providers, and covered contractors. Throughout the proposed rule, the Department is added to the list of direct access personnel. Lastly, the rule changes the definition for the term "Covered Provider".

### **West Virginia Department of Health and Human Resources, Recovery Residence Certification and Accreditation Program, 69 CSR 15**

This new rule sets forth the requirements for certification and accreditation of recovery residences. A recovery residence is a single-family, drug-free, alcohol-free residential dwelling unit, or other forms of group housing, that is offered or advertised by any person or entity as a residence that provides a drug-free and alcohol-free living environment of the purposed of promoting sustained, long-term recovery from substance use disorder.

The rule requires the Bureau for Behavioral Health to appoint at least one certifying agency to administer the recovery residence accreditation programs. The appointed certifying agency must be an affiliate of National Alliance for Recovery Residences (NARR), Oxford House or a similar national entity and may last up to two years or be mutually terminated with 120 days-notice. The rule provides the monitoring of the certifying agency.

The rule sets forth minimum standards for recovery residence certification. It specifies the information to be included on a certificate of compliance, provides for the revocation and reinstatement of certification,

The rule includes a section regarding the rights and responsibilities of residents which requires each recovery residence to establish and adhere to a written policy regarding client rights and a written grievance procedure. The owner of a recovery residence has a right, under the proposed rule, to appeal the denial, suspension, or revocation of a certification and to then appeal a final decision to the Circuit Court of Kanawha County or in the county where the petitioner resides or does business. The owner may appeal the decision of the circuit court to the Supreme Court of Appeals of West Virginia.

Senate Bill 4620 which passed during the 2020 Regular Session of the Legislature included language specifying that the article does not permit a structure that would not

normally be classified as a single-family dwelling to be exempt from the state building code or fire code.

**Department of Health and Human Resources, Child Placing Agency  
Licensure: 78 CSR 2**

The rule amends a current Legislative rule. It modernizes and updates the standards and procedures for the licensure of child placing agencies. It deletes references to initial, provisional, and regular licenses; updates from the criminal background check to the West Virginia Clearance for Access: Registry & Employment Screening (CARES) check in the foster or adoptive parent records; removes quality assurance program; requires a missing child to be reported immediately instead of within 24 hours; allows an applicant for employment to work under direct supervision once a background check has begun for no more than 60 days until the background check is completed; clarifies employee educational and training requirements; sets forth the child and his or her family's basic rights as they relate to general rights, health rights, religious preferences, multi-ethnic placements; behavior management and discipline, financial resources, and clothing.

The rule also specifies information to be included in a child's placement plan; requirements for transfers and discharges; requires the agency to inform foster or adoptive parents of the foster child bill of rights; provides that foster and adoptive parents may only be certified with one agency at any given time; requires all offenses committed by current juvenile household members to be reported on a continual basis; requires a childcare provider for a foster or adoptive family shall meet the same criteria for background checks and protective service record checks as the foster or adoptive parent or be a licensed childcare provider; prohibits an agency from denying a foster or adoptive parent a certification of approval of their home for placement on the basis of a class of individuals protected by federal or state statutes or rules; requires an annual safety assessment for each foster or adoptive parents and specifies information that must be included; requires an agency to maintain records for biological parents containing specified information; and requires a written plan for a child transitioning from foster care.

The rule eliminates the requirement that the governing board of a child placing agency implement a mission statement; removed the minimum requirements for an executive director; in addition to current qualifications, allows a person with a Bachelor's degree who has completed a department approved training program provide by the child placing agency to be employed as a case manager; removes the requirement that an employee orientation program include training in the agency's philosophy and mission; and removes the requirement an agency's procedure for emergency discharges include a provision that the child be accompanied by a designated employee to the receiving agency or individual.

## **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 3**

This rule originally established standards and procedures for the licensure of residential childcare and treatment facilities. It has been amended to include the addition of vulnerable and transitioning youth group homes and programs. The proposed rule: Removes annual time study of the quantification of employee supervision time; removed requirement that mission statement and long term plan be in the administrative file; removes specific insurance requirements; requires that contracted services be certified or licensed in the service they are providing; require that a contracted licensed practitioner who serves children in his or her own location is licensed in the service he or she is providing; and removes some required hiring and training practices.

The rule requires program employees with direct care responsibilities to be trained within 90 days of employment on the following: sensitivity to differences in cultural norms and values as appropriate; management of children attempting to escape supervision or who are away from supervision; sensitivity to sexual identity including lesbian, gay, bisexual, transgender and questioning youth; family dynamics, including human growth and development; proper documentation techniques; basic therapeutic or behavior management techniques; and food handler's certification as necessary and appropriate. Program employees with direct care responsibilities must also be trained within 90 days of employment on children's trauma stress experiences, to include: impact on development, behavior, and relationships; understanding the types of trauma; understanding the influence of cultural factors; recognizing how on-going stressors impact child traumatic stress; responding to crises with interventions; and strategies and interventions to promote resiliency and health. Employees must be trained at the time of admission to serve any child with special needs. All employees shall be trained on prudent parenting standards and on interacting with victims of sex trafficking. The organization must document all employee training provided to employees, including a survey by the employee that indicates that he or she feels adequately trained to do their job.

A child entering a facility with properly bottled and labeled medications may continue on those medications with appropriate consents, until such time as the organization can obtain current physician's orders, either from the organization's physician or the child's physician, to continue the medications. Currently there is a 72-hour limitation. In the case of all other prescribed medication, the guardian must be notified within one business day of the medication prescribed, the reason, and the date the medication began.

The rule requires that prior to discharge, the team shall meet to review and document the child's progress in treatment, describe continuing problems and issues, and develop specific recommendations for aftercare and follow-up. The aftercare and follow-up plans or recommendations must be provided to the child and his or her parent and guardian upon discharge.

Under the rule, when the initial assessment indicates the presence of a sexually sensitive history (either as offender or victim) the organization must consider the child's history when making determination regarding housing and supervision in order to ensure the safety of all the children. The organization must also ensure that discharge plans make provisions for clothing needs at the time of discharge. All personal clothing shall go with a child when he or she is discharged, or arrangements shall be made if the child was not able to leave with his or her personal belongings. The organization must provide a list of items that are not appropriate for the child to have at the program upon intake.

Section 26 relating to vulnerable and transitioning youth group homes and programs is new and exempts them from numerous sections of the proposed rule. It specifies programs, procedures, and policies the organization must develop and make available to employees and residents. These include a complete and detailed description of the range of services offered and eligibility requirements for admission; specific service training to employees providing transitional living services prior to their direct work with youth; programming to provide sex trafficking prevention; assessment of a youth's health and medical needs that ensures that any youth receives appropriate health screening and services, including medical and dental screening and services; and the determination of the appropriateness for living arrangements used for offsite transitional living.

