

WEST VIRGINIA LEGISLATURE

SENATE COMMITTEE ON THE JUDICIARY

2024 BILL SUMMARIES



COMMITTEE ON THE JUDICIARY
WEST VIRGINIA SENATE

EIGHTY-SIXTH LEGISLATURE
SECOND REGULAR SESSION

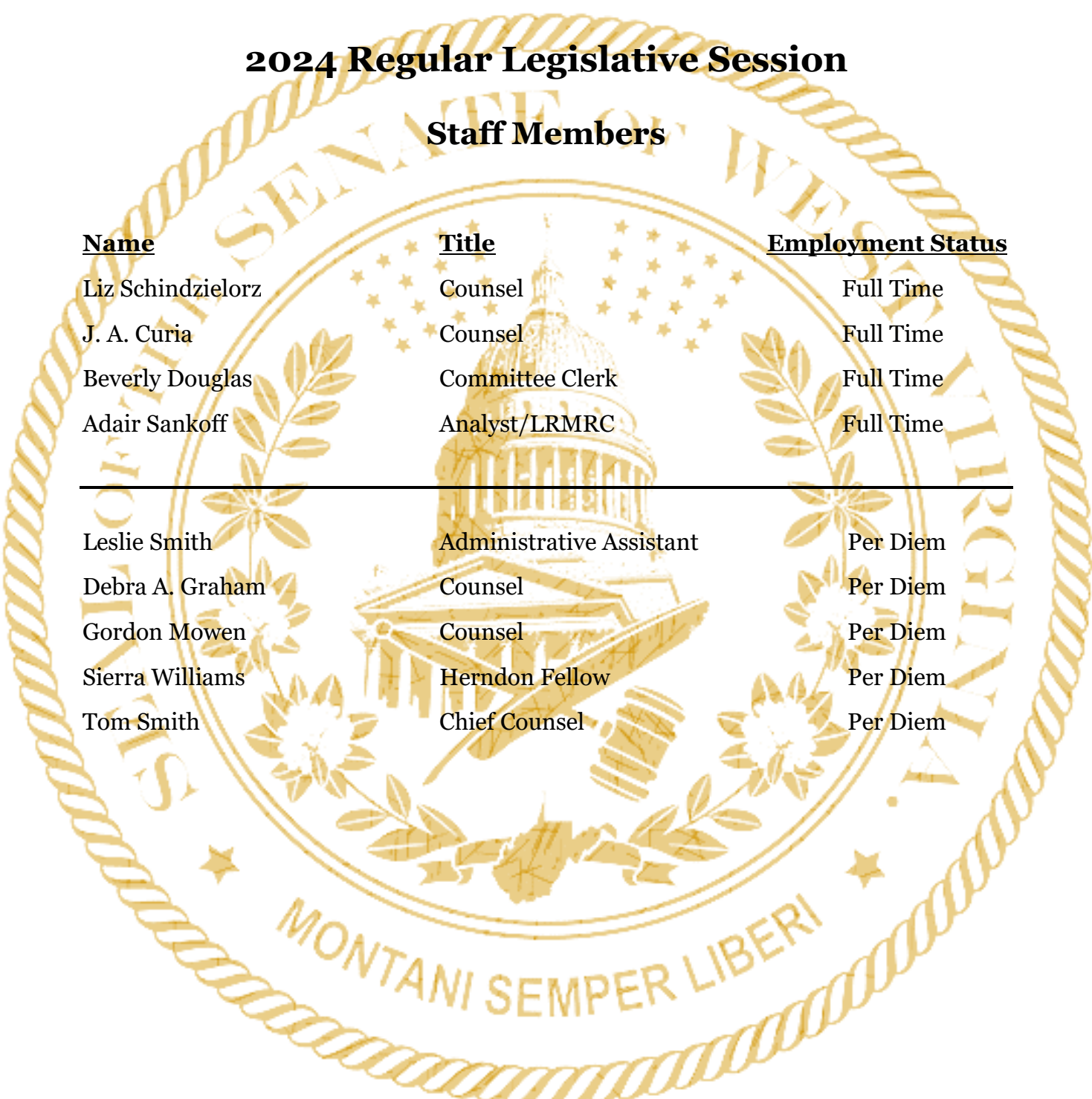


APRIL 2024

SENATE COMMITTEE ON THE JUDICIARY

2024 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 olive and oak branches. The words "SENAE OF WEST VIRGINIA" are inscribed around the top half of the circle, and "MONTANI SEMPER LIBERI" is at the bottom. A rope-like border encircles the entire seal.

<u>Name</u>	<u>Title</u>	<u>Employment Status</u>
Liz Schindzielorz	Counsel	Full Time
J. A. Curia	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
Gordon Mowen	Counsel	Per Diem
Sierra Williams	Herndon Fellow	Per Diem
Tom Smith	Chief Counsel	Per Diem

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West Virginia Legislature's Office of Reference and Information.*



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(R – Mercer, 06)

86th Legislature
West Virginia Senate

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Majority Leader
(R – Kanawha, 17)



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WEST VIRGINIA LEGISLATURE
SENATE COMMITTEE ON THE JUDICIARY
STATISTICS 2024

**TOTAL NUMBER OF BILLS AND RESOLUTIONS INTRODUCED
DURING THE 1st SESSION OF THE 86th LEGISLATURE:**

BILLS:	2,568
RESOLUTIONS:	83
CONCURRENT RESOLUTIONS:	132
<u>JOINT RESOLUTIONS:</u>	<u>40</u>
TOTAL:	2,823

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

SENATE BILLS:	870
SENATE RESOLUTIONS:	71
SENATE CONCURRENT RESOLUTIONS:	37
<u>SENATE JOINT RESOLUTIONS:</u>	<u>10</u>
TOTAL:	988

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

HOUSE BILLS:	1,698
HOUSE RESOLUTIONS:	12
HOUSE CONCURRENT RESOLUTIONS:	95
<u>HOUSE JOINT RESOLUTIONS:</u>	<u>30</u>
TOTAL:	1,835

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

BILLS:	0
JOINT RESOLUTIONS	1
<u>CONCURRENT RESOLUTIONS:</u>	<u>2</u>
TOTAL:	3

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

SENATE BILLS:	353
HOUSE BILLS:	86
SENATE CONCURRENT RESOLUTIONS:	4
SENATE JOINT RESOLUTIONS:	10
HOUSE CONCURRENT RESOLUTIONS:	2
<u>HOUSE JOINT RESOLUTIONS:</u>	<u>2</u>
TOTAL:	457

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

SENATE BILLS:	64
HOUSE BILLS:	35
RULES BILLS:	147
JOINT RESOLUTIONS:	5
<u>CONCURRENT RESOLUTIONS:</u>	<u>2</u>
TOTAL:	253

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

SENATE BILLS:	156
<u>HOUSE BILLS:</u>	<u>123</u>
TOTAL:	279*

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

SENATE CONCURRENT RESOLUTIONS:	20
<u>HOUSE CONCURRENT RESOLUTIONS:</u>	<u>52</u>
TOTAL:	72

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

SENATE BILLS:	35
<u>HOUSE BILLS:</u>	<u>33</u>
TOTAL:	68

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

SENATE JOINT RESOLUTION:	0
<u>HOUSE JOINT RESOLUTION:</u>	<u>1</u>
TOTAL:	1

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

SENATE BILLS:	30
<u>HOUSE BILLS:</u>	<u>34</u>
TOTAL:	64**

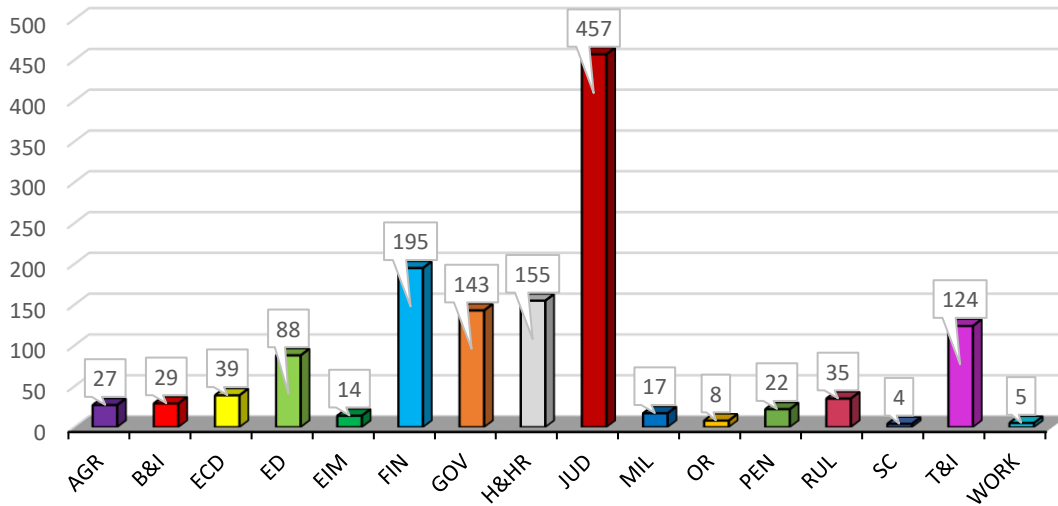
(Senate Judiciary Totals include Rules Bundles as a single bill.)

(*Of the 333 Bills that Completed Legislative Action, there were seven vetoes.)

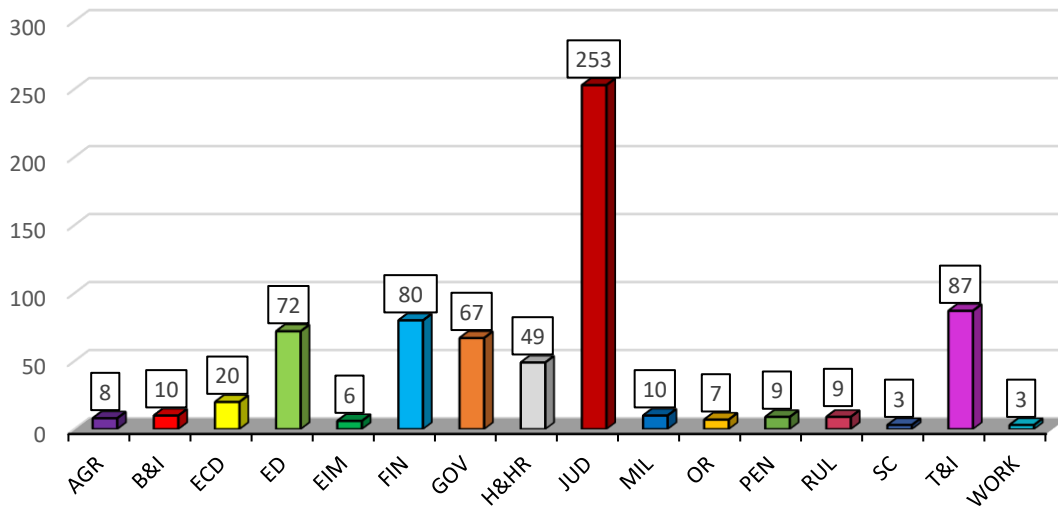
(**Of the 64 Bills reported that Completed Legislative Action, there were no vetoes.)

STATISTICS 2023

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Senate Bill 2

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing DEP to promulgate rules.

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

SUMMARY:

This Committee Substitute is the Department of Environmental Protection Bundle, known as Bundle 3. It contains 15 rules from the Division of Air Quality, the Secretary's Office, and the Division of Water and Waste Management.

The U.S. EPA made a finding of failure to submit action to address deficiencies which may result in sanctions. All but two of the proposed rules from the Division of Air Quality all have similar amendments with the goal of the State retaining primacy. The amendments include adding or revising the definitions for the terms: alternative emission limitation; malfunction; shutdown; and startup. A requirement is added that any owner or operator that cannot comply with established emission standards during periods of startup and shutdown request an alternative emission limitation. Language has been added to several of the proposed rules providing that any inconsistency between rules is to be decided by the Secretary in favor of the more stringent provision, term, condition, method, or rule.

The amendments to the rules are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of the counterpart standards in this State. Upon authorization and promulgation, the rules will be submitted to the EPA.

A severability section has been added to each of the Division of Air Quality proposed rules. The Division of Air Quality is moving forward with the proposed removal of the startup, shutdown, or maintenance (SSM) exemption provisions to ensure the state complies with the federal requirements. However, in response to comments, a severability clause was added to address disposition of the rule in the event the federal regulations are withdrawn by a subsequent administration's U.S. EPA, are overturned by a court of competent jurisdiction, and/or are invalidated by an act of the West Virginia Legislature or United States Congress. It allows the Secretary to terminate any permit or section of an existing permit issued under an affected rule.

References to "Director" have been changed to "Secretary" throughout these rules. The rules have also been amended to clarify that they are not subject to the Sunset Law.

Senate Bill No. 2. WV Department of Environmental Protection (DEP), Division of Air Quality, Alternative Emission Limitations During Startup, Shutdown, And Maintenance Operations, 45 CSR 01; Alternative Emission Limitations During Startup and Shutdown Operations 45 CSR 01 (New Title).

This rule amends a current legislative rule. The rule sets forth the criteria for establishing an alternative emission limitation during periods of startup, shutdown, or maintenance (SSM). The rule adopts the alternative emission limitation provisions already contained in a series of state implementation plans (SIP). The rule applies to a set of sources that have excess emissions during these specified periods and could not therefore always meet the allowable emissions limits. The rule provides criteria for establishing these alternative emissions limitations and includes the reporting requirements in accordance with federal regulations.

The revisions to this rule are related to the disapproval of the SSM provisions (88 FR 23356). It is designed to be a mechanism to have in place for WV sources in case they cannot meet emissions limits once the exceptions allowed in the current rule are removed and to protect WV industries from being instantly in violation. The inclusion of maintenance events was specifically identified as one of the reasons the U.S. EPA disapproved the state's request to add this rule to the WV SIP.

Senate Bill No. 3. WV Department of Environmental Protection (DEP), Division of Air Quality, To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers, 45 CSR 02.

This rule amends a current legislative rule which establishes emission limitations for smoke and particulate matter which are discharged from fuel burning units and sets forth the permitting, testing, monitoring, recordkeeping, reporting, and exemption requirements. The purpose of the rule is to control particulate matter.

The rule is being amended in response to the U.S. EPA finding of failure to submit action [88 Fed. Reg, 23353, April 17, 2023] to address deficiencies identified in the U.S. EPA 2015 findings of substantial inadequacy and State Implementation Plan Call for provisions related to excess emissions during periods of startup, shutdown, and malfunction (SSM SIP Call). The provisions identified in this rule were the automatic exemptions at §45-2-9.1, the discretionary exemptions at §§45-2-10.1 and 10.2, and the affirmative defense at §45-2-9.4. The finding of failure to submit action triggers certain Clean Air Act deadlines for U.S. EPA to impose sanctions if a state does not submit a complete State Implementation Plan revision addressing the outstanding requirements. Upon authorization and promulgation, this rule will be submitted to the U.S. EPA.

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by U.S. EPA as of June 1, 2023.

Senate Bill No. 4. WV Department of Environmental Protection (DEP), Division of Air Quality, Control of Air Pollution from the Operation of Hot Mix Asphalt Plants, 45 CSR 03.

This rule amends a current legislative rule which establishes emission limitations for hot mix asphalt plants and the plant property and sets forth the permitting, recordkeeping, reporting, and exemption requirements. The purpose of the rule is to control particulate matter.

The rule is being amended in response to the U.S. EPA finding of failure to submit action [88 Fed. Reg, 23353, April 17, 2023] to address deficiencies identified in the U.S. EPA 2015 findings of substantial inadequacy and State Implementation Plan Call for provisions related to excess emissions during periods of startup, shutdown, and malfunction (SSM SIP Call). The provisions identified in the rule were an exemption for smoke and or particulate matter during certain start-up or shutdowns at §45-3-3.2 and the discretionary exemption at §45-3-7.1. These provisions have been deleted in the proposed rule. The finding of failure to submit action triggers certain Clean Air Act deadlines for U.S. EPA to impose sanctions if a state does not submit a complete State Implementation Plan revision addressing the outstanding requirements. Upon authorization and promulgation, the rule will be submitted to the U.S. EPA.

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by U.S. EPA as of June 1, 2023.

Senate Bill No. 5. WV Department of Environmental Protection (DEP), Division of Air Quality, Control of Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas, 45 CSR 05.

This rule amends a current legislative rule which establishes emission limitations for coal preparation plants, coal handling operations, and coal refuse disposal areas and sets forth the permitting, recordkeeping, reporting, and exemption requirements. The purpose of the rule is to control particulate matter.

The rule is being amended in response to the U.S. EPA finding of failure to submit action [88 Fed. Reg, 23353, April 17, 2023] to address deficiencies identified in the U.S. EPA 2015 findings of substantial inadequacy and State Implementation Plan Call for provisions related to excess emissions during periods of startup, shutdown, and malfunction (SSM SIP Call). The provisions identified in the rule was a discretionary exemption at §45-5-13.1, which has been deleted in the proposed rule. The finding of failure to submit action triggers certain Clean Air Act deadlines for U.S. EPA to impose sanctions if a state does not submit a complete State Implementation Plan revision addressing the outstanding requirements. Upon authorization and promulgation, this rule will be submitted to the U.S. EPA.

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by U.S. EPA as of June 1, 2023.

Senate Bill No. 6. WV Department of Environmental Protection (DEP), Division of Air Quality, Control of Air Pollution from Combustion of Refuse, 45 CSR 06.

This rule amends a current legislative rule which establishes emission limitations for combustion of refuse. The purpose of the rule is to control particulate matter.

The rule is being amended in response to the U.S. EPA finding of failure to submit action [88 Fed. Reg, 23353, April 17, 2023] to address deficiencies identified in the U.S. EPA 2015 findings of substantial inadequacy and State Implementation Plan Call for provisions related to excess emissions during periods of startup, shutdown, and malfunction (SSM SIP Call). The provisions identified in this rule was the automatic exemptions at §45-6-8.2, which has been deleted in the proposed rule. The finding of failure to submit action triggers certain Clean Air Act deadlines for U.S. EPA to impose sanctions if a state does not submit a complete State Implementation Plan revision addressing the outstanding requirements. Upon authorization and promulgation, 45 CSR 06 will be submitted to the U.S. EPA

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by U.S. EPA as of June 1, 2023.