The organization must also provide a process for developing appropriate aftercare or discharge plans for youth and specifies what those plans must contain. In addition, the process for serving individuals with developmental disabilities with supportive services to help them fully interact with the community and achieve maximum independence and a detailed youth's case record is to be developed.

The rule removes the specific policy and procedure requirements for developing a process for assessing and improving overall performance; removes types of allowable governing bodies, struck the section related to performance review, removed the criteria for adjusting supervisory ratios for program employees, deleted specific provisions on environmental quality and inserted in lieu thereof a requirement that an organization meet all applicable federal, state, and local health, building, safety and fire codes, deleted specific food services standards and instead referenced local health department regulations relating to food services, and deleted provisions regarding compliance with legal, health and regulatory requirements.

### **Human Services, Procedure to Contest the Substantiation of Child Abuse or Neglect, 78 CSR 27**

This new rule establishes the procedure to contest a substantiation of abuse or neglect determined by a Child Protective Services (CPS) worker as required by House Bill 4092 passed during the 2020 Regular Session of the Legislature. It requires the Bureau of Human Services to provide written notice to the maltreater that through an assessment or investigation that he or she has had an allegation of abuse or neglect substantiated. It specifies the information which must be required in the notice. The notice must contain information concerning a person's right to grieve the substantiation of abuse before the Board of Review; information on the ability to discuss the case with a supervisor; clear



instructions on how to file a grievance with time limits; the right to request a copy of the file; and the right to appeal the decision of the Board of Review.

The rule does not contain a provision requiring the Department to remove a person's name from an abuse and neglect registry if substantiation is successfully challenged as required by House Bill 4092.

The rule specifies what is necessary for the Department to substantiate a claim of abuse or neglect and provides notice and grievance procedures and requires non-substantiated claims be recorded as such in the Bureau's records.

### **Health Care Authority, Exemption from Certificate of Need, 65 CSR 29**

The purpose of this rule is to implement House Bill 4108, which passed during the 2020 Regular session and eliminated the \$1,000 application fee for review of exempt health care services. The Health Care Authority reviews the application information to ensure compliance with the requirements of the exemption. Language has also been deleted; prohibiting the affected party from filing an objection to the exemption request; prohibiting an administrative hearing to review the application; setting time frames for action by the Authority. The rule eliminates the review of exemption requests by the Health Care Authority.

**DATE OF PASSAGE:** April 6, 2021

**EFFECTIVE DATE:** April 6, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# House Bill 2495

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to the filing of asbestos and silica claims.

**CODE REFERENCE:** §55-7G-4 (Amends and Reenacts)

### **SUMMARY:**

This bill provides new criteria for sworn information forms in asbestos and silica claims under the Asbestos and Silica Claims Priorities Act, which specifies evidence gathered regarding each claim against each defendant. The form must be filed 60 days after filing of the claim, and must contain:

1. The name, address, date of birth, marital status, occupation, smoking history, current and past worksites, current and past employers of the exposed person, and any person through which the exposed person alleges exposure;
2. Each person through whom the exposed person was exposed to asbestos or silica and the exposed person's relationship to each such person;
3. Each asbestos-containing or silica-containing product to which the person was exposed and each physical location at which the person was exposed to asbestos or silica, or the other person was exposed if exposure was through another person;
4. The identity of the manufacturer or seller of the specific asbestos or silica product for each exposure;
5. The specific location and manner of each exposure, including for any person through whom the exposed person was exposed;
6. The beginning and ending dates of each exposure and the frequency of the exposure, including for any person through whom the exposed person was exposed;
7. The specific asbestos-related or silica-related disease claimed to exist; and
8. Any supporting documentation relating to the information required under this section.

**DATE OF PASSAGE:** March 31, 2021

**EFFECTIVE DATE:** June 29, 2021

**ACTION BY GOVERNOR:** Signed April 15, 2021

# House Bill 2507

## STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Remove the limitations on advertising and promotional activities by limited video lottery retailers.

**CODE REFERENCE:** §29-22B-404, §29-22B-702, §29-22B-706, §29-22B-1201 (Amends and Reenacts)

### **SUMMARY:**

The bill amends four sections in the Limited Video Lottery Act, W. Va. Code §29-22B-1 *et seq.* The bill:

- Authorizes the Lottery Commission or its Director to conduct video lottery advertising only for the purpose of advising the public as to the use of the revenues generated by video lottery operations;
- Authorizes video lottery advertising and promotional activities by licensed limited video lottery retailer permittees and licensed limited video lottery operator permittees only in accordance with legislative rules;
- Authorizes rulemaking to regulate video lottery advertising and promotional activities by retailers and operators;
- Removes the prohibition against limited video lottery retailer permittees using the words “video lottery” in the name of the approved location or in any directions or advertising visible from outside the retailer’s establishment;
- Removes the requirement for notice and public hearing prior to approval of placement of a video lottery terminal; and
- Removes a future cap on licensed limited video lottery locations during bidding process.

**DATE OF PASSAGE:** April 8, 2021

**EFFECTIVE DATE:** July 1, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021

# House Bill 2581

## STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Providing for the valuation of natural resources property and an alternate method of appeal of proposed valuation of natural resources property.

**CODE REFERENCE:** §11-3-24b, §11-3-25 (Repeals); §11-3-15c, §11-3-15f, §11-3-15h, §11-3-15i, §11-3-23, §11-3-23a, §11-3-24, §11-3-24a, §11-3-25a, §11-3-32, §11-10A-1, §11-10A-7, §11-10A-8, §11-10A-10, and §11-10A-19 (Amends and Reenacts); and §11-1C-10 (New)

### **SUMMARY:**

This bill requires the Tax Commissioner to propose emergency rules for valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof, by July 1, 2021. It also provides guidelines for promulgating those rules, including definitions of terms.

The bill also reforms the property tax appeals process for all property taxpayers. Specifically, it empowers the Office of Tax Appeals to hear property tax appeals; lowers the standard of proof a taxpayer must meet from “clear and convincing” to “preponderance of the evidence;” makes appeal to the Board of Equalization and Review optional; and eliminates the Board of Assessment Appeals.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** April 10, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# House Bill 2633

## STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Creating the 2021 Farm Bill.

**CODE REFERENCE:** §19-1-2, §19-1-3a, §19-1-7, §19-1C-2, §19-1C-3, §19-1C-4, §19-1C-6, §19-9A-2, §19-12A-5, §19-14-1, §19-14-2, §19-14-3, §19-14-5, §19-14-6, §19-14-7, §19-14-8, §19-14-9, §19-14-10, §19-14-11, §19-14-12, §19-14-14, §19-21A-1, §19-21A-3, §19-21A-4, §19-21A-8, §19-25-1, §19-25-2, §19-25-5, §19-31-1, §19-35-1, §19-35-2, §19-35-3, §19-35-4, §19-35-5, §19-35-6, and §19-37-2 (Amends and Reenacts); §19-1C-7, §19-14-16, §19-35-3a, §19-35-3b, §19-38-1, §19-38-2, §19-38-3, §19-38-4, and §19-38-5 (New)

### **SUMMARY:**

The bill amends 36 sections and creates nine new sections, all within Chapter 19 and pertaining to agriculture.

§19-1-2 - The bill amends qualifications for Commissioner of Agriculture by removing requirements that Commissioner must be a practical farmer, learned in the science of agriculture, with agriculture as chief business for last 10 years.

§19-1-3a - The bill amends the authority of the West Virginia Department of Agriculture (WVDA) with respect to marketing, development, and economic development activities. The bill authorizes the WVDA to establish marketing, promotional, and economic development programs related to agriculture; authorizes the Department of Economic Development to coordinate with WVDA on development of such programs, upon request of the Commissioner of Agriculture; and provides a Freedom of Information Act (FOIA) exemption for WVDA in furtherance of its economic development duties and for the purpose of furnishing assistance to a new or existing business.

§19-1-7 - The bill amends requirements for raw milk herd share agreements by authorizing sale of raw milk without such an agreement if used as ingredient in nonedible product or as animal feed.

§19-1C-2, §19-1C-3, §19-1C-4, §19-1C-6, and §19-1C-7 - The bill amends provisions governing the Livestock Care Standards Board. The bill defines two new terms; redefines membership and qualifications of the Board commencing July 1, 2021; authorizes rulemaking on livestock care standards by WVDA in consultation with the Board; requires the Board to review proposed rules and provide its recommendation to LRMRC; provides a FOIA exemption for complaints and investigations of inhumane treatment of livestock; authorizes the Commissioner to call meetings in addition to the required annual meeting;

authorizes the Commissioner to file an annual report with the Legislature (sunset Dec. 31, 2025); authorizes enforcement measures by WVDA with respect to livestock care standards; and requires notification of law-enforcement regarding changes to this article by September 1, 2021.

§19-9A-2 - The bill eliminates the annual fee for the swine garbage feeding permit.

§19-12A-5 - The bill amends requirements for certain leases and contracts entered into by the Department of Agriculture. The bill eliminates sealed bid auction and notice/publication requirements for leases of \$1,000 or more between WVDA and public or private parties, for contracts or leases for development of WVDA lands, and for timberland transactions; and authorizes WVDA to cancel, upon 30 days written notice to lessee, leases with annual consideration of less than \$5/acre and containing provision authorizing cancellation or impairment by the Legislature.

§19-14-1, §19-14-2, §19-14-3, §19-14-5, §19-14-6, §19-14-7, §19-14-8, §19-14-9, §19-14-10, §19-14-11, §19-14-12, §19-14-14, and §19-14-16 - The bill makes changes to the Commercial Feed Law. The bill defines new terms, amends definitions, and deletes terms; clarifies the authority of WVDA regarding review of labels and annual reports; changes the permit/registration application deadline and replaces current per product registration requirement for commercial feed and customer-formula feed with a three-tier system of annual permits for manufacturing, distributing, guarantor activities; requires annual registration of pet food (any amount) and specialty pet food (any amount) and requires new registration for any alteration necessitating label change; extends grounds for denial, suspension, or revocation of permit or registration to violations by guarantor and extends related right to hearing to guarantors; clarifies appeal procedures in accordance with Administrative Procedures Act; updates certain labeling requirements for categories of animal feed; revises requirements for tonnage reports, inspection fees, and semi-annual statements; authorizes inspection of records by WVDA; revises conditions in which commercial feed or ingredients are considered adulterated; revises conditions in which commercial feed is considered misbranded; limits WVDA embargo authority to specific lot of commercial feed; eliminates knowing use of adulterated or misbranded commercial feed as a prohibited act, prohibits failure or refusal to register pet/specialty pet foods, and prohibits distribution of raw milk for use as a commercial feed unless certain conditions met; and establishes new requirements regarding deviations and associated penalties.

§19-21A-1, §19-21A-3, §19-21A-4, and §19-21A-8 - The bill amends provisions pertaining to conservation districts. The bill includes references to water quality in legislative findings and policies; defines one new term; requires State Conservation Committee to assist and advise on conservation improvements, and nonpoint source pollution and floodwater/sediment damage projects; includes water quality and soil conservation projects in scope of grant program; and adds nonpoint source pollution and water quality issues to conservation district authority.

§19-25-1 and §19-25-2 - The bill amends provisions regarding landowner liability. The bill defines one new term; and authorizes liability protections to landowners who invite or permit entry onto land without charge for agricultural purposes.

§19-31-1 - The bill makes a technical correction and recognizes current ownership of the Gus R. Douglass Agricultural Center at Guthrie by WVDA.

§19-35-1, §19-35-2, §19-35-3, §19-35-3a, §19-35-3b, §19-35-4, §19-35-5, and §19-35-6 - The bill makes changes to provisions regarding farmers markets and what was formerly and colloquially referred to as “cottage foods”. The bill adds to legislative findings; defines new terms, amends definitions, and deletes terms; reorganizes requirements for farmers market registration, farmers market vendor permits, and provisions regarding role of local health departments in farmers markets; exempts all farmers markets, except consignment farmers markets, and all farmers market vendors, from local health department food establishment permitting requirements; reorganizes requirements for potentially hazardous and nonpotentially hazardous foods; requires vendors of potentially hazardous foods to obtain farmers market vendor permit; vendors of nonpotentially hazardous foods exempt; expands location of kitchens that may be used to create potentially hazardous and nonpotentially hazardous foods; and authorizes rulemaking by WVDA.

§19-37-2 - The bill amends the West Virginia Fresh Food Act to require each state institution to obtain at least 5% of total food from in-state producers; requires food purchase contracts to contain provisions ensuring compliance; and authorizes rulemaking.