Senate Bill No. 7. WV Department of Environmental Protection (DEP), Division of Air Quality, To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations (current); Control of Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations, 45 CSR 07 (New).

This rule amends a current legislative rule which establishes emission limitations for combustion of refuse. The purpose of the rule is to control particulate matter.

The rule is being amended in response to the U.S. EPA finding of failure to submit action [88 Fed. Reg, 23353, April 17, 2023] to address deficiencies identified in the U.S. EPA 2015 findings of substantial inadequacy and State Implementation Plan Call for provisions related to excess emissions during periods of startup, shutdown, and malfunction (SSM SIP Call). The provisions identified in the rule were the discretionary exemptions at §45-7-9.1, the automatic exemptions at §45-7-10.3 and §45-7-10.4, which are all deleted in the proposed rule. The finding of failure to submit action triggers certain Clean Air Act deadlines for U.S. EPA to impose sanctions if a state does not submit a complete State Implementation Plan revision addressing the outstanding requirements. Upon authorization and promulgation, the rule will be submitted to the U.S. EPA

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by U.S. EPA as of June 1, 2023.

Senate Bill No. 8. WV Department of Environmental Protection (DEP), Division of Air Quality, Ambient Air Quality Standards, 45 CSR 08

This rule amends a current legislative 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 United States Environmental Protection Agency (EPA).

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by U.S. EPA as of June 1, 2023.

Senate Bill No. 9. WV Department of Environmental Protection Division of Air Quality, Control of Air Pollution from the Emission of Sulfur Oxides, 45 CSR 10

The rule amends a current legislative rule and is promulgated under the Air Pollution Control Act which governs a statewide program of air pollution prevention, abatement, and control and ensures timely processing of permit applications for the good of the public, business, and the environment. This rule establishes emission standards for sulfur oxides from fuel burning units and sets forth the permitting, reporting, testing, record keeping, and exemption requirements.

The rule is required to maintain state primacy under the United States Environmental Protection Agency. The rule is being amended in response to the U.S. EPA finding of failure to address deficiencies and inadequacies for provisions related to excess emissions during startup, shutdown, and malfunctions for fuel burning units. There are currently deadlines which must be met for these amendments, or the U.S. EPA will impose sanctions.

Senate Bill No. 10. WV Department of Environmental Protection, Division of Air Quality, Standards of Performance for New Stationary Sources 45 CSR 16

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

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by U.S. EPA as of June 1, 2023.

Senate Bill No. 11. WV Department of Environmental Protection, Division of Air Quality, Control of Air Pollution from the Emission of Volatile Organic Compounds, 45 CSR 21

The rule amends a current legislative rule and is promulgated under the Air Pollution Control Act which governs a program of air pollution prevention, abatement, and control and to ensure timely processing of permit applications for the good of the public, business, and the environment. This rule establishes reasonably available control technology to control emissions of volatile organic compounds from sources that

manufacture, mix, store, use, or apply materials containing volatile organic compounds and are in Cabell, Kanawha, Putnam, Wayne, and Wood Counties.

This promulgation is required to maintain state primacy under the United States Environmental Protection Agency. The rule is being amended in response to the U.S. EPA finding of failure to address deficiencies and inadequacies for provisions related to excess emissions during startup, shutdown, and malfunctions, specifically Subsection 9.3. There are currently deadlines which must be met for these changes of the U.S. EPA will impose sanctions.

Senate Bill No. 12. WV Department of Environmental Protection, Division of Air Quality, Emission Standards for Hazardous Air Pollutants, 45 CSR 34

This rule amends a current legislative rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).

The amendments incorporate by reference annual updates to the federal counterpart promulgated by U.S. EPA as of June 1, 2023.

Senate Bill No. 13. WV Department of Environmental Protection, Division of Air Quality, Control of Greenhouse Gas Emissions from Existing Coal-Fired Electric Utility Generating Units, 45 CSR 44

The rule repeals a current legislative rule which regulates greenhouse gas emissions in the form of carbon dioxide from existing coal-fired electric generating units because its federal counterpart regulation was vacated by the D. C. Circuit Court on January 19, 2021.

Senate Bill No. 14. WV Department of Environmental Protection, Secretary's Office, Drinking Water Treatment Revolving Fund, 60 CSR 12

The rule is new. It transfers the administration of the Safe Drinking Water Treatment Fund from the Department of Health and Human Resources to the Department of Environmental Protection as a result of Committee Substitute for Committee Substitute for Senate Bill 561, passed by the Legislature during the 2023 Regular Session.

The Fund is used for financial assistance to projects for public water systems that collect, treat, and supply water for human consumption. It continues to be managed by the Water Development Authority, but under the direction of the Department instead of the Department of Health and Human Resources.

Senate Bill No. 15. Department of Environmental Protection, Waste Management Division of Water and Waste Management, Hazardous Waste Management System, 33 CSR 20

The rule amends a current legislative rule and is the result of the Hazardous Waste Management Act under W.Va. Code §22-18-1, *et seq.* The Act protects the public health and the environment from the effects of inadequate management of hazardous waste. This 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 October 31, 2021.

Senate Bill No. 16. Department of Environmental Protection, Water Resources Division of Water and Waste Management, Underground Injection Control, 47 CSR 13

The rule amends a current legislative rule and is promulgated under the Water Pollution Control Act which governs the discharge and disposal of pollutants into the waters of the state to maintain reasonable standards of quality to ensure public health and enjoyment. Specifically, this rule governs the Underground Injection Control Program (UIC). The UIC program regulates underground injections of waste into six classes of wells. This rule set forth criteria and standards which apply to the UIC program. The proposed rule updates the 6 classes of wells to maintain state primacy under the U.S. Environmental Protection Agency.

The rule updates the definition of a Class 3 well which is a well which injects for the extraction of minerals to exclude in situ combustion of fossil fuel; specifies that the amount and chemical make-up of injection fluids are to be considered among the factors for casing and cementing requirements to prevent potential leaks from a Class 1 well; requires caliper logs for intermediate and long strings of casings for Class 1 wells; require each Class 1 well plug to be tested for seal and stability; additional specifications are added for alarms and shut off systems Also, §47-13-8.4.2.j is added to the rule providing requirements for testing and monitoring for hazardous waste injection wells and requiring a plan be developed and followed; requires additional data in quarterly reports to the Director; the requirements for the contents of permitting maps are changed; allows the Director to consider well materials specifications and their life expectancy before issuing a permit and adds post-closure care to the list of items needed to be covered by the performance bond; provides that the requirement to maintain an approved post-closure care plan is enforceable even if the plan is not a condition of a permit, must be submitted with a permit application, and becomes a condition if approved by the Director; requires that after closure of a well, records be kept for 3 years and that the operator turn the records over to the Director; adds new sections to the rule adopting federal regulations concerning financial responsibility for hazardous waste injection wells, modifications, exceptions, and omissions to the incorporated regulations, and restrictions and prohibitions on injections with exceptions; and updates permitting requirements for class 3 wells for mineral dissolution and extraction to include the submission of mapping indicating public water systems and water well.

The rule also adds language regarding Class 1 hazardous waste injection wells stating that the obligation to implement the closure plan survives the termination of a

permit or the cessation of injection activities and that the requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. It also requires the owner or operator of a well that has ceased operations for more than two years notify the Director 30 days prior to resuming operation of the well.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: March 8, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

Senate Bill 17

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing Department of Health to promulgate legislative rules.

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

SUMMARY:

This Committee Substitute is the Department of Health Bundle, known as Bundle 5. It contains 16 rules from the Department of Health.

Senate Bill No. 17. Department of Health, Public Water Systems Operators, 64 CSR 04

This rule amends a current legislative rule. The purpose of the rule is to govern the examination and certification of operators of a public water system (PWS), to establish a system for the classification of a PWS, and to specify the responsibilities of a PWS. The amendments were made to the rule as a result of the passage of Enrolled Committee Substitute for House Bill 2848 that passed during the 2023 Regular Session of the Legislature.

The rule adds a limited waiver to the requirement that a Class II PWS always have an operator with a certification equal to or greater than the system classification present in the primary treatment facility when the plan is operational. If the limited waiver is granted, an operator may perform the tasks of an operator certified one grade higher. The rule provides a limited exception for Class I operators at Class II PWSs if the Class II operator has passed the Class II exam before being considered for an exception. The rule also adds a limited waiver to the requirement that Class II, III, and IV PWS have at least one certified operator (except, 1D, Class R, and WDS level) in addition to the chief operator. If the limited exception is granted an operator may perform the tasks of an operator certified one grade higher.

The rule deletes the requirement regarding a PWS operator from another jurisdiction passing a WV certification examination equivalent to the certification level of the other jurisdiction as determined by the Commissioner and instead requires an applicant to demonstrate he or she has successfully passed an examination in another jurisdiction substantially equivalent to the certification level sought by the applicant. The Commissioner may condition and limit renewal of the license on a requirement for additional education classes. If the Commissioner determines the other jurisdiction has

substantially different regulations, he or she may require an applicant to take a WV-specific operator course within 24 months of licensure. If the Commissioner determines the other jurisdiction's examination is not substantially equivalent, the applicant must pass the WV certification examination equivalent to the certification level of the other jurisdiction.

Senate Bill No. 18. Department of Health, Wastewater Systems and Operations, 64 CSR 05

The rule amends a current legislative rule. The purpose of the rule is to govern the examination and certification of wastewater operators, to establish a system for the classification of wastewater systems, and to specify the responsibilities of wastewater systems. The amendments were made to the rule due to the passage of Enrolled Committee Substitute for House Bill 2848 that passed during the 2023 Regular Session of the Legislature. The rule has basically the same provisions as the previous rule regarding waivers and reciprocity.

Senate Bill No. 19. Department of Health, Behavioral Health Centers Licensure, 64 CSR 11

The rule amends a current legislative rule. It establishes the general standards and procedures for licensure of behavioral health services and supports. Passage of Senate Bill 679 during the 2023 Regular Session required amendments to the rule relating to the location of forensic group homes. The rule prohibits location of a forensic group within 1 mile of a residential area, a public or private day care center, or a public or private K-12 school, learning pod, or micro-school. The Inspector General may grant a variance for homes in existence prior to March 6, 2023.

Enforcement of the rule is moved from the Secretary to the Inspector General housed within the Department of Health. The rule updates the provider notification section, adding to the 60-day notice requirement for a change in location of a behavioral health center service location. Language has been added stating consumers who are being treated at a behavioral health center pursuant to a civil or criminal court order may not choose to be discharged from the center against medical advice. In the section pertaining to Administrative Appeals and Judicial Review, the West Virginia Intermediate Court of Appeals replaces any reference to a circuit court.

Senate Bill No. 20. Department of Health, Hospital Licensure, 64 CSR 12

The rule amends a current legislative rule. It establishes standards and procedures for the licensing of hospitals and extended care facilities operated in connection with a hospital and is being amended due to passage of Enrolled Committee Substitute for House

Bill 2993 which passed during the 2023 Regular Session. The rule sets forth the statutory requirements to be licensed as a rural emergency hospital.

Senate Bill No. 21. Department of Health, Assisted Living Facilities, 64 CSR 14

The rule amends a current legislative rule by amending the sunset date to August 1, 2029.

Senate Bill No. 22. Department of Health, Cross-Connection Control and Backflow Prevention, 64 CSR 15

The rule amends a current legislative rule. The purpose of the rule is to govern cross-connection control and backflow prevention for public water systems. The amendments were made to the rule due to the passage of House Bill 2961 that passed during the 2020 Regular Session of the Legislature.

The rule transfers the following determinations from the public water system to the Commissioner or his or her designee: the determination of the type of protection required under the rule depending on the degree of hazard that exists or may exist; the determination of when an approved air gap separation is needed; and the determination of when an approved double-check valve assembly, approved reduced pressure principal backflow prevention assembly or an approved air gap separation is needed.

Under the rule, when the Commissioner or his or her does not approve any point of connection between a public water system and an auxiliary water supply, the water customer shall install an approved air gap separation or an approved interchangeable connection with a reduced backflow prevention assembly. The Commissioner is also required to approve installation of an approved backflow prevention assembly at a location in a manner that best facilitates testing and servicing. These duties are currently under the purview of the public water system.

Senate Bill No. 24. Department of Health, Fees for Permits, 64 CSR 30

The rule repeals a current legislative rule. The statutory authority for the proposed rule was repealed.

Senate Bill No. 24. Department of Health, Fees for Services, 64 CSR 51

The rule amends a current legislative rule. It establishes the reasonable fees for services provided by the Bureau for Public Health (BPH) and local boards of health. Section 9 relating to fees for services provided by local boards of health has been deleted. It updates fees that have not been raised since 2016, including certain Fees for

Environmental Chemistry Lab Services, some Fees for Environmental Microbiology Lab Services, certain Fees for Diagnostic Immunology, and certain Environmental Health Services Fees.

Senate Bill No. 25. Department of Health, Medical Examiner Requirements for Postmortem Inquiries, 64 CSR 84

The rule amends a current legislative rule. The purpose of the rule is to regulate the conduct of medico-legal investigation into the cause of death; to set procedures for postmortem examination of deceased persons and the examination of the substances collected as part of that process; to determine the cause of death; to set forth requirements for the training and certification of county medical examiners; and to allow fees to be collected for services provided to certain parties by the Office of the Chief Medical Examiner. The amendments were made to the rule due to the passage of Enrolled Senate Bill 605 that passed during the 2023 Regular Session.

The rule adds a definition for the term “procurement organization” which is defined as an eye bank, organ procurement organization or tissue bank; clarifies the definition of the term “unclaimed decedent” as to when the 30 days begins to run; This section sets forth training, certification, and standards of practice of county medical examiners and coroners; requires the County Medical Examiner, Assistant County Medical Examiner, and County Coroner to “provide findings so that the Chief Medical Examiner or the Deputy Chief Medical Examiner may determine the cause and manner of death; provides that a request to cremate is not necessary when the decedent has donated his or her body to science; requires the Office of Chief Medical Examiner to allow representatives of a procurement organization approved by the Office to be present in the facility and to provide the organization the with information necessary to facilitate timely recovery and donation of anatomical gifts; and deletes the section of the rule relating to the temporary disposition or internment of unclaimed decedents in the custody of the Office of Chief Medical Examiner.

Senate Bill No. 26 Department of Health, Newborn Screening System, 64 CSR 91

This rule amends a current legislative rule by amending the sunset date to August 1, 2029.

Senate Bill No. 28. Department of Health, Distribution of Funds from Emergency Medical Services Salary Enhancement Fund, 64 CSR 116

This rule is new and was filed as an emergency rule. It establishes a formula for the Director of the Office of Emergency Medical Services to use in distributing funds from the Emergency Medical Services Salary Enhancement Fund, which was created with the

passage of Enrolled Senate Bill 737 which passed during the 2023 Regular Session. The rule requires counties to fill out a questionnaire to be used in determining the allocation of funds under the formula established in the proposed rule. The Director is required to calculate the amount of funds for salary supplementation and crisis response and distribute 10% equally among the regions used to enhance training of crisis response teams. The money is to be distributed to the counties within the region according to the number of members each county supports on a crisis response team.

The remainder of the funds are to be distributed according to a formula with coefficients assigned based on based on rural/border county status, the current levy rate, maximum allowable rate on regular levies, and additional qualifying factors. Based on those numbers 50% is divided equally among 1st tier counties; 35% is divided equally among 2nd tier counties; and 15% is divided equally among 3rd tier counties.

The rule requires a receiving county to submit a post fund distribution assessment to the Office of Emergency Medical Services.

Appendices A and B contain forms. Generally, forms are not included in a rule allowing them to be amended as needed without going through the rule-making process.

Senate Bill No. 28. Department of Health, West Virginia Clearance for Access: Registry and Employment Screening, 64 CSR 123

The rule repeals and replaces a current legislative rule, 69 CSR 10. The purpose of the rule is to require prescreening and state and federal criminal background checks for all direct access personal of the bureaus, covered providers, and covered contractors. The proposed rule adds definitions for “covered contractor”, “disqualifying offense for persons responsible for the care of children”, and prescreening. and amends other terms including “disqualifying offense” to include human trafficking and felony money laundering.

The rule adds language stating if a variance is requested relating to a rap back (Record of Arrest and Prosecution BACK) notification of ineligibility, the affected employee’s status of employment may continue until the variance is resolved at the discretion of the bureau, covered provider, or covered contractor and the requirements related to provisional employees in the Code and in the rule apply.

The rule adds new language relating to handling fitness determinations when a pending charge is a disqualifying misdemeanor offense and the applicant has not had a conviction of a disqualifying offense in the last seven years, that allows a waiver may be requested; provides an applicant with a pending felony offense is ineligible for work and states that a variance may be requested regarding the pending disqualifying felony offense; provides that the provisions relating to provisional employees do not apply to persons who are responsible for the care of children; clarifies that an applicant may not

be employed “or engaged” during the appeal process unless a variance has been requested; and provides that the criminal history and related information in the possession of the Secretary is not subject to subpoena, other than one for a criminal action.

Senate Bill No. 29. Department of Health, Cooperative Agreement Approval and Compliance, 65 CSR 06

The rule amends a current legislative rule by amending the sunset date to August 1, 2029.

Senate Bill No. 30. Department of Health, Certificate of Need, 65 CSR 32

The rule amends a current legislative rule. This rule implements the provisions of the Certificate of Need program. Amendments to the exemption section of the rule were necessitated with the passage of Enrolled Committee Substitute for Senate Bill 613 which passed during the 2023 Regular Session. Specifically, it eliminates birthing centers from those health services requiring a certificate of need.

Senate Bill No. 32. Department of Health, Chronic Pain Management Clinic, 69 CSR 08

The rule amends a current legislative rule by amending the sunset date to August 1, 2029.