§19-38-1, §19-38-2, §19-38-3, §19-38-4, and §19-38-5 - The bill creates a new article which establishes the Agriculture Investment Program and Fund; includes legislative findings; defines four new terms; creates a special revenue account to be administered by WVDA and from which grants or loans may be awarded to attract and support agriculture businesses and facilities producing or developing products made, grown, or processed in WV; sets forth criteria for awarding grants or loans; authorizes establishment of a committee to assist in administration; and authorizes rulemaking.

**DATE OF PASSAGE:** April 6, 2021

**EFFECTIVE DATE:** July 5, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# House Bill 2671

## STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

**SHORT TITLE:** Relating to financial exploitation of elderly persons, protected persons or incapacitated adults.

**CODE REFERENCE:** §55-7J-1, §55-7J-4, §55-7J-6, and §61-2-29b (Amends and Reenacts)

### **SUMMARY:**

This bill clarifies the financial exploitation statute. Specifically, it clarifies that relief under the statute may be by civil complaint, protective order, or a combination thereof. Relief by protective order may be granted without notice to the alleged exploiter; however, that relief is temporary. Permanent relief may only be granted after a full evidentiary hearing. The bill also clarifies that venue for petitions under this statute is proper in either the county in which the alleged victim resides, or the county in which the alleged exploitation took place. Any order entered under this statute must provide notice that violation of the order may result in criminal prosecution.

The bill also provides technical cleanup, and cross-reference with the criminal statute.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021



# House Bill 2688

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Allow county political parties to have building funds in a similar manner that state parties are allowed.

**CODE REFERENCE:** §3-8-2c (Amends and Reenacts)

### **SUMMARY:**

The bill amends a single section in the Election Code, W. Va. Code §3-1-1 *et seq.*, pertaining to party headquarters committees:

- The bill defines one new term, “county executive committee”, as the executive committee of a political party which is situate in, and responsible for, the conduct of that party’s business in one of the counties of the state;
- Amends the definition of “party headquarters committee” to include county executive committee headquarters in its stated purpose;
- Extends authority to a county executive committee of a political party to establish a party headquarters committee for solicitation and receipt of contributions for the exclusive purpose of funding county executive committee headquarters; and
- Extends the \$1 million cap currently imposed on contributions received and expenditures made for the purpose of funding a county executive committee headquarters.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021

# House Bill 2694

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Create the 2nd Amendment Preservation Act.

**CODE REFERENCE:** §61-7B-1, §61-7B-2, §61-7B-3, §61-7B-4, §61-7B-5, §61-7B-6, §61-7B-7,3 §61-7B-8, §61-7B-9, and §61-7B-10 (New)

### **SUMMARY:**

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

- 1) Prohibits federal commandeering of West Virginia law-enforcement for purposes of enforcement of federal firearms laws;
- 2) 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;
- 3) 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;
- 4) 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;
- 5) Prohibits any court of the state to deprive the right to possess firearms, firearm accessories, or ammunition under any red flag law;
- 6) Identifies permitted activities for West Virginia law-enforcement agencies;
- 7) Authorizes the Attorney General to challenge unconstitutional federal actions related to firearms;
- 8) Authorizes the Attorney General to publish model policies on or before January 1, 2022; and
- 9) 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.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 27, 2021

# House Bill 2709

## INTRODUCED

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**SHORT TITLE:** Providing that the aggregate liability of a surety on a consumer protection bond under the West Virginia Fintech Regulatory Sandbox Program does not exceed the principal sum of the bond.

**CODE REFERENCE:** §31A-8G-4 (Amends and Reenacts)

### **SUMMARY:**

This bill provides that the aggregate liability of a participant in the Fintech Regulatory Sandbox Program for the consumer protection bond required by the Division of Financial Institutions does not exceed the principal sum of the bond.

**DATE OF PASSAGE:** March 19, 2021

**EFFECTIVE DATE:** June 17, 2021

**ACTION BY GOVERNOR:** Signed March 30, 2021

# House Bill 2730

## STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

**SHORT TITLE:** Relating to financial exploitation of elderly persons, protected persons or incapacitated adults.

**CODE REFERENCE:** §38-10-4 (Amends and Reenacts)

### **SUMMARY:**

This bill allows an individual debtor in bankruptcy to choose to use the federal property exemptions under 11 U.S.C. §522(d) rather than the state exemptions under §38-10-4. It also adjusts portions of the state exemptions, raising the value a debtor may claim as exempt on a residence to \$35,000 (up from \$25,000) and on a motor vehicle to \$7,500 (up from \$2,400).

**DATE OF PASSAGE:** April 9, 2021

**EFFECTIVE DATE:** July 7, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021

# House Bill 2747

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Transferring the Parole Board to the Office of Administrative Hearings.

**CODE REFERENCE:** §15-9A-1 and §62-12-12 (Amends and reenacts)

### **SUMMARY:**

The bill:

- 1) Clarifies duties and qualifications of the Chief Hearing Examiner at The Department of Homeland Security;
- 2) Removes from parole board section language which references congressional districts in anticipation of redistricting;
- 3) Clarifies that substitute parole board members serve at the Governor's will and pleasure;
- 4) Directs that at least three board members initially appointed after July 1, 2121, have at least five years of experience in mental health, social work, or prison reentry services;
- 5) Clarifies that Parole Board member meetings are not subject to open meetings law but that parole hearings are open to the public.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# House Bill 2758

## STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Requiring the Insurance Commissioner to regulate professional bondsmen.

**CODE REFERENCE:** § 51-10-1 and §51-10-8 (Amends and Reenacts)

### **SUMMARY:**

This bill:

- Amends §51-10-1 by providing definitions for “bonding business,” “bondsman,” “commissioner,” and “insurer.”
- Amends §51-10-8 as follows:
  - 1) Requires the Insurance Commissioner to promulgate and propose rules regulating bail bondsmen. Under current law, bondsmen are regulated by the West Virginia Supreme Court of Appeals;
  - 2) Requires the Insurance Commissioner to promulgate rules related to the qualifications of a person applying to be a bondsman;
  - 3) In promulgating rules and granting a license to a bondsman applicant, the insurance commissioner must take into consideration the financial responsibility of the applicant and the applicants moral character, including convictions involving moral turpitude;
  - 4) An applicant must provide the commissioner a power of attorney from a licensed insurer or surety company or pledge cash or approved securities with the commissioner as security for bail bonds;
  - 5) Requires a criminal background check of an applicant;
  - 6) A principal bondsman must file a list of employees of the bondsman, along with an affidavit from the bondsman and employees that the each will abide by the terms and conditions of the article;
  - 7) A bondsman is required to renew his or her license every two years and provide an affidavit swearing that he or she has abided by the provisions of the article;

- 8) The commissioner is required to keep a list of all bondsmen, and, upon request of a place of detention, to provide such list to the jail; and
- 9) Requires all bondsmen to be licensed by the insurance commissioner after July 1, 2022.

**DATE OF PASSAGE:** April 7, 2021

**EFFECTIVE DATE:** July 6, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021



# House Bill 2764

## INTRODUCED

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**SHORT TITLE:** Allow the Division of Financial Institutions to enter into reciprocity agreements with other jurisdictions that operate similar programs to the West Virginia Fintech Sandbox Program.

**CODE REFERENCE:** §31A-8G-3 (Amends and Reenacts)

### **SUMMARY:**

This bill allows the Division of Financial Institutions to enter into reciprocity agreements with other jurisdictions that operate programs similar to the West Virginia Fintech Sandbox Program. Participants in the program would be able to offer their “innovative financial product or service” outside West Virginia in those participating jurisdictions, and vice versa.

**DATE OF PASSAGE:** March 19, 2021

**EFFECTIVE DATE:** June 17, 2021

**ACTION BY GOVERNOR:** Signed March 30, 2021

# House Bill 2776

## STRIKE AND INSERT AMENDMENT

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**SHORT TITLE:** Creating the Air Ambulance Patient Protection Act.

**CODE REFERENCE:** §31-11B-1, §31-11B-2, §31-11B-3, §31-11B-4 §31-11B-5, §31-11B-6, and §31-11B-7 (New)

**SUMMARY:**

This bill allows the Offices of the Insurance Commissioner to regulate and license the sale of air ambulance membership services, to the extent that those services promise to reimburse or indemnify costs of a member's air ambulance transport.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# House Bill 2793

## STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

**SHORT TITLE:** Permit out of state residents to obtain West Virginia concealed carry permits.

**CODE REFERENCE:** § 61-7-4 (Amends and Reenacts)

### **SUMMARY:**

This bill provides a scheme of licensure to carry concealed, deadly weapons for non-residents. It requires the payment of \$100 fee, specifies where those moneys are to go, requires non-residents to meet the same standards as West Virginians for licensure and requires them to make application to a county sheriff. Finally, it specifies how licenses are to be amended if the licensee moves.

**DATE OF PASSAGE:** April 7, 2021

**EFFECTIVE DATE:** July 6, 2021

**ACTION BY GOVERNOR:** Signed April 9, 2021

# House Bill 2830

## INTRODUCED BILL

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**SHORT TITLE:** Relating generally to sex trafficking.

**CODE REFERENCE:** §49-5-104, §61-8-5, §61-14-2, §61-14-8, §61-14-9 (Amends and Reenacts)

### SUMMARY:

The purpose of this bill is to modify state law related to sex trafficking. The bill allows for child victims of sex trafficking to access juvenile adjudication records without a waiting period and provides for immunity from prosecution for child victims of sex trafficking.

The bill further allows for the criminal liability of a person who aids, assists, or abets the trafficking of an adult or child and provides that a child victim of sex trafficking be eligible for comprehensive and specialized trauma-informed child welfare services. It also allows a child victim of sex trafficking to expunge records of a juvenile delinquency adjudication.

The bill strengthens the state law relating to sex trafficking as follows:

- §49-5-104 – The bill adds subsection (g) allowing a juvenile victim to obtain their records of sex traffic upon request to the circuit court in which the case is pending.
- §61-8-5 – The bill adds immunity for minor victims of sex trafficking by adding a proviso stating that no minor shall be prosecuted nor held criminally liable for an offense of prostitution under this section if the court determines the minor is a victim of an offense under §61-14-1.
- §61-14-2 – The bill adds language concerning aiding and abetting a person who knowingly and willfully traffics an adult.
- §61-14-8 – The bill adds language in this section stating that a minor victim of sex trafficking is deemed to be abused child and is eligible for services under Chapter 49 of this code including comprehensive trauma-informed serves that are specialized to the needs of child victims of sexual abuse or child sex trafficking victims.
- §61-14-9 – The bill adds language that would not only vacate and expunge the conviction of a minor’s record of prostitution but would also vacate and expunge any juvenile delinquency records of that child.

**DATE OF PASSAGE:** April 8, 2021

**EFFECTIVE DATE:** July 7, 2021

**ACTION BY GOVERNOR:** Signed April 21, 2021

# House Bill 2842

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Preventing cities from banning utility companies in city limits.

**CODE REFERENCE:** §8-12-23 (New)

### **SUMMARY:**

This bill prohibits a city or political subdivision from enacting an ordinance which would prohibit:

- 1) A utility from furnishing utility service to a customer based upon the energy source provided or used by the utility;
- 2) A customer from purchasing or connecting to a utility service based upon the energy source provided or used by the utility; or
- 3) A utility from using or powering vehicles and equipment used for providing utility service to a customer.

This bill also requires that any ordinance enacted by a city or political subdivision must preserve the ability of a private property owner to use utility services that are otherwise authorized by state law.

**DATE OF PASSAGE:** April 8, 2021

**EFFECTIVE DATE:** July 7, 2020

**ACTION BY GOVERNOR:** Signed April 26, 2021

# House Bill 2888

## INTRODUCED BILL

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**SHORT TITLE:** Relating to when contentions can be revived based on forensic scientific evidence that was not available at time of conviction.

**CODE REFERENCE:** §53-4A-1 (Amends and Reenacts)

### **SUMMARY:**

The purpose of this bill is to clarify when a contention is adjudicated, define forensic scientific evidence, and provide that no additional liabilities are created.

The bill adds language stating that any relevant forensic evidence that exists is not deemed to be to be finally adjudicated if it was not available at the time of the conviction. Second, any relevant forensic evidence that undermines old forensic evidence that was used and relied on to convict the petitioner and there is a reasonable probability there would be a different outcome at trial.

The bill also adds the following definitions:

- “Forensic science” is the application of scientific or technical practices to the recognition, collection, analysis, and interpretation of evidence for criminal and civil law or regulatory issues.
- “Forensic scientific evidence” shall include scientific or technical knowledge; a testifying forensic analyst’s or expert’s scientific or technical knowledge or opinion; reports and/or testimony offered by experts or forensic analysts; scientific standards; or a scientific method or technique upon which the relevant forensic scientific evidence is based.
- “Scientific knowledge” shall be defined broadly to include the knowledge of the general scientific community and all fields of scientific knowledge on which those fields or disciplines rely and shall not be limited to practitioners or proponents of a particular scientific or technical field or discipline.

The bill states that it does not create additional liabilities for any expert who repudiates his or her original position at a later hearing when the original opinion has been undermined by research of technological advancements.