Senate Bill No, 33. Department of Health, Medication-Assisted Treatment – Office Based Medication – Assisted Treatment, 69 CSR 12

The rule amends a current legislative rule by amending the sunset date to August 1, 2029.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: March 9, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

Senate Bill 31

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing Department of Human Services to promulgate legislative rules.

CODE REFERENCE: New §64-5A-1 *et seq.*

SUMMARY:

This bill is the Department of Human Services Bundle, known as Bundle 5A. It contains two rules from Human Services and one from the Family Protection Services Board.

Senate Bill No. 31. Department of Human Services, Collection and Exchange of Data Related to Overdoses, 67 CSR 01

The rule repeals and replaces a current legislative rule, 69 CSR 14. It establishes requirements to facilitate the exchange of data and information with the Office of Drug Control Policy, Department of Human Services, the Department of Military Affairs and Public Safety, the Department of Administration, the Administrator of Courts, the Poison Control Center, the Office of National Drug Control Policy, the Board of Pharmacy, law enforcement, local health departments, and emergency medical service agencies in each county. The rule is necessary due to the passage of Enrolled Committee Substitute for House Bill 3306 which passed during the 2023 Regular Session.

It also covers the reporting of overdoses by law enforcement agencies, health care providers, emergency response providers, medical examiners, and hospital emergency rooms and adds to reportable information whether the individual has a history of a prior overdose.

The rule provides for enforcement for failure to report overdose events by mandatory reporters and provides civil penalties.

Senate Bill No, 34. Department of Human Services, Procedure to Contest the Substation of Child Abuse or Neglect, 78 CSR 27

The rule amends a current legislative rule. The purpose of the rule is to establish the procedure to contest the West Virginia Department of Human Services’

Bureau of Social Services substantiation of abuse and neglect. The amendments were made to the rule due to the passage of Enrolled Committee Substitute for Senate Bill 647 that passed during the 2023 Regular Session of the Legislature. Section 8.1 adds new language stating that when any allegation of abuse or neglect is substantiated and a petition for abuse or neglect could be filed and the bureau does not file a petition, all bureau records related to the allegation shall be sealed one year after the substantiation is made. Provided that the person who is the subject of the allegation does not have another substantiation of abuse or neglect against them during the one-year period following the initial substantiation.

The rule adds a third circumstance under which the Bureau may consider an allegation against a person of abuse or neglect of a child substantiated for its records and sets forth a procedure for sealing records of maltreatment substantiation.

Senate Bill No. 35. Family Protection Services Board, Domestic Violence Program Licensure Standards, 191 CSR 02

The rule amends a current legislative rule governing the general standards and procedures for the licensure of domestic violence programs. It amends definitions for the terms “crisis intervention” and “shelter”; adds a definition for “extension space services”; and deletes the definition for “Family Protection Fund”.

The rule adds additional program requirements related to audit standards for a domestic violence program; adds language that allows information to be shared to assist a Fatality and Mortality Review Team upon request and under certain conditions; adds standards for extension space services; requires criminal background checks for employees and volunteers; provides that domestic violence programs are not required to have a shelter component if they meet federal regulations for enhanced services; clarifies that residence in a shelter does not create a landlord/tenant relationship; and deleted the section relating to licensing standards for Domestic Violence Outreach Extension Offices.

DATE OF PASSAGE: February 5, 2024

EFFECTIVE DATE: February 5, 2024

ACTION BY GOVERNOR: Signed February 15, 2024

Senate Bill 36

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing Department of Homeland Security to promulgate legislative rules.

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

SUMMARY:

This Committee Substitute is Department of Homeland Security Bundle, known as Bundle 6. It contains 14 rules from the Governor's Committee on Crime, Delinquency and Correction, Emergency Management, the Fire Commission, the Fire Marshal, and the State Police.

Senate Bill No. 36. Crime Delinquency and Correction, Law Enforcement Training and Certification Standards, 149 CSR 02

This rule amends a current legislative rule relating to law enforcement training and certification standards. It amends the provisions relating to instructor certification by reducing the time frame to receive 16 hours of verified training from five years to two years. It requires certified law enforcement level 1 instructors to instruct a basic training program or Subcommittee certified in service program every 12 rather than 24 months from the date of their original certifications and attend additional training in areas they are certified to instruct every 12 rather than 24 months of the original level 1 instructor certification.

The rule also provides that a trainee resigning for voluntary reasons, other than hardship, may not appeal to the subcommittee; increases the on-line or web-based training program for annual in-service training to a maximum of 50% from 25%; and increases the online or web-based training program for supervisory level in-service training to a maximum of 100% from 25%.

Senate Bill No. 37. Crime Delinquency and Correction, Protocol for Law Enforcement Response to Domestic Violence, 149 CSR 03

This rule amends a current legislative rule, which provides guidelines and establishes standards for responding to domestic violence incidents. The rule adds definitions for the terms "Domestic Violence Protective Order Registry", "asphyxiate", "strangle", "suffocate", and "trauma informed"; amends the definition for the term "firearm" to reflect amendments in code regarding antique firearms; and deletes persons

employed as rangers for the Hatfield and McCoy Regional Recreation Authority from the definition of "law enforcement officer".

The rule also clarifies that when a protection order is not presented, the law enforcement officer may consider other credible information including, but not limited to, the domestic violence registry. It adds a new section creating Domestic Violence Protective Order Registry which contains information about the victim and the respondent, the condition of the victim, whether firearms were used and are in possession of the respondent, whether a protective order was served, and a temporary or final order. This registry is a tool for the court to communicate domestic violence data to law enforcement and can be used to confirm the status of a protective order or to serve a protective order. It provides that court staff and any law enforcement agency with access to a WEAPONS terminal can enter information into the registry and clarifies when the registry should be used.

The protocols in instances where children are present have been rewritten and contain provisions regarding speaking with children, assessing harm to children, determining when a child should be referred to a Handle with Care Program, and requiring certain action in instances of abuse and neglect.

The rule requires an arresting officer to inform the court of any circumstances surrounding the arrest of the accused which would affect conditions of bond, if bond amount and conditions are a decision solely with the court. It also requires officers to convey information regarding highly dangerous/potentially lethal behaviors of the offender to the magistrate.

Finally, the rule requires a law enforcement officer to conduct an interview with the victim using the "Dangerousness Lethality Information Form for Use by Law Enforcement Officers.

Senate Bill No. 38. Crime, Delinquency and Correction, Sexual Assault Forensic Examinations, 149 CSR 11

This is a new rule. It provides procedures for hospitals and health care facilities in treating sexual assault victims. This rule is required because of the passage of Enrolled Committee Substitute for Senate Bill 89, which passed during the 2023 Regular Session, and which required every hospital to have health care providers trained and properly qualified by the Sexual Assault Forensic Examination Commission to conduct examinations and have qualified health care providers available for emergencies at all hours of operation. Additionally, the rule provides how photo documentation is to be stored and used; establishes the procedures for submitting and storing sexual assault evidence for testing; establishes the procedures for a laboratory upon receipt of sexual assault evidence; and sets forth the procedures for the maintenance of nonreported sexual assault evidence collection kits.

Senate Bill No. 39. Division of Emergency Management, Industrial Accident Rapid Response Rule, 170 CSR 02

This rule amends a current legislative rule. It updates reporting of emergency incidents at industrial facilities by changing “emergency telephone system” to “911 center” in several places and by correcting the title of the agency to “Division of Emergency Management” where appropriate throughout the rule. It adds a requirement that an industrial facility reporting an incident provide a designated contact for state and local emergency responders via the Industrial Accident Call Center reporting line; makes imposition of a civil penalty for failing to comply with the reporting and access requirements permissive rather than mandatory; and mandates that appeal of any fines or penalties imposed under the rule be taken to the Intermediate Court of Appeals, in compliance with recent revisions to code.

Senate Bill No. 40. Fire Commission, Fire Code, 87 CSR 01

This rule amends a current legislative rule which establishes the State Fire Code for the safeguarding of life and property from the hazards of fire and explosion. The rule exempts all permits and processes to boilers, including inspections from the Fire Code because they are under the jurisdiction of the Division of Labor and clarifies precedence when there are certain conflicts.

The rule adopts Appendix A of the NFPA 1 in its entirety and strikes the references to other NFPA editions. It clarifies the requirements for Plan Reviews; clarifies the requirements for certain renovations and reconstructions; clarifies certain architectural requirements and licensing board approval prior to construction; creates an exception to sprinkler requirements for certain industrial occupancies; removes certain sprinkler standards regarding nursing or similar care homes; requires newly constructed emergency fire, rescue, or ambulance buildings to have automatic sprinklers with certain exemptions; deletes certain restrictions relating to carpeting; revises the requirements for hotels and motels; deletes provisions relating to group day care centers; clarifies the construction date of certain modular classroom structures; deletes requirements for assembly occupancy; adds language regarding carbon monoxide detectors to be consistent with WV code; and clarifies the requirements for NICET Certification for Fire Protection and Fire Alarm Systems.

The rule requires a person responsible for doing maintenance, testing, or drills with fire protection equipment to contact 911 before and after the activity. Lastly, it clarifies that appeals from a hearing examiner’s decision is under the jurisdiction of the Intermediate Court of Appeals.

The Committee Substitute contains an amendment to the rule that provides for an electronic filing system, sets forth timelines for plan review, and contains technical clean-up.

Senate Bill No. 41. Fire Commission, Certification and Evaluation of Local Fire Departments, 87 CSR 06

This rule amends a current legislative rule which establishes the requirements and procedures for certification and evaluation of local fire departments.

The rule updates the sunset date to August 1, 2029.

Senate Bill No. 42. Fire Commission, Certification of Fire Chiefs, 87 CSR 13

This rule amends a current legislative rule which establishes the procedures for certifying Fire Chiefs and acting Fire Chiefs. It clarifies that all appeals from a final order of the Commission are within the jurisdiction of the Intermediate Court of Appeals.

Senate Bill No. 43. Fire Marshal, Electrical Inspectors, 103 CSR 01

This rule amends a current legislative rule which establishes the procedures to be followed to protect the health, safety, and welfare of the public by assuring the competence of those who perform electrical inspection through certification by the State Fire Marshal. It clarifies that all appeals from a final order of the Commission are within the jurisdiction of the Intermediate Court of Appeals.

Senate Bill No. 44. Fire Marshal, Supervision of Fire Protection Work, 103 CSR 03

This rule amends a current legislative rule which governs certification, fees, examinations, training, powers, and duties of the Fire Marshal and penalties for violations. It clarifies that all appeals from a final order of the Commission are within the jurisdiction of the Intermediate Court of Appeals.

Senate Bill No 45. Fire Marshal, Electrician Licensing Rules, 103 CSR 05

This rule amends a current legislative rule which establishes the procedures to protect the health, safety, and welfare of the public by assuring the competence of those who perform electrical work through licensure by the State Fire Marshal or State Fire Commission. It clarifies that all appeals from a final order of the Commission are within the jurisdiction of the Intermediate Court of Appeals.

Senate Bill No. 46. Fire Marshal, Standards for the Certification and Continuing Education of Municipal, County, and other Public Sector Building Code Officials, Building Code Inspectors, and Plans Examiners, 103 CSR 06

This rule amends a current legislative rule which establishes the requirements for the certification and continuing education of municipal, county, and other public sector building code officials, building code inspectors, and plans examiners. It clarifies that all appeals from a final order of the Commission are within the jurisdiction of the Intermediate Court of Appeals.

Senate Bill No. 47. Fire Marshal, Certification of Home Inspectors, 103 CSR 07

This rule amends a current legislative rule which establishes the procedures to be followed to assure that consumers of home inspection services can rely on the competence of home inspectors, defines home inspection, outlines what must be included in a home inspection, defines unethical conduct by home inspectors, and creates penalties for prohibited acts. The rule provides that when a party appeals the hearing examiner's decision when a license is denied, limited, suspended, or revoked or when a party appeals the hearing examiner's decision on a complaint against a certified home inspector charged with violating this rule, the appeal is under the jurisdiction of the Intermediate Court of Appeals.

Senate Bill No. 48. West Virginia State Police, West Virginia State Police Member Grievance Procedure 81 CSR 08

This rule amends a current legislative rule. It has been amended to clarify that the court of next jurisdiction after a decision from a hearing examiner is the West Virginia Intermediate Court of Appeals. The Intermediate Court of Appeals has jurisdiction to enforce rulings from a hearing examiner, hear appeals from a ruling by a hearing examiner, and grant stays from the ruling of a hearing examiner.

Senate Bill No. 49. West Virginia State Police, Motor Vehicle Inspection, 81 CSR 19

The rule is new rule that adopts an Official Motor Vehicle Inspection Manual. It incorporates by reference the West Virginia Official Motor Vehicle Inspection Manual which was filed with this rule.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: March 8, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

Senate Bill 50

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

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

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

SUMMARY:

Alcohol Beverage Control Commissioner Rules:

*NOTE: Both ABCA rules are amended by direction of this Legislature during this current session. These rules were not promulgated by the agency and therefore were never reviewed or voted on by the Legislative Rule Making Review Committee.

Private Club Licensing, 175 CSR 02

This amendment strikes two subsections of the rule dealing with hours of operation. The current rule requires all persons, including employees, to clear the building no more than 30 minutes after the sale of alcohol has expired except in limited circumstances which would require the bar/restaurant area at least be cleared. Similarly, “persons,” presumably also including employees, cannot enter a premises more than 30 minutes before alcohol hours of sale. The amendment would limit that 30-minute requirement to only members and guests and give employees one hour to clear the premises after hours of sale and would limit their entrance to the *serving areas only* (not offices and the like) to an hour before hours of sale.

Subsection 4.9, which requires all entertainment, both live and mechanical (i.e. jukeboxes), cease no more than 30 minutes prior to the expiration of the hours for sale of alcohol, is struck and not replaced.

Nonintoxicating Beer Licensing and Operations Procedure, 176 CSR 01

The first change to this rule adds a new definition. “Delivery day means any day that the distributor is open for business.”

The second change strikes 6.3.d.3 of the rule, which currently reads:

“A distributor or a resident brewer acting in a limited capacity as a distributor, may rotate, stock, merchandise, and price nonintoxicating beer in a licensed nonintoxicating beer retail establishment only on nonintoxicating beer or nonintoxicating craft beer delivery day; Provided, that products purchased from other distributors are not altered or disturbed. No distributor may pull, move, or place on a display shelf or cooler shelf any

nonintoxicating beer from a retailer's existing or purchased nonintoxicating beer inventory currently resting at the retailer's licensed premises.”

and replaces it with:

“A distributor or a resident brewer acting in a limited capacity as a distributor may rotate, stock, merchandise, price, and presell nonintoxicating beer in a licensed nonintoxicating beer retail establishment only on nonintoxicating beer or nonintoxicating craft beer delivery day.”

Insurance Commissioner Rules:

Senate Bill No. 50. AIDS Regulation, 114 CSR 27

Sunset extension only.

Senate Bill No. 51. Health Benefit Plan Network Access and Adequacy, 114 CSR 100

This rule was originally promulgated in 2021 to govern the administration of the Health Benefit Plan Network Access and Adequacy Act (§33-55-1, *et seq.*), enacted in 2020. It requires those who offer a network plan in the state that provides health benefits (“a health carrier”) to “maintain a network that is sufficient in numbers and appropriate types of providers, including those that serve predominantly low-income, medically underserved individuals, to assure that all covered services to covered persons, including children and adults, will be accessible without unreasonable travel or delay.”

The Insurance Commissioner’s amendments adopt standards for his or her review of these networks that are as stringent as the standards for review of the United States Centers for Medicare & Medicaid Services (CMS). The expressed goal is to adopt standards that mirror the CMS standards to ensure the state’s primacy in the review of the adequacy of these networks and preclude possible federal preemption of those responsibilities.

The proposed rule includes the following substantive changes to existing law:

Section 2 is definitional:

2.2. would be amended to define the new term “county designation” to determine how each of the state’s counties will be classified for purposes of establishing adequate times and distances for insureds to reach their medical providers according to the new Appendix A at the end of the rule.

2.18. and 2.26. are deleted, removing the definitions of “person” and “transfer,” which are duplicative of those terms as defined by code in §33-55-1.

Section 3 regards the Network Adequacy Standards and makes changes to match the Federal CMS standards:

3.1. provisions are deleted that require certain “provider-to-covered person ratios” to be met by a health carrier. 3.1.1 requiring that at least 70% of a health carrier’s providers “must be accepting new patients” are deleted.

3.2. is renumbered 3.1 and amended to remove existing geographic accessibility standards that will now be set forth in the new Appendix A.

3.1.1. (as renumbered) is new language requiring the Commissioner to “publish a notice with the county designation of each West Virginia county by July 1st of each year or as soon as that information becomes available from CMS” which would be applicable to the geographic accessibility standards in the new Appendix A.

3.1.2. is new language requiring geographic accessibility standards for dental to be “met by limited scope dental plans and by health benefit plans with embedded dental benefits.”

3.1.3. is new language requiring that at “least 90 percent of a health carrier’s members must live within the maximum distance to at least one provider of each type to satisfy geographic accessibility network adequacy standards.” This language revises the language deleted in 3.2.2.

3.2. (as renumbered) is new language that sets wait times standards to see providers that must be met by a health carrier in order to comply with network adequacy requirements.

3.2.1. is new language requiring that at “least 90 percent of a health carrier’s providers must meet” those wait time standards.

3.2.2. is deleted. See 3.1.3 above.

Section 4 regards Network Access Plans and amends subsection 4.1 to require that health carriers must file their access plans (see 4.8.) with the Commissioner for health benefit plans beginning January 1, 2025.

Senate Bill No. 52. Bail Bondsmen in Criminal Cases, 114 CSR 103

House Bill 2621 in Regular Session 2023 changed existing law regarding bail bondsmen. This existing rule is amended to reflect those changes.

Section 2 is definitional:

2.1. requires licensure for agents, clerks, or representatives of a bail bondsman.