**DATE OF PASSAGE:** April 2, 2021

**EFFECTIVE DATE:** July 1, 2021

**ACTION BY GOVERNOR:** Signed April 19, 2021



# House Bill 2891

## STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Creating minimum statutory standards for law-enforcement officers.

**CODE REFERENCE:** §30-29-1 (Amends and Reenacts) and §30-29-14 (New)

### **SUMMARY:**

This bill amends the definitions section and creates a new section in Chapter 30, Article 29 governing law-enforcement training and certification. This bill:

- Defines a new term, “pre-certified law-enforcement officer”, which means a person employed or offered employment by a West Virginia law-enforcement agency prior to his or her initial certification. This term does not include a person employed or offered employment by a West Virginia law-enforcement agency whose certification status is inactive, suspended, or has been revoked.
- Prohibits a West Virginia law-enforcement agency from employing or offering to hire a pre-certified law-enforcement officer who does not meet certain minimum standards.
- Requires hiring agency to make written findings that the law-enforcement officer meets the standards, or to adopt previous employer’s written findings.
- Requires the written findings to be made available upon request to the Law-Enforcement Professional Standards Subcommittee of the Governor’s Committee on Crime, Delinquency and Correction.
- Authorizes a hiring West Virginia law-enforcement agency to set higher minimum standards; authorizes the Subcommittee to promulgate legislative rules setting higher minimum standards or interpreting the statutory standards; preserves existing rules of the Subcommittee.
- Sets forth 10 minimum standards including thorough background investigation.
  1. Is 18 years of age or older.
  2. High school graduate or equivalent.
  3. Submitted to a psychological assessment and has been recommended for hire as a result.
  4. Submitted to and passed a polygraph examination.
  5. Has not been dishonorably discharged from any branch of the armed forces of the United States or the National Guard.
  6. Has not been convicted in any civilian or military court of a crime punishable by imprisonment exceeding one year, a crime involving moral turpitude, or a crime of domestic violence, or who has been administratively pardoned for any such crime.

7. Has not admitted to committing any criminal acts in 6 above which did not result in a conviction.
  8. Is not prohibited by state or federal law from shipping, transporting, receiving, or possessing firearms or ammunition.
  9. Is not addicted to narcotics or other controlled substances.
  10. Has consented to a thorough background investigation.
- Authorizes the Subcommittee to deny certification or admission to basic training for failure to meet minimum standards.
  - Requires direct supervision of pre-certified law-enforcement officer while engaged in law-enforcement duties.
  - Requires initial hiring agency to maintain written findings and background investigation during the law-enforcement officer's employment, provides for transfer of records, and provides an exemption for State Police.
  - Makes provisions of the new section applicable to law-enforcement officers hired after effective date.
  - Exempts written findings and investigation information from the Freedom of Information Act, W. Va. Code §29B-1-1 *et seq.*

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# House Bill 2905

## INTRODUCED VERSION

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**SHORT TITLE:** Unlawful use of prefix “Doctor” or “Dr.” penalty.

**CODE REFERENCE:** §61-10-21 (Repealed)

**SUMMARY:**

The purpose of this bill is to repeal the prohibition against the use of the word “Doctor” or prefix “Dr.” in connection with his or her name in any letter, business card, advertisement, sign, or public display of any nature without affixing suitable words or letters designating the degree he or she holds.

**DATE OF PASSAGE:** March 25, 2021

**EFFECTIVE DATE:** June 23, 2021

**ACTION BY GOVERNOR:** Signed April 5, 2021

# House Bill 2918

## INTRODUCED VERSION

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**SHORT TITLE:** Relating to Family Drug Treatment Court.

**CODE REFERENCE:** §62-15B-1 and §61-15B-2 (Amends and Reenacts)

### **SUMMARY:**

The purpose of this bill is to make permanent the Family Drug Treatment Court Pilot Program from the original four circuit pilot program.

The bill eliminates the annual reporting requirement of the family drug treatment court advisory committee to Legislative Oversight Commission on Health and Human Resources Accountability.

Finally, the bill adds a proviso which permits the court, in its sole discretion, to permit a parent to participate in the family drug treatment court notwithstanding the fact that the parent has had a previous involuntary termination of his or her parental rights to another child.

**DATE OF PASSAGE:** April 8, 2021

**EFFECTIVE DATE:** July 7, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021

# House Bill 2927

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Adding Caregiving expenses to campaign finance expense.

**CODE REFERENCE:** §3-8-1a and §3-8-9 (Amends and Reenacts)

### **SUMMARY:**

The bill amends two sections in the Election Code. The bill defines a new term of “caregiving services” as direct care, protection, and supervision of a child, or other person with a disability or a medical condition, for which a candidate has direct caregiving responsibility. It authorizes expenses related to caregiving services as a lawful election expense and requires that the caregiving service expense incurred be in direct connection with the candidate’s campaign activities during the current election cycle.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# House Bill 2982

## STRIKE AND INSERT AMENDMENT TO COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to the Second Chances at Life Act of 2021.

**CODE REFERENCE:** §16-2I-1, §16-2I-2, and §16-2I-3 (Amends and Reenacts)

### **SUMMARY:**

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 claims 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.
  - (i) You might experience a complete abortion without ever taking misoprostol;
  - (ii) You might experience a missed abortion, which means the fetus is no longer viable, but the fetus did not leave your body; or
  - (iii) It is possible that your pregnancy may continue; and
  - (iv) 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.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# House Bill 2997

## STRIKE AND INSERT AMENDMENT TO INTRODUCED BILL

---

**SHORT TITLE:** Adding a defense to the civil penalty imposed for a result of delivery of fuel to a state other than the destination state printed on the shipping document for fuel.

**CODE REFERENCE:** §11-4C-34 (Amends and Reenacts)

### **SUMMARY:**

This bill requires a shipping document for the transportation of motor fuel loaded at a terminal rack and removes the requirement for motor fuel loaded at a bulk plant rack. When motor fuel is delivered to a destination state, other than that printed on the shipping document, current code requires the person transporting the motor fuel to notify the Tax Commissioner and to receive a confirmation number from the commissioner authorizing the diversion.

This bill substitutes the commissioner's designated entity for the commissioner in both instances. The designated agency has been Fueltrac since 2014. Finally, this bill provides a defense to civil penalties issued relating to missing, false, or incomplete shipping documents, if the person notified the commissioner's designated entity of the diversion and received a confirmation number and the tax was timely paid on the diverted motor fuel.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** April 10, 2021

**ACTION BY GOVERNOR:** Signed April 27, 2021



# House Bill 3078

## STRIKE AND INSERT AMENDMENT FOR ORIGINATING BILL

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**SHORT TITLE:** Relating to powers and duties of the parole board.

**CODE REFERENCE:** §62-12-13 (Amends and Reenacts)

### **SUMMARY:**

The bill amends a single section in Chapter 62 pertaining to eligibility for parole. The bill provides:

- As a condition of eligibility for parole an inmate's successful completion of any individually required rehabilitation and educational programs while incarcerated.
- Permits an inmate to be granted parole with the completion of eligible programs outside of the correctional institution as a special condition of his or her parole term, if he or she satisfies all other parole eligibility requirements except for completion of the required programs while incarcerated, which was through no fault of the inmate (effective September 1, 2021).
- Authorizes the Parole Board to consider whether completion of the inmate's outstanding amount of programming would interfere with his or her successful integration into society.
- Requires the Commissioner of the Division of Corrections and Rehabilitation to develop, maintain, and make publicly available a list of programs available outside of the correctional institutions which an inmate may be required to complete a special condition of parole, and the manner and method in which the programs are to be completed by the parolee.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 28, 2021

# House Bill 3081

## INTRODUCED VERSION

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**SHORT TITLE:** Updating the West Virginia Business Corporations Act.

**CODE REFERENCE:** §31D-7-708 and §31E-7-708 (Amends and Reenacts)

**SUMMARY:**

This bill updates the Business Corporation Act and Nonprofit Corporation Act to allow shareholder/member meetings to be conducted, in whole or in part, by remote communication to the extent authorized by the corporate board of directors. If remote participation is authorized, the board must establish guidelines and procedures which must, at minimum, provide that participants have a reasonable opportunity to read or hear the proceedings concurrently with the meeting and provide for reasonable verification that remote participants are shareholders/members or a proxy.

**DATE OF PASSAGE:** April 2, 2021

**EFFECTIVE DATE:** April 2, 2021, Retroactive to March 1, 2020

**ACTION BY GOVERNOR:** Signed April 26, 2021

# House Bill 3089

## INTRODUCED BILL

---

**SHORT TITLE:** Make utility workers essential employees during a state of emergency.

**CODE REFERENCE:** §15-5-2 (Amends and Reenacts) and §15-5-30 (New)

### **SUMMARY:**

This bill adds two new definitions to Article 5 for the Division of Homeland Security and Emergency Management.

1. “Critical infrastructure” includes any systems and assets, whether physical or virtual, so vital to the state that the incapacity or destruction of such systems and assets would have a debilitating impact on security, state economic security, state public health or safety, or any combination of those matters.
2. “Essential workers” means employees or contractors that fall under the definition of essential business activities during a disaster, state of emergency, or state of preparedness.

The bill provides that during a state of emergency or state of preparedness, employees, contractors, vendors, and suppliers of public utilities, cable television operators, telecommunications carriers, and publicly or privately owned water and sewer systems are to be considered essential workers to ensure these services can continue to operate or be restored.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021

# House Bill 3106

## COMMITTEE SUBSTITUTE

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**SHORT TITLE:** To change the hearing requirement for misdemeanors to 10 days.

**CODE REFERENCE:** §62-1C-1a (Amends and Reenacts)

### **SUMMARY:**

Current law provides that bond hearings for defendants occur within 72 hours and must be held before the same magistrate or judge who set the bond. The original House bill increased the timeframe to 10 days. The final bill increased the 72-hours bond hearing timeframe to five days. It also allows any magistrate or judge to conduct the hearing and clarifies that this process applies only to misdemeanor claims.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021

# House Bill 3130

## STRIKE AND INSERT AMENDMENT FOR ORIGINATING BILL

---

**SHORT TITLE:** Relating to elimination of sunset provisions concerning towing rates.

**CODE REFERENCE:** §24A-2-2b (Amends and Reenacts)

### **SUMMARY:**

This bill amends the governing rulemaking authority of the Public Service Commission with respect to common carriers by motor vehicle in the business of recovering, towing, hauling, carrying, or storing wrecked or disabled vehicles. The bill extends the sunset date for towing/wrecker rules promulgated thereunder to July 1, 2023 and extends the deadline for review of such rules by the Legislative Auditor to December 31, 2022.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 21, 2021

# House Bill 3175

## STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to removing certain felonies than can prohibit vehicle salespersons from receiving a license.

**CODE REFERENCE:** § 17A-6E-1, §17A-6E-2, §17A-6E-3, §17A-6E-4, §17A-6E-5, §17A-6E-6, §17A-6E-7, §17A-6E-8, §17A-6E-9, §17A-6E-10, §17A-6E-11, §17A-6E-12, §17A-6E-13, and §17A-6E-14 (Repeals)

**SUMMARY:**

This bill repeals several sections of code and eliminates the state requirements for the motor vehicle salesperson license.

**DATE OF PASSAGE:** April 7, 2021

**EFFECTIVE DATE:** April 7, 2021

**ACTION BY GOVERNOR:** Signed April 21, 2021

# House Bill 3215

## STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

**SHORT TITLE:** Amending the requirements to become an elected prosecutor.

**CODE REFERENCE:** §7-4-1a (New)

**SUMMARY:**

This bill creates a new section which governs prosecuting attorneys. The new section requires licensure as an attorney in West Virginia as a prerequisite for candidacy for the office of prosecuting attorney.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** July 9, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021

# House Bill 3254

## STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Authorizing members of development authorities to accept federally authorized reimbursement for services which the members rendered on a voluntary basis.

**CODE REFERENCE:** §7-12-5 and §61-10-15 (Amends and Reenacts)

### **SUMMARY:**

The bill amends one section in Chapter 7 which governs compensation of members of a county or municipal development authority. The bill authorizes a county or municipal development authority to reimburse of its members for his or her reasonable and necessary expenses, including but not limited to compensation, in connection with his or her performance of other duties as assigned by the authority in connection with the June 2016 flooding event in West Virginia, if the duties and reimbursement are first approved by a vote of the authority with the affected member being recused from voting on the question.

The bill amends one section in Chapter 61 which sets forth certain crimes against public policy. The bill provides a corresponding exception to the prohibition against such a member becoming pecuniarily interested in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if he or she has any voice, influence, or control. It also provides a similar exception to the same prohibition with respect to reimbursements of members' necessary expenditures in connection with performance of general duties as members of authority.

**DATE OF PASSAGE:** April 8, 2021

**EFFECTIVE DATE:** July 7, 2021

**ACTION BY GOVERNOR:** Signed April 21, 2021



# House Bill 3294

## INTRODUCED VERSION

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**SHORT TITLE:** Relating to unemployment insurance.