2.4. clarifies that there are 2 types of bail bondsmen (a professional bondsman or a surety bondsman). The section also deletes the language of 2.4.1 and 2.4.2 to avoid unnecessary conflict with the definitions of “professional bondsman” and “surety bondsman” set forth in 2.9 and 2.11.

2.8. excludes all entities other than individuals from the definition of person so that only people, not organizations, may be licensed as bail bondsmen.

2.9. removes an “annuity” as a permissible “security” for bail bonds since the new statutory definition of “approved security” in House Bill 2621 does not include annuities as a type of approved security.

Section 3 regards licensing and makes the following substantive changes:

3.2.2.c.3. is new language that clarifies the new provisions in House Bill 2621 (2023 Regular Session) that a pledge of real estate by a professional bondsman as an approved security will no longer be permitted after July 1, 2024, unless he or she is licensed by the Commissioner as of July 1, 2024, and has pledged real estate as security to conduct bonding business; that person may continue to use real estate as collateral to operate as a bondsman after July 1, 2024 until his or her license is voluntarily surrendered or revoked by the Commissioner.

3.9. deletes the treatment of both a professional bondsman’s license and a surety bondsman’s license as one license in the context of the nonrenewal of licenses for the purpose of disciplinary actions.

3.10. thru 3.10.3. adds a competency testing requirement for new licensee applicants (or those whose license was suspended or revoked) beginning July 1, 2024, that tests “the knowledge of the person concerning the duties and responsibilities of a person engaged in the bonding business and the applicable laws and rules of this state,” to conform to the new provisions in House Bill 2621 (2023 Regular Session) that require the Commissioner to “formulate testing requirements for all initial license applicants;” and to establish a \$25 fee for each examination to be deposited into the General Revenue Fund of the State.

Section 5 regards responsibilities and prohibited activities of licensees and, in subsection 5.12, deletes authority for agents, clerks, or representatives directly employed by a bondsman to sign or countersign in blank bail bonds, or give a power of attorney to, or otherwise authorize, anyone to countersign his name to bonds.

Subsection 6.2. clarifies that the Commissioner is not liable for any of the incurred liabilities of any bondsman.

Section 15 regards reporting requirements:

15.1.4 requires that when reporting about his or her bonds to the Commissioner, the bondsman must identify the county in which each bond was issued.

15.2. authorizes the Commissioner to verify the information provided to him or her about a bond with the clerk of the county court in which the bond was issued.

15.6 and 15.7 adds new language requiring bondsmen to timely notify the Commissioner of any adverse administrative or criminal actions against the bondsman.

Finally, all referenced forms are removed from the rule's appendix and replaced with a reference to the Commissioner's website.

*Two amendments which were not agreed on by the agency were approved by the LRMRC. Both deny licenses to any person convicted of a felony and order the Commissioner to revoke or not renew any current license should a licensee be convicted of a felony.

Racing Commissioner Rule:

Senate Bill No. 53. Thoroughbred Racing, 178 CSR 01

The rule regulates all aspects of Thoroughbred Racing in West Virginia (this rule does not regulate greyhound racing).

A single amendment was approved by the LRMRC but not agreed to by the agency. In subdivision 41.2.g., the words "Entry of a" were replaced with the word "A". [41.2.g. Entry of a A horse which has been scratched, or excused from starting by the stewards, because of a physical disability or sickness shall not be accepted will be permitted to run until following the expiration of five (5) days after such horse was scratched or excused and the horse has been removed from the veterinarians' list by a Racing Commission veterinarian.]

The proposed rule includes the following substantive changes to existing law:

Section 5 relates to Racing commission personnel:

5.3 removes the minimum required (2) license clerks at each track.

Section 8 relates to the Stewards:

8.10.b. & d. allow a horse to be placed on or removed from the Stewards' List when there exists a question as to the exact identity of the actual trainer of the horse.

Section 9 deals with the racing secretary:

9.2.a. is new language requiring proof of health certificate and required vaccinations of all horses entering racetrack grounds.

9.2.b. is new language requiring all horses moving interstate to meet the entry requirements of the destination state, the Racing Commission in the destination state, and the individual Racetracks or Training Facilities to which the horse is being shipped in the destination state.

Section 22 relates to facilities and equipment:

22.1.b. requires that the ambulance provided by a track's racing association be properly equipped to transport.

22.1.b. is amended to require that each track's racing association employ least one person adequately trained in diagnosing and assessing concussions and must provide mandatory orientation of racing emergency procedures for all emergency response personnel employed by or assigned because of a contract to the association grounds.

22.4., 22.5., 22.12. and 22.13. are new and would add rules regulating racetrack rails, gaps, starting gates, and racing surface data collection and monitoring.

Section 23 deals with the operations of racing grounds:

23.1.e. is amended to allow those under the age of 18 years to be admitted in a restricted area without the written permission of the stewards or without a permit.

23.5 is new and would require racetracks to have an Emergency Warning System.

Section 24 are general provisions for all permit applications and permit holders:

24.1.i. is amended to allow 16- and 17-year-olds to receive an occupational permit from the Racing Commission.

24.3.d. is amended to allow drug testing to be accomplished by the taking of saliva specimens.

24.4.b. is amended to allow 16- and 17-year-olds to be employed by an occupational permit holder.

24.13.a. is amended to require all those mounted on a horse or pony to wear a properly secured safety helmet and require starting gate crew to adhere to this rule, and modify the minimum standards for safety helmets. (See similar modifications for jockeys at 45.3.c.)

24.13.b. is amended to modify the minimum standards for safety vests. (See similar modifications for jockeys at 45.3.b.)

24.13.c. is new and requires that a safety helmet or safety vest may not be altered in any manner nor shall the product marking be removed or defaced.

Section 28 deals with jockeys:

28.2.b. is amended to remove certain required documents when applying for an occupational permit to act as an apprentice jockey.

28.2.e., 28.2.f., 28.2.g., 28.2.h. and 28.2.i., providing certain requirements governing apprentice jockeys, would be deleted. A number of following paragraphs in 28.2 would also be deleted, added or modified governing weight allowances and other requirements related to apprentice jockeys.

28.5 is amended to allow jockey spouses to compete against one another in races.

Section 30 relates to blacksmiths:

30.2.c. is amended to give the stewards the discretion over the composition of the panel responsible for blacksmith permit testing.

Section 33 regards claiming racing:

33.1 is amended to remove certain provisions relating to warranty of title to a horse when entered in a claiming race.

Section 38 deals with the transfer of claimed horses:

38.5. is amended to provide for the suspension of a certain 60-day period governing activities of claimed horses.

Section 39 regards entries and nominations of horses:

39.1.h. is amended to limit the disqualification on spouses entering races when one spouse is disqualified to only when the spouse is a trainer.

Section 41 deals with declarations (withdrawal prior to closing of entries) and scratches (withdrawal after the closing of entries):

41.2.g. removes language that prohibits horses scratched or excused from starting a race because of physical disability from being entered in a race until after 5 days from the scratch or excuse. It also appears the amended language would permit horses scratched or excused from starting a race because of sickness to run, rather than only be entered, in a race following the expiration of five (5) days after such horse was scratched or excused and the horse has been removed from the veterinarians' list by a Racing Commission veterinarian.

Section 45 relates to the actual running of the race:

45.7.f.2. is amended to require all racetrack licensees to ensure that no electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than the riding crop approved by the stewards are being used during a race.

Section 46 deals with protests, objections, and inquiries:

46.2.d. is amended to address the manner in which a jockey may object after a race.

Section 49 regards medications and prohibited substances:

49.7. is amended by deleting, adding or modify language governing the administration of Lasix to a horse.

49.8. is amended by deleting, adding or modify language governing the Bleeder list of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout.

Section 52 deals with the physical inspection of the horses:

52.3. is amended by deleting, adding or modify language governing the Veterinarians' List of all horses which are determined to be unfit to compete in a race due to illness, physical distress, unsoundness, injury, infirmity, heat exhaustion, positive test or overage, administration of a medication invoking a mandatory stand down time, administration of shock wave therapy, positive out of competition test, or any other assessment or determination by a Racing Commission veterinarian that the horse is unfit to race.

Tax Department Rules:

Senate Bill No. 54. Aircraft Operated Under a Fractional Ownership, 110 CSR 15K

Sunset extension only.

Senate Bill No. 55. Citizen Tax Credit for Property Taxes Paid, 110 CSR 21B

Sunset extension only. (*modified to correct error making rule inconsistent with code)

Senate Bill No. 56. Income Tax Paid at the Entity Level by Electing Pass-Through Entities, 110 CSR 21G

Fiscal Impact - \$15K in initial administrative costs

This is a new rule in response to Senate Bill 151 which passed in the 2023 Regular Session. That bill allowed for owners of pass-through entities to pay their share of income tax owing to that entity at the entity level as opposed to on their own individual return. The proposed rule provides guidance for Pass-through entities (LLCs, LLPs, Partnerships, etc.) that elect to be taxed at the entity level (as opposed to on the individual owners' income tax level) and their respective owners. Effective for taxable years beginning on and after January 1, 2022, a qualifying pass-through entity may elect to be subject to the personal income tax at the entity level for a taxable year.

Section 2 is definitional.

Section 3 explains the purpose and summary of the rule.

Section 4 regards the method by which owners of the business receive a tax credit for their share of the tax paid by the business. Owners of the pass-through entity get a tax credit equal to that owner's proportionate share of the tax remitted at the entity level. It is claimed for that taxpayer's taxable year including the last day of the electing pass-through entity's taxable year for the tax paid with a five-year carryforward.

Section 5 regards the election to pay individual owners' income tax at the entity level and the timing thereof. The election must be made on or before the due date for filing the return (including extensions) and is irrevocable for that taxable year.

Section 6 explains which entities are qualifying.

Section 7 explains what taxable income for this rule’s purposes and specifically lays out computations for individual owners’ share of the tax (including nonresidents).

Section 8 regards the actual breakdown of figuring the tax to be remitted.

Section 9 regards the actual filing process.

Section 10 explains that for taxable year 2022 only, electing pass-through entities will not have to make estimated payments, but the requirement resumes in taxable year 2023.

Section 11 regards nonresident withholding payments and Section 12 regards filing requirements for nonresidents.

Senate Bill No. 57. Income Tax Credits for Property Taxes Paid, 110 CSR 21H

Fiscal Impact - Estimated \$201.3 million reduction in annual collections beginning FY 2025

This is a new rule in response to legislation passed during the 2023 Regular Session (House Bill 2526) known as the West Virginia Property Tax Adjustment Act. It provides guidance to taxpayers relating to income tax credits for property taxes paid. House Bill 2526 created a refundable motor vehicle property tax credit, a refundable personal income tax credit based on real property taxes paid by an eligible disabled veteran, and a refundable tax credit based on certain property taxes paid by small businesses.

Section 2 is definitional.

Section 3 explains the Motor Vehicle Property Tax Adjustment Credit, which allows a refundable tax credit for West Virginia ad valorem property tax timely paid on the value of a motor vehicle owned by the taxpayer during the personal income taxable year or corporation net income taxable year, as applicable.

Section 4 explains the Disabled Veteran Real Property Tax Credit, which similarly allows a refundable tax credit against a qualifying disabled veteran’s personal income tax for timely paid West Virginia ad valorem real property tax paid on their homestead during the personal income taxable year.

Section 5 regards the Small Business Property Tax Adjustment Credit, which allows a tax credit of 50% of the amount of West Virginia ad valorem personal property tax timely paid during the business’s applicable income tax year, less any credit already taken from the Motor Vehicle Property Tax Adjustment Credit.

Senate Bill No. 58. Administration of Tax on Purchases of Wine and Liquor, 110 CSR 49

Sunset extension only

Senate Bill No. 59. Privilege Tax on Sales of Hemp-Derived Cannabinoid and Kratom Products, 110 CSR 99

Fiscal Impact: None to General Revenue. Administrative costs to the Tax Department of \$45K in FY2023, \$75K per year thereafter.

This is a new rule in response to Senate Bill 220 passed during the 2023 Regular Session known as the Industrial Hemp Development Act and the Select Plant-Based Product Regulation Act. The rule is legislatively authorized and is intended to provide needed guidance regarding procedures and administration of the excise tax on retail sales of hemp derived cannabinoid products and kratom products.

The above cited acts established an 11% privilege tax on the retail sale of these taxes (in addition to all other applicable taxes), to be remitted quarterly on the 20th day of the month following the end of the calendar quarter, and to be deposited by the Tax Commissioner into the Agricultural Fees Fund.

Section 1 sets the sunset date as August 1, 2029.

Section 2 is definitional.

Section 3 regards the imposition of the 11% tax on retail sales of cannabinoid products and kratom products.

Section 4 explains the administration and process by which the tax and returns are to be remitted.

Section 5 lays out the various record-keeping requirements.

Section 6 explains violations and penalties, including fines and incarceration.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: March 8, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

Senate Bill 60

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing DOT to promulgate legislative rules.

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

SUMMARY:

This Committee Substitute is Department of Transportation Bundle, known as Bundle 8. It contains six rules from the Division of Motor Vehicles, the Division of Highways, and the Division of Multimodal Transportation Facilities.

Senate Bill No. 60. Division of Motor Vehicles, Motor Vehicle Titling, 91 CSR 03

The rule repeals and replaces a current legislative rule. It substantially revises the process for titling and registering a vehicle, and for registering a fleet of vehicles, whether current or antique.

The rule also implements the provisions of House Bill 2506 from the 2023 Regular Session, which authorized the Division to establish a national title clearinghouse using the Division's title system. The title clearinghouse is intended to expedite issuance of vehicle titles to non-resident businesses that participate in the clearinghouse program.

Non-resident businesses must apply and post a \$250,000 penalty bond to participate in the program. There is a minimum \$15 fee per title transaction through the clearinghouse, plus a pass-through of any technology fee applicable pursuant to a contract or agreement between the DMV and vendors associated with the program.

The full complement of administrative and criminal penalties is available to the DMV for misconduct in the titling and registration process.

The committee substitute contains an amendment requested by the Division regarding titling of a nonresident business's vehicles through the Title Clearinghouse.

Fiscal Impact: The fiscal year costs upon full implementation are estimated at \$1,809,800 against estimated total revenues of \$90,000,000.

Senate Bill No. 61. Division of Motor Vehicles, Dealer Licensing, 91 CSR 06

The rule amends a current legislative rule regarding licensing of various entities involved in motor vehicle services.

The rule has been amended to require all licensees to participate in the Division's electronic lien and title program.

In addition, the amendments to the rule reflect passage of Enrolled Committee Substitute for Senate Bill 455 during the 2023 Regular Session. That bill amended the definition of "established place of business" for used motor vehicle dealers, eliminating the requirement that the dealer be open to the public any specific number of hours or any specific time periods. It also eliminated the requirement for maintaining display and office areas of a certain minimum square footage.

Senate Bill No. 62. Division of Motor Vehicles, Handicapped Parking Permits, 91 CSR 10

The rule amends a current legislative rule to allow issuance of a permanent windshield placard for eligible disabled individuals that would be valid for the remainder of the applicant's life. Currently, the placards are renewed every five years. The rule reflects passage of House Bill 2533 during the 2023 Regular Session.

Senate Bill No. 63. Division of Highways, Construction and Reconstruction of State Roads, 157 CSR 03

The rule amends a current legislative rule. In general, the rule updates the Division of Highways ("DOH") contracting procedures and utilization of the DOH electronic system to reflect current practice. The rulemaking also revises and updates sections related to working with third parties on DOH projects.

The rule allows plans and proposals to be obtained by mail, phone or weblink with the Technical Support Division, DOH and removes the specified fees; deletes the requirement that a contractor file a "Prequalification Statement" and instead requires the filing of "an Application"; eliminates certain outdated provisions dealing with pre-qualification and proposal documents, plans and specifications submittals; removes outdated modes of proposal withdrawal and updates the proposal withdrawal procedure; deletes old bonding procedures and replaces them with updated bonding requirements based on the bidder's published Performance Rating; and clarifies that all contractor insurance policies, except Worker's Compensation are to name the DOH as an additional insured;

The rule also deletes \$50K in fire damage insurance coverage and replace it with \$300K in damages to rented property; increases the amount of Worker's Compensation Insurance from \$500,000 to \$1,000,000; and adds a proviso requiring that railroads must act in good faith and in a meaningful and prompt fashion to review work within railroad rights-of-way.

The provisions on work on railroads rights-of-ways has been amended to prohibit unreasonable withholding of approval of protective insurance coverage; provide for the use of grade crossings; clarify that contractor performance may not impeded railroad operations or pose undue safety risks; eliminate the requirements that a contractor receive certain approvals from the railroad when authorized by court order; update Railroad Protective Services (Flagging) procedures.

Obsolete provisions relating to the disqualification, revocation, and suspension procedures for contractors have been replaced.

Senate Bill No. 64. Division of Highways, Traffic Safety Rules, 157 CSR 05

The rule amends a current legislative rule. In general, it updates the Division of Highways ("DOH") general rules for the control of traffic and the promotion of safety on public highways. It includes permits for oversize trucks and restrictions on where and when oversized loads may be transported. The rule adopts the Manual on Uniform Devices for Streets and Highways. It provides that speed zones are set by order of the Highway Commissioner and under what specifications. The rule also allows local authorities to request that the commissioner alter a speed zone and sets forth the process for the alteration requests.

The rule provides that the regulation of oversize trucks and restrictions on their movement is subject to the rule; adopts the Manual on Uniform Traffic Control Devices; clarifies the conditions and requirements for police escort of oversize loads; clarifies the conditions required for bridges to be strengthened for permitted excessive loads; establishes the requirements and procedures for temporary traffic control plans; clarifies that any type of house is covered for house moving applications; adds overweight to permit costs; clarifies covered width requirements of mobile home or house trailers on local service routes, interstates, US, and WV routes; adds modular homes as well as mobile homes to permit requirements; and allows permit acquisition via online portal.

The Division had requested that the Legislative Rule-Making Review Committee authorize two modifications to the proposed rule. The Committee agreed to the modifications, but when the Division filed its modified rule, it failed to add the two modifications. The following modifications have been included as amendments in the committee substitute.

Section 7.4.h. Vehicle Operator; Speed and Operating Prohibitions. Vehicles transporting explosives shall be driven only by authorized persons not addicted to the use of, or under the influence of, intoxicants or narcotics. ~~Vehicle speed shall not exceed 35 miles per hour~~ Vehicle speed shall not exceed the posted or statutory speed limit in effect and shall not exceed the recommended speed on all warning signs when passing through the area of concern (curve, intersection, etc.). Motor vehicles shall not coast or freewheel at any time. Vehicles containing explosives shall not be taken inside a garage for repairs or other purposes. Insofar as possible, explosives shall be transported on streets or highways only during daylight hours.

Section 7.4.j. Railroad Crossings. Vehicles transporting explosives shall come to a full stop before crossing any railroad track ~~or main highway~~, and then proceed with caution, and conform to all other traffic safety measures. When approaching an intersecting roadway, vehicles shall obey any traffic control devices in place such as stop signs, yield signs, and traffic lights.

Senate Bill No. 65. West Virginia Division of Multimodal Transportation Facilities, Valuation of Used Rolling Stock and Equipment, 220 CSR 01

The rule is essentially the same as the rule promulgated under the State Rail Authority. The program was moved to the newly created Division of Multimodal Transportation Facilities in 2022.

The rule governs the purchase of used railroad rolling stock, which has been exempted from the procurement requirements of W.Va. Code §5A-3-1 *et seq.* due to the uniqueness of this commodity. Originally capped at \$500K, the legislature raised the cap to \$1,000,000 during the statutory creation of the Division in 2022. As originally drafted, the in-house agency staff (both during State Rail Authority and the Division) conducted all valuations and reports. The Division filed a public agency comment after the posting of the rule that it intended to revise the rule to allow qualified individuals outside the Division to conduct the threshold inquiry and report the condition and value to the Commissioner.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: March 8, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

Senate Bill 190

COMMITTEE SUBSTITUTE

SHORT TITLE: Modifying definition of sexual contact.

CODE REFERENCE: §61-8B-1, §61-8B-3, and §61-8B-5 (Amends and Reenacts)

SUMMARY:

Senate Bill 190 updates the definitions applicable to Chapter 61, Article 8B governing sexual offenses. The bill removes “married” as a defined term and modifies the definition of “sexual contact” to remove the requirement that the victim is not married to the actor. “Sexual contact” is defined as “any intentional touching, either directly or through clothing, of the breasts, buttocks, anus, or any part of the sex organs of another person, or intentional touching of any part of another person’s body by the actor’s sex organs and the touching is done for the purpose of gratifying the sexual desire of either party.”

Additionally, the bill eliminates the marriage defense to first-degree and third-degree sexual assault, *i.e.*, the fact that the victim is the spouse of the defendant. The bill also makes other technical corrections.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 22, 2024

Senate Bill 269

COMMITTEE SUBSTITUTE

SHORT TITLE: Excluding test strips from definition of drug paraphernalia.

CODE REFERENCE: §47-19-3 (Amends and Reenacts); §60A-4-403a (Repeals).

SUMMARY:

Senate Bill 269 repeals §60A-4-403a, which was held to be unconstitutional in *Smith v. Roark*, 1980 U.S. Dist. LEXIS 17107 (S.D.W.Va. May 13, 1980).

The bill also clarifies that test strips are not considered drug paraphernalia for purposes of Chapter 47, Article 19. It expands this exception from being solely applicable to test strips for fentanyl to all test strips.

DATE OF PASSAGE: January 26, 2024

EFFECTIVE DATE: January 26, 2024

ACTION BY GOVERNOR: Signed February 2, 2024

Senate Bill 318

COMMITTEE SUBSTITUTE

SHORT TITLE: Modifying process of when parental rights are terminated.

CODE REFERENCE: §48-22-502 (Amends and Reenacts); §49-4-117 (New)

SUMMARY:

The purpose of this bill is to ensure the following of proper procedural protocol for adoptions in abuse and neglect proceedings.

As background, many abuse and neglect cases end with the termination of parental rights. To achieve permanency for the child of parents whose rights have been terminated, often times there is an adoption by a foster family or a relative. West Virginia law currently provides that an adoption petition, which is a formal request by the individuals seeking to adopt the child, should not be filed with the circuit court until any parent's appeal of a circuit court's decision terminating the parental rights has been resolved by the West Virginia Supreme Court. Unfortunately, there are situations where adoption petitions are being filed prematurely and proceeding to the adoption hearing prior to the resolution of a parent's appeal.

This bill requires that where there is a termination of parental rights, the verified petition must state that either (1) the decision terminating the parental rights has been affirmed on appeal and the time for reconsideration of the appellate decision has expired, or (2) the termination decision has not been appealed and the time for filing an appeal has expired.

Additionally, where the adoption involves a termination of parental rights under our state's abuse and neglect law, the Department of Human Services is required to issue a certificate containing the information regarding the status of the parent's appeal. This certificate is then attached to the adoption petition.

DATE OF PASSAGE: February 9, 2024

EFFECTIVE DATE: May 9, 2024

ACTION BY GOVERNOR: Signed February 20, 2024

Senate Bill 325

COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to distribution of drugs to safety net providers and contract pharmacies.

CODE REFERENCE: §60A-8-6a (New)

SUMMARY:

The bill prevents a manufacturer or affiliate from denying, restricting, or prohibiting the acquisition of a 340B drug, unless receipt of the drug is prohibited by the United States Department of Health and Human Services. The bill also prohibits a manufacturer or affiliate from requiring a 340B entity, including contract pharmacies, to submit a claim or provide utilization data as a condition for allowing the acquisition of a 340B drug, unless the information is required by the United States Department of Health and Human Services.

The bill provides penalties for the violation of the article in the form of \$50,000 per violation, which is in addition to liability under the West Virginia Consumer Credit and Protection Act. Of note, the bill does not permit private causes of action.

The licenses/permits of any such person or entity found to be in violation of this section may be suspended and the Board of Pharmacy results of investigations are reported to the Attorney General and the West Virginia Insurance Commissioner. Both the Insurance Commissioner and the Board of Pharmacy have authority to promulgate rules to enforce the terms of this proposed statute.

DATE OF PASSAGE: March 8, 2023

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

Senate Bill 370

COMMITTEE SUBSTITUTE

SHORT TITLE: Clarifying appeal and enforcement process for final orders issued by an administrative law judge in public employee grievance procedures.

CODE REFERENCE: §6C-2-5 and §6C-2-8 (Amends and Reenacts)

SUMMARY:

The bill provides that appeals of an administrative law judge's (ALJ's) final order in a public employee grievance proceeding shall be directly to the Intermediate Court of Appeals. Those appeals were formerly taken to the Circuit Court of Kanawha County.

Enforcement of an ALJ's Order—not the appeal itself—shall be pursued in the circuit court situated in the county in which the grievant is employed. This bill also clarifies that the confidentiality provisions and exceptions under the law apply in appellate proceedings in the same manner as they apply in circuit court.

DATE OF PASSAGE: March 1, 2024

EFFECTIVE DATE: March 1, 2024

ACTION BY GOVERNOR: Signed March 22, 2024

Senate Bill 451

COMMITTEE SUBSTITUTE

SHORT TITLE: Directing Prosecuting Attorneys Institute to make training available to certain new prosecuting attorneys.

CODE REFERENCE: §7-4-6 (Amends and Reenacts)

SUMMARY:

Senate Bill 451 directs the West Virginia Prosecuting Attorneys Institute to establish a training program for all newly appointed or newly elected prosecuting attorneys. The bill makes other technical corrections.

DATE OF PASSAGE: March 6, 2024

EFFECTIVE DATE: March 6, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

Senate Bill 477

COMMITTEE SUBSTITUTE

SHORT TITLE: Prohibiting public disclosure of personal information on internet.

CODE REFERENCE: §5A-8-25 and §61-3C-14d (New)

SUMMARY:

The purpose of this bill is to protect the privacy of healthcare workers, first responders, firefighters, and law enforcement personnel from an abusive practice known as doxing, which is the act of publishing personal information (such as a home address or cell phone number) on the internet with malicious intent.

The bill makes it a misdemeanor for a person to knowingly, willfully, and intentionally make the personal information of the worker, or the worker's immediate family, publicly available on the internet with either: (1) the intent to threaten, intimidate, or incite the commission of a crime of violence against a person; or (2) the intent and knowledge that the personal information will be used to threaten, intimidate, or facilitate the commission of a crime against a person. Upon conviction, the first offense is punishable by a fine of not more than \$500 and/or confinement of not more than six months. A subsequent offense is punishable by a fine of not more than \$1,000 and/or confinement of not more than one year.

Additionally, there is a mechanism for the worker to request the removal of his or her personal information from publicly available records on the internet that are in the control of a state or local government official. The person would (1) submit evidence that they are a protected worker (healthcare worker, first responder, firefighter, or law enforcement) and (2) a notarized statement that he or she believes the personal information being made publicly available poses an imminent and serious threat to the person or that person's immediate family. A person provides that evidence and statement under the potential penalty of false swearing.

DATE OF PASSAGE: March 6, 2024

EFFECTIVE DATE: June 4, 2024

ACTION BY GOVERNOR: March 27, 2024

Senate Bill 482

COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to rule-making authority of Ethics Commission.

CODE REFERENCE: §6B-2-2 (Amends and Reenacts); §6B-2A-1 (Repeals)

SUMMARY:

Senate Bill 482 amends the general legislative rulemaking authority of the Ethics Commission under §6B-2-2 by making its rulemaking authority permissive; by extending its rulemaking authority to the entirety of Chapter 6B; and by specifying that disclosure forms, statements, and reports required by the Ethics Commission must be made in a manner prescribed by legislative rule of the Commission. It also repeals §6B-2A-1, which currently contains obsolete language, as well as the rulemaking requirement for disclosure forms, statements, and reports that has been moved to §6B-2-2.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 22, 2024

Senate Bill 503

COMMITTEE SUBSTITUTE

SHORT TITLE: Protecting belief-based student organizations from certain types of discrimination.

CODE REFERENCE: §18B-20-5 (Amends and Reenacts)

SUMMARY:

This bill updates provisions regarding freedom of association and nondiscrimination against students and student organizations. It prohibits state colleges and universities from denying religious, political, or ideological student organizations any benefit or privilege which is generally available to other student organizations, or from otherwise discriminating against such organizations based on a requirement that an organization's leaders and members affirm and adhere to the organization's sincerely held beliefs, comply with the organization's standards of conduct, and further the organization's mission, expression, or purpose.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 22, 2024

Senate Bill 504

COMMITTEE SUBSTITUTE

SHORT TITLE: Modifying felony offense of sexual misconduct of school employee or volunteer.

CODE REFERENCE: §61-8B-11b (Amends and Reenacts)

SUMMARY:

This bill clarifies that a student who is the victim of sexual misconduct by a school employee or volunteer may be (1) a private or public school student (2) who attends any West Virginia school. It imposes criminal liability on the school employee or volunteer for the sexual misconduct.

Previous West Virginia law provided that it was a felony for "[a]ny teacher, principal, counselor, coach, other employee, or volunteer of any private or public elementary or secondary school who engages in [sexual misconduct] . . . with any student enrolled in the school." The term "the school" had been interpreted as requiring the student, who was the victim of the sexual misconduct, be enrolled in the same school as the perpetrator/employee who engaged in the sexual misconduct. The need for the bill, which broadens application of the criminal provision, arose out of the strict construction of this statutory language.

Additionally, there is an exception in the bill for a high school student who is teaching as part of the Grow Your Own Program. This program allows students to teach, earn money, and potentially become a teacher faster through an accelerated college program. The purpose of the bill's exception for the program is to ensure that high school students, who may be engaged in consensual sexual relations with other high school students, are not prosecuted under this code section.

DATE OF PASSAGE: March 6, 2024

EFFECTIVE DATE: June 4, 2024

ACTION BY GOVERNOR: Signed March 22, 2024

Senate Bill 539

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Creating Cold Case Database.

CODE REFERENCE: §15A-12-9 (New)

SUMMARY:

The bill creates the “cold case database” to assist in the resolution of unsolved cases. The database is to be maintained by the West Virginia Fusion Center and will contain information from all law enforcement agencies across the State for unsolved violent crimes, sex crimes, missing persons cases, and matters involving unidentified human remains. Each law enforcement agency may provide information relating to the unsolved case to the Fusion Center.

This bill defines "cold case" as any investigation into a qualifying crime, a missing person, or unidentified human remains where all investigative leads have been exhausted and the crime remains unsolved.

This bill defines “Qualifying crime” as felony offenses set forth in:

§61-2-1 *et seq.* (Crimes against persons),

§61-3-1 (First Degree Arson),

§61-3-2 (Second degree arson),

§61-3-7 (Causing injuries during an arson-related crime),

§61-3C-14b (Soliciting, etc., a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity),

§61-3E-1 *et seq.* (Offenses involving explosives),

§61-8-1 *et seq.* (Crimes against chastity, morality, and decency),

§61-8A-1 *et seq.* (Preparation, distribution or exhibition of obscene matter to minors),

§61-8B-1 *et seq.* (Sexual Offenses),

§61-8C-1 *et seq.* (Filming Explicit Conduct of Minors), and

§61-8D-1 *et seq.* (Child abuse and Child neglect).

DATE OF PASSAGE: March 4, 2023

EFFECTIVE DATE: June 2, 2024

ACTION BY GOVERNOR: Signed March 22, 2024

Senate Bill 548

COMMITTEE SUBSTITUTE

SHORT TITLE: Clarifying appellate jurisdiction of Intermediate Court of Appeals

CODE REFERENCE: §51-11-4 (Amends and Reenacts)

SUMMARY:

This bill clarifies the jurisdiction of the West Virginia Intermediate Court of Appeals ("ICA"). Of note, the ICA only possesses appellate jurisdiction pursuant to the jurisdictional statute addressed by this proposed legislation. That statute permits the ICA to hear appeals in the following types of cases: civil; family law; worker's compensation; administrative law; and guardianship/conservatorship.

Prior to the passage of this bill, it was unclear as to whether the ICA had appellate jurisdiction in civil matters where equitable relief (including injunctive relief) is sought by a party. This bill provides that the ICA would have jurisdiction over any final judgment or order in a civil case, including any civil case that involves a request for legal or equitable relief.

Cases involving appeals of matters involving the extraordinary remedies set forth in Chapter 53 of the Code, with the exception of injunctive relief, would not be heard in the ICA and would continue to be heard by our state's Supreme Court. Those extraordinary remedies include matters involving: writs of prohibition, writs of mandamus, writs of quo warranto, writs of certiorari, writs of habeas corpus, special receivers, arrests in civil cases, and personal safety orders.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

Senate Bill 568

COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Creating multi-tiered system for school absenteeism.

CODE REFERENCE: §18-8-2, §18-8-4, and §49-4-702 (Amends and Reenacts); §18-34-1, §18-34-2, and §18-34-3. (New)

SUMMARY:

This bill is designed to combat school truancy and excessive absenteeism. It modifies the definition of “excused absences” for purposes of truancy by clarifying what types of absences qualify as excused and unexcused. It also places a limitation on the use of parent excuse notes (10 per school year) and requires documentation be provided within three days of the student’s return to school.

This bill also creates a system of support to facilitate communication between the school and the parent or custodian when a student fails to attend school. It requires the school engage in “meaningful contact” with the parent or custodian to ascertain the reasons for the absences. The State School Board has rule-making authority to promulgate rules and implement standards for this system of support.

This bill provides that school systems shall implement programs to support students with children for the purpose of providing enough time for proper medical recovery after birth. It provides for a written attendance policy to excuses all absences due to pregnancy or parenting- related conditions provided at least eight weeks for a mother and two weeks of excused absence for a father following the birth of their child provided a doctor’s excuse.

County boards are required to provide academic supports options including but not limited to work provided virtually, and a homebound instructor for weekly visits. Schools shall refer the pregnant and parenting student to a “pregnancy help organization” by providing a list of pregnancy or postpartum organizations.

The bill removes requirement for attendance director and assistant directors to prepare a report for submission by the county superintendent to the state superintendent on school attendance. It removes requirement for a state board rule that sets forth absences that are excluded for accountability purposes.

Finally, this legislation also modifies the criminal penalties for parents or custodians found in violation of the compulsory attendance law by removing the court’s ability to require the parent, guardian, custodian attend school with the student.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: June 7, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

Senate Bill 578

COMMITTEE SUBSTITUTE AS AMENDED

SHORT TITLE: Creating offense of burglary.

CODE REFERENCE: §61-3-11 (Amends and Reenacts)

SUMMARY:

This bill clarifies that the dwelling house or its adjoining outbuilding referenced in the statute establishing the offense of breaking and entering or entering without breaking, is a dwelling house or outbuilding belonging to another person.

The bill also clarifies that a dwelling or outbuilding is considered to be that “of another” if the person knows that he or she is precluded from being on the property by a court order entered in a divorce, domestic violence, or bail matter.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: June 7, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

Senate Bill 583

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to employer liability and damages in civil actions involving commercial motor vehicles.

CODE REFERENCE: §55-7-32 (New)

SUMMARY:

This tort reform bill places a \$5 million cap on the noneconomic damages a plaintiff may recover against a commercial motor vehicle operator. Of note, that cap is per plaintiff and per occurrence on personal injury and wrongful death claims.

For a defendant to take advantage of the cap, it must have liability insurance in the amount of at least \$3 million dollars. Additionally, the cap would not apply in certain circumstances where, at the time of the incident, the operator of the commercial motor vehicle was: (1) under the influence of drugs or alcohol; (2) refused to submit to a breathalyzer exam; (3) driving in excess of the hours permitted under state/federal law; (4) engaging in reckless driving; (5) operating an overloaded vehicle (unless the vehicle had a valid excess weight permit); or (6) engaging in distracted driving.

There is an indexing provision for raising the cap, which is similar to the medical malpractice damages cap. Specifically, the cap would be adjusted upward annually using the consumer price index, but it could never exceed 150 percent of the original \$5 million dollar cap.