**CODE REFERENCE:** §21A-2D-1, §21A-2D-2, §21A-2D-3, §21A-2D-4, §21A-2D-5, §21A-2D-6, §21A-2D-7, §21A-2D-8, §21A-2D-9, §21A-2D-10, §21A-6B-1, §21A-6B-2, §21A-6B-3, §21A-6B-4, §21A-6B-5, §21A-6B-6 and §21A-6B-7 (New)

### **SUMMARY:**

This bill creates two new articles in Chapter 21A, relating to unemployment compensation. New Article 2D creates the Unemployment Insurance Program Integrity Act, and new Article 6B creates a short-time compensation program.

### **Unemployment Insurance Program Integrity Act**

The Unemployment Insurance Integrity Act requires the commissioner to check on a weekly basis, unemployment insurance rolls against Division of Corrections and Rehabilitation's list of imprisoned individuals; check new hire records against the National Directory of New Hires; and check unemployment rolls against a commercial database that provides cross-matching functions to verify eligibility for unemployment benefits. The Act also allows the commissioner to enter into data sharing agreements with other agencies.

If Workforce West Virginia receives information affecting eligibility, it must investigate that information and take action within one week. Workforce is also required to implement internal policies to recover overpayments and enter into a cooperative agreement with U.S. Department of Labor Office of the Inspector General.

The Act also allows employers a mechanism for employers to report employees that decline to accept an offer to return to work. Workforce is required to investigate these reports.

The procedures outlined in the Act must be in place no later than July 1, 2022; Workforce is required to thereafter file an annual report with the Legislature.

### **Short-Time Compensation Program**

New Article 6B requires Workforce to create a work-sharing program no later than July 1, 2023. This program allows employers experiencing a slowdown in business to save jobs by reducing the number of hours their employees work in a given unit, instead of laying off a portion of those employees. In exchange, employees whose hours have been

reduced can recover prorated unemployment benefits tied to the amount of their reduced hours. Employers are not required to participate in this program, but must certify as part of the application that participation in the program is in lieu of layoffs and that no employees will be hired or transferred into the affected business unit while the plan is in place.

Workforce can approve a work-share plan for employees whose hours are reduced by between 10% or as much as 60%. Employees included in the work-share plan will be eligible to collect prorated unemployment benefits tied to the percentage reduction in hours.

An employer can modify or terminate an approved work-share plan at any time. However, an employer must request permission to modify its work-share plan unless the change is “not substantial.” Every modification, including non-substantial ones, must be reported to the Commissioner in writing. The Commissioner has power to revoke the plan at any time for good cause. The article provides that the Commissioner must have access to corporate records necessary to ensure compliance with the plan.

**DATE OF PASSAGE:** April 7, 2021

**EFFECTIVE DATE:** July 1, 2022

**ACTION BY GOVERNOR:** Signed April 28, 2021

# House Bill 3304

## STRIKE AND INSERT AMENDMENT

---

**SHORT TITLE:** Authorizing the Division of Corrections and Rehabilitation to establish a Reentry and Transitional Housing Program.

**CODE REFERENCE:** §15A-4A-1, §15A-4A-2, §15A-4A-3, §15A-4A-4, §15A-4A-5, §15A-4A-6, and §15A-4A-7 (New)

### SUMMARY:

This bill establishes a work release program which allows the Commissioner of the Division of Corrections and Rehabilitation (DCR) to require inmates to serve their last six months in a work release setting. The Commissioner has discretion as to who among eligible inmates may be required to serve in the work release facility and shall develop all operational procedures and policies.

The following offenders are ineligible for the:

- (1) An offender who requires inpatient psychological or psychiatric treatment;
- (2) An offender who refuses to participate in the Offender Financial Responsibility Program;
- (3) An offender who refuses to participate in the Institution Release Preparation Program; and
- (4) An offender determined by the commissioner, in his or her sole discretion, to pose a threat to the safety of another or to the community or to be an otherwise inappropriate candidate for participation in the program.

The bill allows expansion up to five facilities around the state on a pilot program basis, up from the two current programs. They may be either run by the state or contract providers. All programs are funded from the current general revenue fund or budget assigned annually to the DCR.

**DATE OF PASSAGE:** April 10, 2021

**EFFECTIVE DATE:** April 10, 2021

**ACTION BY GOVERNOR:** Signed April 26, 2021

# House Bill 3310

## STRIKE AND INSERT FOR COMMITTEE SUBSTITUTE

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**SHORT TITLE:** Relating to the jurisdiction of the Public Service Commission.

**CODE REFERENCE:** §24-1-2 and §24-2-1 (Amends and Reenacts) and §24-1-1c (New)

### **SUMMARY:**

This bill sets forth legislative findings generally providing that individuals and entities that enter into solar power purchase agreements should not be considered or treated as public utilities. (See §24-1-1c.)

The bill amends §24-1-2, reorganizes the definitions, places existing definitions in alphabetical order for ease of use, and provides an exception to the term “public utility” for individuals or entities owning a solar facility that is located on the premises of and serves only the needs of a retail customer under a lease or power purchase agreement, subject to the provisions of §24-2-1(a).

This bill amends §24-2-1(a), relating to the jurisdiction of the Public Service Commission. It reorganizes the section by separating and numbering the public services.

The bill also provides that a solar photovoltaic energy facility located on and designed to meet only the electrical needs of the premises of a retail electric customer, the output of which is subject to a power purchase agreement (PPAs) with the retail electric customer, is not a public service, subject to certain conditions and limitations:

- 1) The aggregate of all PPAs and net metering arrangements for any utility must not exceed three percent (3%) of the utility’s aggregate customer peak demand during the previous year;
- 2) There are individual customer on-site generator limits of designing the photovoltaic energy facility to meet only the electrical needs of the premises of the retail electric customer and may not exceed 25kW for residential customers, 500 kW for commercial customers, and 2,000 kW for industrial customers;
- 3) Customers who enter into PPAs must notify the utility of its intent to enter into a transaction. In response, the utility must notify within 30 days if any of the caps have been reached. If the utility does not respond within 30 days, the generator may proceed and the caps will be presumed not to have been reached; and
- 4) The Public Service Commission may promulgate rules to govern and implement the provisions of interconnections for PPAs, except the PSC does not have authority over the power rates for the arrangements between the on-site generator and the customer.

Finally, this bill corrects errors in §24-2-1(f) and (g).

**DATE OF PASSAGE:** April 9, 2021

**EFFECTIVE DATE:** April 9, 2021

**ACTION BY GOVERNOR:** Became Law Without Signature.