The cap becomes effective on July 1, 2024, and it applies to claims arising after that date.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: July 1, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

Senate Bill 623

STRIKE AND INSERT AMENDMENT AS AMENDED

SHORT TITLE: Requiring DMV to provide images of certain individuals to Secretary of State for voter identification purposes.

CODE REFERENCE: §3-2-11 (Amends and Reenacts)

SUMMARY:

W. Va. Code §3-2-11 requires the Division of Motor Vehicles (DMV) to transmit specific biographical information that it obtains from each applicant for a driver's license or identification card to the Secretary of State for voter identification purposes. Senate Bill 623 adds a photograph of the applicant to the list of information transmitted.

The bill updates requirements for the DMV to create a regular process to ensure that any applicant to register to vote through the DMV is a U.S. citizen eligible to vote in West Virginia, and likewise to ensure that persons who are noncitizens of the United States have not and cannot register to vote. In furtherance of this purpose, it requires the DMV to transmit the information it obtains purporting to document an applicant's status as a U.S. citizen to the Secretary of State.

The bill specifies that these amendments go into effect January 1, 2025.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: January 1, 2025

ACTION BY GOVERNOR: Signed March 26, 2023

Senate Bill 624

STRIKE AND INSERT AMENDMENT AS AMENDED

SHORT TITLE: Cancelling voter registration records for individuals no longer WV residents.

CODE REFERENCE: §3-2-6 and §3-2-27 (Amends and Reenacts)

SUMMARY:

This bill specifies the time at which voter registration closes for both online and in-person registration prior to an election.

The bill adds a new requirement that county clerks must cancel a person's voting record once the Secretary of State notifies the clerk that the person is no longer a West Virginia citizen and has obtained a driver's license in another state, based on information provided by the Division of Motor Vehicles.

The bill specifies that these amendments go into effect January 1, 2025.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: January 1, 2025

ACTION BY GOVERNOR: Signed March 27, 2024

Senate Bill 632

COMMITTEE SUBSTITUTE AS AMENDED

SHORT TITLE: Relating to Dangerousness Assessment Advisory Board multi-disciplinary study group.

CODE REFERENCE: §27-6A-12 (amends and reenacts)

SUMMARY:

Senate Bill 632 continues the multi-disciplinary study group created by Senate Bill 232, which was passed during the 2023 Regular Session. The study group is charged with developing a strategic plan for a “sequential intercept model” to divert adults and juveniles with mental illness, development disabilities, cognitive disabilities, and substance use disorders away from the criminal justice system into treatment and to promote continuity of care and interventions. Pursuant to Senate Bill 232, the study group produced a report in November 2023 that was presented to the Joint Standing Committee on the Judiciary.

This bill continues the study group so that it can keep working. It specifies that individuals with brain injuries are to be included among the population of individuals with cognitive disabilities who are one of the subjects of the study. It adds four members to the study group: a designee of the Department of Veterans Assistance, a designee of the Department of Health Facilities, a senator appointed by the President of the Senate, and a delegate appointed by the Speaker of the House.

The bill updates the reporting provisions. It requires the study group to submit a supplemental report with findings and recommendations to the President of the Senate and Speaker of the House of Delegates on or before November 30, 2024. Thereafter, it requires the study group to submit an annual report to the President and the Speaker updating its findings and recommendations on topics specified by the Joint Standing Committee on the Judiciary, the Joint Standing Committee on Finance, the Joint Standing Committee on Health, or the Legislative Oversight Committee on Regional Jail and Correctional Facility Authority.

The bill requires the study group to form a steering committee consisting of the Chairman of the Dangerousness Assessment Advisory Board, the Statewide Forensic Clinical Director, and the Statewide Forensic Coordinator. It provides the steering committee with the authority to enter into grant-funded contracts for administrative support services, to enter into MOUs with study group members, and to seek grant funding.

Finally, the bill makes several technical corrections to clarify the agencies that are included as members in the study group and update references to former DHHR agencies.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: March 9, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

Senate Bill 649

COMMITTEE SUBSTITUTE

SHORT TITLE: Clarifying per diem compensation for certain judges recalled to service.

CODE REFERENCE: §5-10-48 and §51-9-10 (Amends and Reenacts)

SUMMARY:

This bill updates provisions regarding retired justices of the Supreme Court of Appeals and retired judges of the Intermediate Court of Appeals, circuit courts, and family courts who are recalled and assigned to temporarily serve as senior judges or justices by the Supreme Court of Appeals.

The bill authorizes per diem compensation for senior family court judges of \$325 per day, plus reimbursement for actual and necessary expenses. The bill further provides that the combined total per diem compensation and retirement benefits paid to a senior family court judge during a single calendar year may not exceed the annual salary of a sitting family court judge, except under certain extraordinary circumstances as ordered by the Supreme Court of Appeals.

DATE OF PASSAGE: March 7, 2024

EFFECTIVE DATE: June 5, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

Senate Bill 679

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Regulating certain plant-based derivatives, hemp-derived cannabinoid products, and Kratom.

CODE REFERENCE: §11-16-23, §19-12E-12, §19-12F-1, §19-12F-3, §19-12F-4, §19-12F-7, §19-12F-8, §19-12F-9, §19-12F-11, and §60-7-13 (Amends and Reenacts); §19-12F-9a (New)

SUMMARY:

This bill updates provisions relating to the manufacturing, processing, distributing, or sale of hemp-derived cannabinoid products and kratom products.

The bill clarifies that all penalties imposed by the Alcohol Beverage Control Administration (ABCA) will be deposited into the existing Alcohol Beverage Control Enforcement Fund, to be used for the ABCA enforcement activities. It expands the purposes for which the fund may be used and increases the amount that may be retained at the end of each fiscal year from \$20,000 to \$200,000.

The bill updates legislative findings, definitions, and requirements for permitting, registration, taxation, labeling, enforcement, and rulemaking relating to hemp-derived cannabinoid products under the Industrial Hemp Development Act (§19-12E-1 *et seq.*) and kratom products under the Select Plant-Based Derivatives Regulation Act (§19-12F-1 *et seq.*), respectively. It requires coordination between ABCA, Department of Agriculture, and the Tax Department for enforcement purposes.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: March 9, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

Senate Bill 732

COMMITTEE SUBSTITUTE

SHORT TITLE: Requiring cooperation between law-enforcement agencies and military authorities.

CODE REFERENCE: §15-10-7 (Amends and Reenacts)

SUMMARY:

This bill facilitates the sharing of information relating to military members who may be the victims or perpetrators of crimes. The legislation first permits the prosecuting attorney or assistant prosecuting attorney to provide relevant information to designated military staff upon a written request.

The bill next expands the information that may be provided after the written request from military staff. Existing law already provided information may be provided for (1) violations of military codes/ directives, (2) state and federal criminal law violations, and (3) sexual assault/harassment investigations and reports. The information provided is expanded to include information and records about offenses that are generally confidential (such as sexual offenses, child abuse, human trafficking, etc.).

Finally, this legislation imposes a duty upon law enforcement, campus police, and prosecuting attorneys to respond to a written request for information pertaining to an alleged offender or victim who is a member of either (1) the National Guard or (2) an armed forces service component located in our state. That response is to be provided within a reasonable time after receiving the request.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

Senate Bill 751

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Creating online charitable raffles.

CODE REFERENCE: §47-21A-1, §47-21A-2, §47-21A-3, §47-21A-4, §47-21A-5, §47-21A-6, §47-21A-7, §47-21A-8, §47-21A-9, §47-21A-10, §47-21A-11, §47-21A-12, §47-21A-13, §47-21A-14, §47-21A-15, §47-21A-16, §47-21A-17, §47-21A-18, §47-21A-19, §47-21A-20, §47-21A-21, §47-21A-22, §47-21A-23, §47-21A-24, §47-21A-25, §47-21A-26, §47-21A-27, §47-21A-28, §47-21A-29, and §47-21A-30 (New)

SUMMARY:

Senate Bill 751 adds a new Article 21A to Chapter 47. Article 21A is nearly identical to Article 21, which governs charitable raffles, except that Article 21A allows for charitable and public service organizations to hold online raffles. Article 21A does not include language that does not apply to online raffles, such as the definitions of “concession” and “joint raffle occasion” and the restriction on the use of raffle equipment.

The bill provides the legislative intent of this bill and defines terms, including, but not limited to, definitions of “platform provider”, “online raffle”, “online raffle occasion”, and “virtual present”.

The bill authorizes certain online raffles by charitable or public service organizations without a license; limits the value of prizes and cumulative gross proceeds; and imposes recordkeeping requirements.

The bill includes requirements for license applications and prohibits transfer of an online raffle license.

The bill provides requirements and restrictions for an annual license, including a requirement to utilize geo-location or geo-fencing technology to ensure that patrons are located within the state. It requires licensees to maintain its servers in West Virginia. It requires the Tax Commissioner to list active licensees on its website, and licensees to include a hyperlink to the Tax Commissioner’s website on tickets and to display their license at their physical location as provided on their application.

The bill provides requirements and restrictions for a limited occasion license for two or more charitable or public service organizations holding a joint online raffle occasion and provides requirements and restrictions. It similarly requires the Tax Commissioner to list active licensees on its website, and licensees to include a hyperlink to the Tax Commissioner’s website on tickets and to display their license at their physical location as provided on their application.

The bill imposes an annual license fee of \$500 and limited occasion licensee fee of \$50, with revenues being used to support investigatory activities. It provides that the gross proceeds of an online raffle are exempt from certain state and local taxes.

The bill specifies information that must be included in an application for a license.

The bill authorizes a process to seek approval to modify the terms and conditions of a license.

The bill authorizes licensees to adopt rules consistent with the provisions of the article and rules promulgated thereunder and requires that any rules so adopted be advertised on the licensee's website and posted at the place of operation.

The bill includes provisions regarding prizes awarded and specifies the value of real or personal property or merchandise prizes.

The bill authorizes a licensee to pay a salary to operators of charitable online raffles and places restrictions on salary, who may be a paid operator, and number of paid operators.

The bill authorizes certain expenses to be paid out of gross proceeds of the online raffle and places restrictions on when and how net proceeds and interest must be spent. It authorizes the Tax Commissioner to disapprove certain contracts and leases in connection with an online raffle and makes the attempt to engage in transactions under a disapproved contract grounds for revocation or suspension of a license. It provides a process to seek approval to expend net proceeds after the specified one-year period.

The bill contains recordkeeping and bookkeeping requirements and authorizes audits.

The bill authorizes a licensee to advertise its online raffles.

The bill provides requirements and restrictions on an annual platform provider license. It provides for an annual license fee of \$500 and specifies information that must be included in the application for licensure. It contains recordkeeping and bookkeeping requirements specific to annual platform provider licensees.

The bill establishes the felony offense of knowingly conducting or participating in a fraudulently or deceptively conducted or administered online raffle with intent to defraud, which is punishable by fine of \$500 to \$10,000 and/or imprisonment for 1 to 5 years.

The bill establishes the misdemeanor offense of knowingly obtaining or assisting another person in obtaining an online raffle license or platform provider license under false, deceptive, or fraudulent pretenses, which is punishable by fine of \$500 to \$10,000.

The bill establishes the misdemeanor offense of knowingly violating any provision of the article other than §47-21A-20 or §47-21A-21, which is punishable by fine of \$100 to

\$1,000, and for a second or subsequent violation, by fine of \$100 to \$100,000 and/or confinement up to one year.

The bill establishes a civil penalty of up to \$10,000 for violation of any provision of the article or for failure to perform any of the duties or obligations imposed under the article other than the §47-21A-20 or §47-21A-21.

The bill authorizes rulemaking by the Tax Commissioner. It provides grounds for denial of an application for licensure or modification of a license. It provides grounds and procedures for revocation, suspension, or non-renewal of a license. It authorizes and provides procedures for the Commissioner to issue an emergency order to suspend a license.

The bill requires licensees to file financial reports and specifies information to be included in the report.

The bill requires a copy of each license to be filed and recorded with the clerk of the county commission of the county of the licensee's physical operations. It requires an out-of-state platform provider licensee to provide a hyperlink on its website to the license. It requires copies of applications to be available in the Tax Commissioner's office.

The bill prohibits persons convicted of a felony, misdemeanor for gambling offense, or violation of §47-20-1 *et seq.* to obtain a license, conduct an online raffle, or lease or provide the premises for online raffles to a licensee within 10 years from conviction.

The bill declares net proceeds of online raffle games which accrue to the West Virginia State Fair are considered to be used for charitable or public service purposes, and any proceeds allowed by the State Fair Board to be paid to or retained by persons conducting or overseeing online raffles are considered to be expenses incurred by the State Fair Board.

The bill authorizes the West Virginia State Fair Board to annually apply for a State Fair online raffle license. It specifies who may conduct the online raffles. It imposes a license fee of \$500. It exempts the State Fair raffle license from certain provisions of the article. It requires the application to include a copy of any agreement between the board and persons or entities to conduct online raffle occasions. It authorizes the board to adopt rules for holding online raffles.

The bill provides additional remedies available to the Tax Commissioner, including revocation, suspension, or renewal of a license; placement of a licensee on probation and payment of a probation supervision fee of at least \$2,000; requiring licensees to replace officers who knew or should have known of a material violation; requiring licensees to prohibit members, supporters, volunteers involved in acts of material violation from future online raffles; imposing a civil penalty of \$100 to two times the annual gross proceeds derived by the license for each material violation, an a civil penalty of \$500 to two times the annual gross proceeds for a subsequent offense; and any combination of

these remedies. The bill provides administrative procedures for orders and appeals of orders. It requires fines, penalties, and fees other than the probation supervision fee to be deposited into the General Revenue Fund.

DATE OF PASSAGE: March 8, 2023

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

Senate Bill 755

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Providing safeguards for online sales of tobacco products.

CODE REFERENCE: §16-9E-1, §16-9E-2, §16-9E-3, §16-9E-4, §16-9E-5, §16-9E-6, and §16-9E-7 (Amends and Reenacts)

SUMMARY:

This bill amends most sections within Article 9E of Chapter 16, which regulates delivery sales of cigarettes to consumers in West Virginia. The bill expands the reach of this article beyond solely cigarettes to other types of tobacco products, including electronic smoking devices; updates the scope of a delivery sale to include remote delivery sales (e.g., those made via internet or mobile app); and updates the requirements sellers must comply with respect to age verification, shipping and labeling, registration and reporting, and collection of taxes.

The bill amends the definition of “delivery sale”, “legal minimum purchase age”, and “mails” or “mailing”; adds two new defined terms (“electronic smoking device” and “tobacco product”); and eliminates other defined terms which no longer appear in the legislation (“adult”, “shipping container”, and “shipping documents”).

The bill prohibits delivery sales of any tobacco product to any individual under the legal minimum purchase age in West Virginia, and requires a person who accepts a purchase order, sells, mails, delivers, or causes to be delivered any tobacco product in connection with a delivery sale to comply with applicable requirements for age verification, shipping, registration and reporting, as well as tax collection and other state laws generally applicable to sales of tobacco requirement including excise and sales taxes, license and revenue-stamping requirements, and escrow or other payment obligations.

The bill prohibits a person from accepting a purchase order, selling, mailing, delivering, or causing to be delivered any tobacco product that is subject to 15 U.S.C. §375 *et seq.* (the Prevent All Cigarette Trafficking Act or “PACT Act”) unless it complies with all applicable requirements for age verification, shipping, labeling, registration, and reporting under the PACT Act, and it updates these requirements accordingly. The bill also updates requirements for collection of taxes.

With respect to age verification, the bill authorizes sellers to use a check box on a website or mobile application to confirm the full name, birth date, and registered address of a purchaser prior to accepting a delivery sale for a tobacco product if the purchaser provided this information when registering as a user of the website or application, and if

the person verified the information through a database to ensure that the purchaser is at least 21 years of age. The bill provides that a person who obtains a consumer's electronic signature upon delivery of a tobacco product is deemed to satisfy 15 U.S.C. §376a.

The committee substitute changes existing references to "cigarettes" throughout the article to the broader category of "tobacco products".

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: June 7, 2024

ACTION BY GOVERNOR: SIGNED March 27, 2024

Senate Bill 768

INTRODUCED

SHORT TITLE: Providing exception for sharing of confidential child welfare records.

CODE REFERENCE: §49-6-110 (New)

SUMMARY:

This bill permits the Department of Human Services ("DHS", which was formerly DHHR) to share confidential information regarding a child who either runs away or is determined missing when that child is not in the custody of the DHS.

The information may be shared with law enforcement agencies or the National Center for Missing and Exploited Children without the permission of the parent or guardian. Of note, this proposed legislation would bring the Department into federal foster care compliance.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

Senate Bill 778

COMMITTEE SUBSTITUTE

SHORT TITLE: Amending certain qualifying offenses to enhance sentences of repeat offenders.

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

SUMMARY:

Senate Bill 778 adds to and modifies the list of offenses which upon conviction allow for an enhanced sentence if the person has one or more prior felony convictions. It corrects several citations and adds the following offenses:

1. §61-3-12 (felony burglary);
2. §61-2-9c (wanton endangerment with firearm);
3. §61-3-18 (felony transfer and receiving stolen goods);
4. §61-3-19 (felony bringing stolen goods into West Virginia);
5. §61-3-20 (felony embezzlement);
6. §61-3-20a (felony embezzlement by fiduciary);
7. §61-3-21 (felony embezzlement by common carrier);
8. §61-3-22 (falsifying accounts);
9. §61-3-24 (obtaining money or property by false pretenses);
10. §61-3-24a (fraudulent use of credit card);
11. §61-3-54 (identity theft);
12. §61-5-10 (escape from prison or jail under felony);
13. §61-8A-2 (distributing/showing obscene materials to a minor);
14. §61-8A-4 (use of obscene matter to seduce a minor);
15. §61-8A-5 (use of a minor to make obscene matter); and
16. §61-8B-11b (school personnel sex with student).

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

Senate Bill 786

COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to massage therapy establishments.

CODE REFERENCE: §30-37-13 (Amends and Reenacts); §30-37-14 (New)

SUMMARY:

This bill requires massage establishments to be licensed July 1, 2025. Current law specifies July 1, 2023. It also limits the biennial establishment license fee set by the Board to a maximum of \$100.

The bill adds a new section authorizing the Board's Executive Director to issue an emergency order suspending a massage establishment's operation where, upon inspection, violations of the statute and rules promulgated under it are observed. The massage establishment is required to post a notice of the emergency order and may not reopen or remove the notice until it complies with the statute and rules. The bill also contains a fine of \$1,000 per day of violation. It allows a court to triple the fines if the Board must take legal action against the massage establishment for continued violations. The Board may also be reimbursed for legal and administrative costs.

DATE OF PASSAGE: March 7, 2024

EFFECTIVE DATE: June 5, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

Senate Bill 803

STRIKE AND INSERT AMENDMENT AS AMENDED

SHORT TITLE: Updating definitions for assessment of real property.

CODE REFERENCE: §11-4-3 (Amends and Reenacts)

SUMMARY:

This bill amends provisions relating to the assessment of real property. The bill amends the definitions used by County Assessors to determine whether a property will qualify for a Class II or residential tax class designation.

The bill amends the definition of “owner” to include homeowners who have vacated their most recent primary residence and have listed that property for sale with a licensed real estate broker and has not leased said property since vacating. It further defines “owner” to mean a person who is using and occupying all or a portion of a parcel of real estate, the freehold of which is possessed by a family trust, as long as the parcel is used and occupied by the owner exclusively for residential purposes.

The bill amends the definition of “used and occupied by the owner thereof exclusively for residential purpose” to include actual habitation by an immediate family member of the owner, and to include situations where real property is unoccupied at time of assessment and is retained by the property owner for noncommercial purposes and was most recently used or occupied by an immediate family member of the owner as a residence.

The bill defines a new term, “family trust”, as a trust the trustees and beneficiaries of which include only the person who is possessed of the freehold and his or her immediate family members.

The bill defines another new term, “immediate family member”, as the spouse, child, sibling, parent, grandparent, grandchild, stepparent, stepchild, stepsibling, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, sister-in-law and adoptive relationships. The bill also contains an internal effective date of July 1, 2024.

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: March 9, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

Senate Bill 837

INTRODUCED

SHORT TITLE: Reorganizing offices of Public Defender Corporations to conform to circuit reconfiguration.

CODE REFERENCE: §51-2-1 (Amends and Reenacts)

SUMMARY:

Senate Bill 837 requires public defender corporations organized pursuant to the provisions of §29-21-1 to conform to the judicial circuits created during the 2023 Regular Session by July 1, 2025.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: March 9, 2024

ACTION BY GOVERNOR: Signed March 13, 2024

Senate Bill 850

COMMITTEE SUBSTITUTE

SHORT TITLE: Updating Consumer Credit and Protection Act

CODE REFERENCE: §46A-6N-1, §46A-6N-4, §46A-6N-6, §46A-6N-7, and §46A-6N-9 (Amends and Reenacts)

SUMMARY:

This bill updates provisions regulating consumer litigation financing to reflect the issuance of an ethics opinion, evolution of the market, and a desire for increased transparency of transactions.

The bill amends the definition of “consumer” to mean any person who resides, is present, or is domiciled in this state who claims an entitlement to a judgement, award, settlement, or verdict with respect to a legal claim but does not include an attorney representing that person.

This bill amends the definition of “litigation financing” or “litigation financing transaction” to mean a transaction in which financing is provided to a consumer in return for a consumer's assigning to the litigation financier a right to receive payment contingent in any respect on the outcome of the legal claim. It removes from the list of transactions which are expressly excluded from the definition a commercial tort claim, as defined by §49-9-102. It also amends another exclusion as lending or financing arrangements between an attorney or law firm and a lender, provided such arrangements do not give the lender any particularized interest in the outcome of any legal claim or portfolio of legal claims. It adds a final exclusion for nonprofit organizations, provided any financing provided to or by the nonprofit organization does not afford the non-party agreeing to pay legal expenses profit from the legal claim beyond repayment of the amount it has contractually agreed to provide, along with reasonable interest not to exceed the Wall Street Journal prime rate at the time the agreement was executed, plus three percent per year.

The bill expands a general prohibition on third-party assignment of a contract between a natural person and litigation financier.

The bill requires disclosure by a party or counsel of third-party financing agreements in litigation if under the agreement a litigation financier other than an attorney permitted to charge a contingent fee representing a party has a right to receive compensation contingent in any respect on the outcome of the legal claim. This includes the disclosure of agreements that provide financing to an attorney or law firm where the

right to receive repayment is contingent in any respect on the outcome of the consumer's legal claim.

The bill includes law firms among those who may refuse to enforce a litigation financing contract.

The bill clarifies that the 18% cap on annual fees applies only to a consumer who is a natural person.

DATE OF PASSAGE: March 9, 2023

EFFECTIVE DATE: June 7, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

House Bill 4026

INTRODUCED

SHORT TITLE: Authorizing the Department of Administration to promulgate a legislative rule relating to state owned vehicles.

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

SUMMARY:

This is a current legislative rule and only amends the sunset date.

DATE OF PASSAGE: February 2, 2024

EFFECTIVE DATE: February 2, 2024

ACTION BY GOVERNOR: Signed February 13, 2024

House Bill 4086

COMMITTEE SUBSTITUTE

SHORT TITLE: Authorizing certain agencies of the Department of Commerce to promulgate legislative rules.

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

SUMMARY:

This bill is Department of Commerce Bundle, known as Bundle 10. It contains 18 rules from the Division of Forestry, Division of Labor, Office of Miners' Health, Safety and Training, Division of Natural Resources, and the Public Energy Authority.

House Bill No. 4086. Division of Forestry, Sediment Control During Commercial Timber Harvesting Operations – Licensing, 22 CSR 02

The rule amends a current legislative rule. This rule outlines the process for obtaining timber harvesting licenses under W.Va. Code §19-1B-4. It adds language relating to the Intermediate Court of Appeals.

House Bill No. 4087. Division of Forestry, Sediment Control During Commercial Timber Harvesting Operations – Certification, 22 CSR 03

The rule amends a current legislative rule. This rule outlines the certification of persons supervising timbering operations under W.Va. Code §19-1B-7. It adds language relating to the Intermediate Court of Appeals.

House Bill No. 4088. Division of Labor, Minimum Wage, Maximum Hours, and Overtime Compensation, 42 CSR 08

The rule amends a current legislative rule concerning the Minimum Wage and Maximum Hours Standards for Employees Act, W. Va. Code §21-5C-1 *et seq.* Substantively, the rule updates certain exemptions from the Fair Labor Standards Act (FLSA) for executive, administrative, and professional employees to reflect changes made to those standards by the US Department of Labor. An Individual performing services for or who is employed by his or her parent, child, or spouse and an individual employed as a seasonal employee by an amusement park are exempt from coverage under the Act. The primary amendment is to the threshold earnings for exemption, raising it from \$455 per week to \$684 per week.

House Bill No. 4089. Division of Labor, Licensing of Elevator Mechanics and Technicians and Registration of Apprentices, 42 CSR 21A

The rule amends a current legislative rule. The rule reflects passage of amendments to the Elevator Safety Act (§21-3C-1 *et seq.*) included in Enrolled Committee Substitute for House Bill 2006 from the 2021 Regular Session and passage of the RECAP Act, Enrolled Committee Substitute for House Bill 4634 from the 2022 Regular Session.

The rule amends provisions relating to administrative hearings and appeal provisions to require taking appeals to the Intermediate Court of Appeals, requires elevator mechanics to obtain 16 hours of continuing education every two years, and allow the obtaining of a valid West Virginia license from another state even if that other state does not license or issue other authorization to perform elevator work.

House Bill No. 4090. Office of Miners' Health, Safety and Training, Safety Provisions for Clearing Crews, 56 CSR 02

The rule amends a current legislative rule. This rule details the safety provisions applicable to clearing crews while working on mining property in West Virginia. The changes to the rule are mostly technical in nature, updating non-substantive language and reformatting in accordance with the Secretary of State's recommendations for rules. The rule does require first aid kits to contain an automated external defibrillator (AED).

House Bill No. 4091. Office of Miners' Health, Safety and Training, Protective Clothing and Equipment, 56 CSR 04

The rule amends a current legislative rule. This rule regulates protective clothing and equipment to be used by miners while underground in West Virginia. The changes to the rule are technical in nature, updating non-substantive language and reformatting in accordance with the Secretary of State's recommendations for rules.

House Bill No. 4092. Office of Miners' Health, Safety and Training, Reporting Requirements for Independent Contractors, 56 CSR 10

The rule amends a current legislative rule. This rule governs the reporting requirements for independent contractors registered with the MHSTO. The only substantive change is to the timing of required reports, which is changed from monthly to quarterly. Other changes are also made incorporating suggested formatting from the Secretary of State's Office.

House Bill No. 4093. Office of Miners' Health, Safety and Training, Assessing Health and Safety Violation Penalties, 56 CSR 12

The rule amends a current legislative rule. This rule establishes the procedure by which the MHSTO assesses civil monetary penalties for violations of the state's mining laws. The amendments to the rule are technical in nature, updating non-substantive language and reformatting in accordance with the Secretary of State's recommendations for rules.

House Bill No. 4094. Office of Miners' Health, Safety and Training, Application Process for the West Virginia Innovative Mine Safety Technology Tax Credit Act, 56 CSR 14

The rule amends a current legislative rule. This rule details the application process for the West Virginia Innovative Mine Safety Technology Tax Credit. The changes to the rule are mostly technical in nature, updating non-substantive language and reformatting in accordance with the Secretary of State's recommendations for rules, and updating the address to which the completed application is to be submitted.

House Bill No. 4095. Office of Miners' Health, Safety and Training, Program for the Sharing of Information Between Employers, 56 CSR 18

The rule amends a current legislative rule. This rule establishes a program for sharing of information between the agency and employers of certified individuals working in the mining industry concerning said individuals' certification status. It adds language relating to the Intermediate Court of Appeals. The remaining amendments to the rule are technical in nature, updating non-substantive language and reformatting in accordance with the Secretary of State's recommendations for rules.

House Bill No. 4096. Office of Miners' Health, Safety and Training, Substance Abuse Screening, Standards and Procedures, 56 CSR 19

The rule amends a current legislative rule. This rule describes the practices and procedures to be used by the mining industry when conducting substance abuse screenings of certified individuals. The rule amends a current legislative rule by extending the sunset date.

House Bill No. 4097. Office of Miners' Health, Safety and Training, Operating Diesel Equipment in Underground Mines in WV, 56 CSR 23

The rule amends a current legislative rule by extending the sunset date.

House Bill No. 4098. Division of Natural Resources, Hunting, Fishing and Other Outfitters and Guides, 58 CSR 11

The rule amends a current legislative rule by revising the references to specify the new appeal process under the Intermediate Court of Appeals.

House Bill No. 4099. Division of Natural Resources, Commercial Whitewater Outfitters, 58 CSR 12

The rule amends a current legislative rule by revising the references to specify the new appeal process under the Intermediate Court of Appeals.

House Bill No. 4100. Division of Natural Resources, Revocation of Hunting and Fishing Licenses, 58 CSR 23

The rule amends a current legislative rule by revising the references to specify the new appeal process under the Intermediate Court of Appeals.

House Bill No. 4101. Division of Natural Resources, Cabwaylingo State Forest Trail System Two Year Pilot Project Permitting ATVs and ORVs, 58 CSR 36

The rule amends a current legislative rule by extending the sunset date.

House Bill No. 4102. Division of Natural Resources, Lifetime Hunting, Trapping and Fishing Licenses, 58 CSR 67

This rule implements the provisions of Enrolled Senate Bill 733, enacted during the 2023 Regular Session authorizing the Department of Natural Resources (DNR) to issue lifetime nonresident statewide licenses for hunting and trapping, fishing, and bear hunting. The Act authorizes the DNR to issue lifetime nonresident stamps for trout fishing, archery deer hunting, muzzleloading deer hunting, turkey hunting, and national forest hunting, fishing, and trapping. The fee for the lifetime licenses and stamps is set at 23 times the equivalent annual nonresident licenses and stamps but is reduced proportionally based on the age of non-resident children applying for a license.

House Bill No. 4103. Public Energy Authority, Rule to Petition the Public Energy Authority for Approval of Decommissioning or Deconstruction Activities Related to Any Coal, Oil, or Natural Gas Fueled Power Plant, 53 CSR 05

The rule is new. The rule was due to the passage of Enrolled Senate Bill 609 during the 2023 Regular Session. It governs private decisions regarding decommissioning or deconstruction of fossil fueled power plants.

All fossil fuel power generators are governed by the rule. Regulated utilities must first obtain approval from the PSC before petitioning the PEA. Likewise, if the facility is connected to the PJM Interconnection, petitioners must obtain a deactivation analysis from PJM. Also, the petitioner must have started the initial closure process with DEP.

Petitioners must file a notice with the PEA prior to petitioning for approval. The notice is to identify the facility, its operators, and certain statistics. If applicable, the notice is to include PSC's order and the analysis performed by PJM. A summary and explanation of need is required in the notice. The petitioner must also propose a third-party evaluator. The PEA will review the evaluator and approve or deny the petitioner's choice.

The rule includes a long list of required information to be included within the notice and the petition. Among the requirements, submittals are to include an objective analysis of the environmental, economic, and social impact of decommissioning or deconstruction on the state and localities; other potential uses of the facility; actions to be taken to prevent safety concerns; a list of entities responsible for environmental liabilities; anticipated job losses; estimated tax revenue losses; and a financial statement.

The filing must also include: the third-party evaluator's analysis; all federal, state, or local permits; certificates issued by governmental agencies; and a physical survey. A timeline and detailed description of the planned activities must also be included. A public comment period is part of the process.

The PEA may approve a petition if based on the facts, circumstances, and public comments, it would be unreasonable to withhold approval. If the PEA denies the petition, the petitioner may address problems identified by the PEA and resubmit its petition.

Under the rule, all documents filed with the PEA are public documents and will be published on the Authority's website. If a petitioner believes filings contain confidential or proprietary information, it is to include a letter describing the information. The PEA Chair l determines what information is exempt from public disclosure.

The Legislative Rule-Making Review Committee approved an amendment to the rule that responded to comments received by the Public Energy Authority that the Authority indicated it did not have time to consider. The amendment is contained in the Committee Substitute.

DATE OF PASSAGE: February 29, 2024

EFFECTIVE DATE: February 29, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

House Bill 4110

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

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

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

SUMMARY:

This bill is the Miscellaneous Bundle, known as Bundle 9. It contains 58 rules from numerous agencies and boards. They are: Board of Accountancy; Board of Acupuncture; Department of Agriculture; Barbers and Cosmetologists; Counseling; Dentistry; Dieticians; Election Commission; Massage Therapy; Medical Imaging and Radiation Therapy Board of Examiners; Board of Medicine; Nursing Home Administrators Licensing Board; Board of Optometry; Board of Osteopathic Medicine; Board of Pharmacy; Board of Professional Surveyors; Board of Psychologists; Board of Registered Professional Nurses; Board of Respiratory Care; Secretary of State, and Treasurer.

House Bill No. 4110. Board of Accountancy, Board Rules and Rules of Professional Conduct, 1 CSR 01

The rule amends a current legislative rule relating to the licensing and examination of CPA candidates. The rule amends the examination process and the timeframe by which a candidate must complete each discrete portion of the exam to qualify as a CPA.

Under the current rule a candidate's credit for any test section passed is valid for 18 months and all four test sections must be passed within an 18-month rolling period. The change lengthens both timeframes to 30 months. This change reflects the National Association of State Boards of Accountancy's adoption of an identical amendment to its Model Rules.

House Bill No. 4111. Board of Acupuncture, Applications for Licensure to Practice Acupuncture, 32 CSR 03

The rule amends a current legislative rule relating to application for licensure to practice acupuncture. The rule: eliminates the requirement that applicants be of good moral character and provide three references and requires applicants be free of felony convictions to conform with §30-36-10; requires proficiency in English; Section 11: Updates the section title to Board Educational Documentation, modifies the application review prior to issuing a license to include the Executive Director, provides notification for oral examinations for apprenticeship applicants; clarifies oral exams are held in

English, clarifies what an applicants' educational documents may consist of, and provides the Board the ability to require an applicant to complete additional exams in lieu of an oral exam; decreases the required continuing education (CE) hours for applicants restoring an inactive license from 48 to 30 hours or from 24 hours to 15 hours if inactive less than a year; and states that the Board will not issue a license for the practice of telehealth.

House Bill No. 4112. Department of Agriculture, Frozen Desserts and Imitation Frozen Desserts, 61 CSR 04B

The rule amends a current legislative rule. The rule: updates the federal standards that are incorporated by reference into the rule; defines “validation of cleaning process” (VCP) procedure, which allows the commissioner to assist a manufacturer in learning how better to clean its frozen dessert unit through an onsite visit for a fee of \$50 per hour; lowers registration and late fees; removes provisions on contamination; splits the enforcement policy into one for mix manufacturers or distributors and one for manufacturers of dairy or imitation dairy frozen dessert products; states that it is the responsibility of the manufacturer to clean, sanitize, and operate the machine or machines that produce product and adds an appendix setting forth a schedule of fees.

Fiscal Impact: The rule projects a fiscal impact of \$22,435 in the first year and \$28,175 for each full fiscal year thereafter. Projected increase is based on making registration costs dependent on the number of machines and on an increase in penalty provisions for third and fourth notices of violation.

House Bill No. 4113. Department of Agriculture, Certified Applicator Rules, 61 CSR 12A

The rule amends a current legislative rule. It adds a definition of “immediate family member”; adds a new section regarding the procedures for administering the written examination required for certification; and adds qualifications for certified commercial or private applicators and noncertified applicators.

The rule modifies the categories for commercial applicators, adding specific categories for Predator Control, Sewer Root Control, and Aerial Pest Control and adds a category for General Fumigation for private applicators.

The rule updates general certification standards for pesticide applicators; specifies the responsibilities of supervisors of noncertified applicators; amends the specific standards for various types of commercial applicators; adds certification standards for Predator Control, Aerial Pest Control, and Sewer Root Control applicators; specifies the elements of required training programs for applicators; and as to record-keeping requirements, mandates that additional information be collected and maintained about

the products used and the circumstances of their application. It also adds provisions regarding records concerning the training and qualifications of noncertified applicators.

House Bill No. 4114. Department of Agriculture, Licensing to Pesticide Businesses, 61 CSR 12B

The rule amends a current legislative rule. It updates record-keeping requirements for pesticide businesses. The rule requires keeping a record of the brand name of any pesticides sold. For restricted-use pesticides and pesticides registered under emergency exemption, the business must keep a record of the residence or principal place of business of the purchaser or receiver of the pesticide, the entity which issued the certification and the applicator's category and expiration date.

House Bill No. 4115. Department of Agriculture, West Virginia Shellfish Rule, 61 CSR 23B

The rule amends a current legislative rule. It updates the version of the Guide for the Control of Molluscan Shellfish that a laboratory may use to analyze samples taken by the commissioner under the rule from the 2007 version to the 2023 edition. It also adds that only labs certified by a laboratory certification officer in accordance with the National Shellfish Sanitation Program (NSSP) may perform NSSP testing.

House Bill No. 4116. Department of Agriculture, Select Plant-Based Derivative Products, 61 CSR 30

The rule amends a current legislative rule. It updates an existing rule regulating hemp products largely to add regulation of kratom and kratom products. These changes are in response to passage of Enrolled Committee Substitute for Senate Bill 220 which passed during the 2023 Regular Session.

Kratom regulation is accomplished through adding the Latin name for kratom *Mitragyna speciosa* to provisions concerning hemp, and by collectively referring to both hemp and kratom products as "select plant-based derivative" products.

The rule makes white labelers subject to all penalty and enforcement actions related to the white-labeled product, that registrants must maintain product documentation for a minimum of two years after manufacture, and that Kratom products are exempt from registration until January 1, 2025.

The rule adds a section specifically regulating the distribution and sale of kratom products. The section largely mirrors the provisions of the existing rule concerning the registration and sale of hemp products. It also adds a section intended to limit the advertising and marketing of hemp and kratom products to minors.

The rule revises the level of cannabinoid (for hemp products) and alkaloid (for kratom products) content that will trigger a label misbranding offense from 10 percent above or below the stated amount to 20 percent. Further, the wording of label warnings is revised in the rule, but the requirements are suspended until January 1, 2025, so long as a sign is prominently displayed with the warnings on it.

The rule adds a separate enforcement section for select plant-based products. Monetary penalties are increased and the knowing manufacture, processing, distribution, or sale of hemp or kratom products that are contaminated with a toxic or illegal substance is denominated a felony.

The Legislative Rule-Making Review Committee's recommendation was to not authorize this rule.

Fiscal Impact: \$5,105,840 in the first year, and \$1,195,840 each year thereafter.

House Bill No. 4117. Department of Agriculture, Agritourism, 61 CSR 37

This rule amends a current legislative rule by amending the sunset date.

House Bill No. 4118. Barbers and Cosmetologists, Procedures, Criteria and Curricula for Examination and Licensure of Barbers, Cosmetologists, Nail Technicians, Aestheticians, and Hair Stylists, 3 CSR 01

The rule amends a current legislative rule to bring the criteria for licensure into compliance with the Code.

Section 3 removes “good moral character” language from the requirements for licensure. Currently, the Board approves schools of barbering or cosmetology. The rule transfers school approval for these schools as well as schools of hairstyling to the WV Council for Community & Technical College Education (CCTCE), the Department of Education in conjunction with CCTCE or the Department of Education in conjunction with the Division of Corrections and Rehabilitation.

The rule adds language requiring the Board to recognize reciprocity for military barbers with a DD214. All other amended sections delete language referencing a table showing the clock-hour requirements that appeared at the end of the rule which was also deleted.

The House amended the rule by striking out the current subsection relating to reciprocity which allows an applicant from another state who attended school or graduated from a school of barbering or cosmetology in another state to get specified hours towards graduation in this state. The amendment requires the Board to issue a license to practice to an applicant

who holds a comparable license in another state who meets specified criteria.

House Bill No. 4119. Barbers and Cosmetologists, Application for Waiver of Initial Licensing Fees for Certain Individuals, 3 CSR 15

The rule is new and largely mirrors recent legislation that waives initial licensure fees for low-income individuals and military families. It outlines the procedure for applying for a waiver and the required documentation. It also references the administrative process for any rejected candidate.

House Bill No. 4120. Barbers and Cosmetologists, Cosmetology Apprenticeship, 3 CSR 16

The rule is new and is modeled off the existing rule for Barber Apprenticeships. It defines terms, sets forth qualifications and requirements for the apprentice and the provider, sets forth requirements for the salon, sets forth the requirements where the apprentice is already a licensed barber, provides the Board authority to revoke an apprentice's permit, and describes the administrative due process procedure if the revocation is challenged.

House Bill No. 4121. Counseling, Licensing, 27 CSR 01

The rule amends a current legislative rule to reflect the Board of Examiners in Counseling's shift to an online portal for licensing and dues. It allows the supervision of an applicant requirement to be satisfied in-person or via any secured, encrypted telecommunication modality, removes the phrase "or its equivalent" when referencing either a master's degree or a doctoral degree in counseling, reduces the time a candidate may take the test three times in an effort to pass from 18 to 12 months, and requires all parties to agree to a patient's change from one counselor to another.

House Bill No. 4122. Counseling, Marriage and Family Therapist Licensing Rule, 27 CSR 08

The rule amends a current legislative rule to reflect the Board of Examiners in Counseling's shift to an online portal for licensing and dues. It allows the supervision of an applicant requirement to be satisfied in-person or via any secured, encrypted telecommunication modality, removes the phrase "or its equivalent" when referencing either a master's degree or a doctoral degree in counseling, reduces the time a candidate may take the test three times in an effort to pass from 18 to 12 months, and requires all parties to agree to a patient's change from one counselor to another.

House Bill No. 4123. Dentistry, Practitioner Requirements for Accessing the West Virginia Controlled Substances Monitoring Program Database, 5 CSR 10

The rule amends a current legislative rule which establishes requirements for licensees of the Board regarding accessing the West Virginia Controlled Substance Monitoring Program (CSMP) database. The rule eliminates obsolete definitions and adds a definition for "Benzodiazepine". It adds a new section which requires practitioners dispensing Schedule II, III, IV, or V controlled substances to register with the CSMP and maintain online access within 30 days of obtaining a new license or within 30 days of reinstatement of licensure, requires licensees to certify compliance when renewing a license, and provides the Board the ability to conduct an audit to verify compliance.

The section relating to patients not suffering terminal illnesses: requires practitioners, before prescribing, Schedule II controlled substances, opioids, or benzodiazepines to patients to apply for access to the CSMP; requires a practitioner to document the initial CSMP data review in the patient's medical record after reviewing CSMP; provides if treatment continues the practitioner shall access the CSMP at least annually, but may review the CSMP data more frequently with each review being documented in the patient's medical record; and requires a practitioner to review the CSMP when they have a concern with abuse of a controlled substance and disallows the practitioner's ability to provide a controlled substance without reviewing the CSMP, even in situation where access to the CSMP is unavailable such as power outage, equipment failure, or other disaster.

Finally, the rule updates disciplinary proceeding to include administrative penalties with all fines collected being transferred to the Fight Substance Abuse Fund.

House Bill No. 4124. Board of Licensed Dietitians, Licensure and Renewal Requirements, 31 CSR 01

The rule amends a current legislative rule. It adds a new provision which prorates application fees for candidates applying in the second half of the fiscal year (\$35), moves the approval of the written examination from the Board to the Commission on Dietetic Registration (a member of the national commission for health certifying agencies), updates the provisional permit fee from \$46 to \$50 to match the Code, and amends the provision regarding renewal of licenses which have lapsed for a period exceeding three years to remove the requirement that the licensees retake the written examination. That requirement is deleted and instead only the lapsed registration number is required to be provided to the Commission for the verification of credentials.

The House amended the rule to go back to the current reinstatement fee of \$46. The rule raised the fee to \$50.

House Bill No. 4125. Board of Licensed Dietitians, Continuing Educational Requirements, 31 CSR 05

The rule amends a current legislative rule. Many of the amendments are to align the rule with the requirements and practices of the Commission on Dietetic Registration (CDR). It deletes criteria for approval of CE providers as the Board prefers pre-approved

providers. A catch-all is also provided that any provider approved by the CDR is approved by the board.

The rule allows for webinars and independent study to complete CE hours and requires all licensees to complete a one hour, West Virginia specific CE every two years. This session is includible in the licensee's 60-hour requirement, not in addition thereto. The requirement goes into effect July 1, 2024.

House Bill No. 4126. Board of Licensed Dietitians, Telehealth Practice: Requirements; Definitions, 31 CSR 07

The rule is new. It states specifically that medical nutritional therapy and nutrition therapy is considered to occur where the patient is located when telehealth is used.

The rule provides that only a licensed dietitian may practice telehealth under the same standard of care as in-person therapy. A dietitian may establish a new patient via telehealth or may treat existing patients who formerly were only treated in-person.

House Bill No. 4085. Economic Development, Operation of Motor Sports Complexes and Events, 145 CSR 19

The rule is new. This rule governs the operation of motorsports complexes and events and is in response to the passage of Enrolled Committee Substitute for House Bill 2569 which passed during the 2023 Regular Session. The rule: defines terms; sets forth requirements for safety equipment, which include the use of safety checks prior to the use of all equipment, and regulates the alteration or manipulation of equipment beyond manufacturers specifications; establishes safety requirements for the design of racing surfaces, including how racing surfaces are to be maintained and constructed, the design of entrance and exits, and the design of safety features; establishes safety requirements for the provision of run-off areas and their maintenance; and establishes requirements for fire and other emergency services.

The House amended the rule by striking out the specific requirements for helmets, eye protection, safety belts, shoulder harnesses, crotch belts, seat design, and clothing requirements and instead requires they be covered by the safety procedures and requirements of the sanctioning body hosting the event.

The House amendment also rewrites provisions relating to fences, infields, flag stations and flagmen, runoff areas and fire services.

House Bill No. 4127. Election Commission, Corporate and Membership Organization Political Activity, 146 CSR 01

The rule amends a current legislative rule which governs corporate and membership organization political activity.

The rule revises the definition of “corporate political action committee” by removing the requirement that the committee come into existence by specific written authorization of the Board of Directors, or equivalent governing body, of one or more corporations, the purpose of which is to solicit funds for, and make expenditures and contributions on behalf of political committees. It adds a requirement that the committee may only accept contributions from its restricted group.

The rule revises the definition of “membership organization political action committee” by specifying that the committee must be organized as a separate segregated fund of the membership organization and adds a definition for the term “unaffiliated political action committee”. It also revises the description of one of three specified types of political action committees by deleting language describing the committee as a political action committee established as a separate segregated fund by membership organization and substitutes language describing the committee as a membership organization political action committee.

House Bill No. 4128. Election Commission, Regulation of Campaign Finance, 146 CSR 03

The rule amends a current legislative rule. It is in response to Enrolled House Bill 4419 which passed during the 2022 Regular Session. The amendments update the maximum value of a coordinated expenditure between a state political party and caucus campaign committee with a candidate for statewide office (excepting the judiciary) consistent with the passage of that bill. The amount of the coordinated expenditure specifically coming from a party or caucus and specifically in relation to a general election was previously capped at \$5,000 while still not being considered a “contribution”. That cap is removed.

House Bill No. 4129. Election Commission, Application and Approval Process for Secretary of State Expenditures from the County Assistance Voting Equipment Fund, 146 CSR 07

This rule is new. It provides criteria governing the application and approval process for expenditures by the Secretary of State from the County Assistance Voting Equipment Fund, for the purchase of election equipment or security upgrades that further the administration of federal elections held in the state. Expenditures are limited to equipment, systems, infrastructure, physical and cyber security upgrades, or any other lawful purpose permitted by the pertinent appropriation from Congress.

The rule defines terms, authorizes the Secretary of State to apply to the State Election Commission for approval of a grant from the County Assistance Voting Equipment Fund to purchase election equipment or security upgrades, establishes

requirements for information to be included on the application and requires the State Election Commission to refer the application to the Help America Vote Act Grant Board which must convene no later than 30 days after receipt of referral; and requires the Board to issue a written recommendation.

The rule also sets forth requirements for the State Election Commission's consideration of the Board's final recommendation. sets forth requirements for State Election Commission approval of grants and provides that the State Elections Commission's decision is full and final.

Board of Funeral Service Examiners, Funeral Director, Embalmer, Apprentice, Courtesy Card Holders and Funeral Establishment Requirements, 06 CSR 01

The House added this rule to the committee substitute and directed the Board to remove the requirement that the licensee in charge of a funeral home have a crematory operator's certificate.

An additional amendment contained in the strike and insert amendment to require direct rather than general supervision of a funeral director apprentice in conformity with the Code.

House Bill No. 4130. Massage Therapy, General Provisions, 194 CSR 01

The rule amends a current legislative rule which establishes licensing procedures. The rule: increases the hours of supervised academic training for licensure from 500 to 625 hours; revises licenses for renewal to include CE units which adhere to the Federation of State Massage Therapy Boards; expands the current standards for CE hours required by the Board to not just conform to the National Certification Board of Therapeutic Massage and Bodywork (NCTMB) and to conform with Enrolled Committee Substitute for Senate Bill 665 which went into effect on June 8, 2023 (W. Va. Code §30-37-7); and prohibiting issuance of a license to practice telehealth.

House Bill No. 4131. Massage Therapy, Schedule of Fees, 194 CSR 03

The rule amends a current legislative rule which establishes the schedule of fees for the Board. The rule creates an initial application and renewal establishment license fee of \$100, to be paid biennially and clarifies how all fees and monies are to be paid to the Board. (Certified check, personal bank check, and money order are acceptable. No cash payments.)

House Bill No. 4132. Massage Therapy, Establishment Licensure, 194 CSR 07

This rule is new. It establishes the policies and procedures for obtaining and renewing an establishment license. The rule defines terms, requires massage

establishments to be licensed on or before October 1, 2023, mandates that such establishments employ or contract only with licensed massage therapists to provide massage therapy or services, requires therapists to document their authorization to work in the country, provides exemptions to requiring a massage establishment license, primarily for solo practitioners, clarifies that an establishment's license may be suspended or revoked for violating the rule, any applicable state law, rule, policy, or local ordinance, and provides that establishment license holders who are not licensed massage therapists must obtain two hours of continuing education every two years beginning July 1, 2023, provide a certificate of completion to the Board by October 1, 2025, and submit the documentation for biennial renewal of the establishment license.

House Bill No. 4133. Medical Imaging and Radiation Therapy, Medical Imaging and Radiation Therapy Board of Examiners, 18 CSR 01

The rule amends a current legislative rule. The purpose of the rule is to establish the general requirements for licensure of Medical Imaging and Radiation Therapy Technologists in WV. The rule the fees for duplicate licenses, change of name, and for WV State only Examination fee. The rule also provides that telehealth practice is inapplicable to the performance of medical imaging and radiation therapy.

House Bill No. 4134. Board of Medicine, Licensure, Practice Requirements, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants, 11 CSR 01B

The rule amends a current legislative rule. The rule provides the regulatory framework for the licensure, regulation and discipline of physician assistants licensed by the WV Board of Medicine. The rule has been amended to align with the continuing education requirements with Enrolled Committee Substitute for House Bill 3317, which became effective March 2, 2023. It replaces the definition of drug diversion training and best practice prescribing of controlled substances training with the definition for Risk Assessment and Responsible Prescribing of Controlled Substances training, which includes some modernizations. The rule mandates initial licensees to take the required training within one year of licensure, unless they are eligible for a waiver.

House Bill No. 4135. Board of Medicine, Continuing Education for Physicians and Podiatric Physicians, 11 CSR 06

The rule amends a current legislative rule. The rule has been amended to align with the continuing education requirements with Enrolled Committee Substitute for House Bill 3317, which became effective March 2, 2023. It replaces the definition of drug diversion training and best practice prescribing of controlled substances training with the definition for Risk Assessment and Responsible Prescribing of Controlled Substances training, which includes some modernizations. The rule mandates initial licensees to take the required training within one year of licensure unless they are eligible for a waiver.

House Bill No. 4136. Board of Medicine, Permitting and Disciplinary Procedures: Educational Permits for Graduate Medical Interns, Residents and Fellows, 11 CSR 12

The rule amends a current legislative rule by amending the sunset date.

House Bill No. 4137. Nursing Home Administrators Licensing Board, Nursing Home Administrators, 21 CSR 01

The rule amends a current legislative rule. The amendments to the current rule increase certain fees paid to the Board on behalf of applicants and licensees. The amendments represent the first increase in fees in 20 years.

According to the Board, 80-90% of the fees represented in these changes are paid by employers on behalf of licensees.

5.2.d – Annual renewal fee increased from \$300 to \$400

5.2.g – Active not practicing annual fees increased from \$0 to \$100

5.6.c – Emergency permit fee increase from \$300 to \$400

5.7.b – Temporary permit fee increased from \$300 to \$400

Fiscal impact: Estimated revenue increase of \$122,000.00

The House amended the rule by adding language to the section relating to suspension or revocation, hearing and judicial review that states “Failure to cooperate with OHFLAC or the designated Medicare Beneficiary and Family Centered Care-Quality Improvement Organization is grounds for disciplinary action and further review by the Board.”

House Bill No. 4138. Board of Optometry, Rules of the Board, 14 CSR 01

The rule amends a current legislative rule. This rule is amended to bring the rule into compliance with §30-1B-1 *et seq*, which was revised during the 2023 Regular Session to allow military trained veterans to use their qualifications for state licensure and to authorize temporary practice permits for military veterans and their spouses while completing licensure requirements to practice in the state. The statute provides that any veteran trained by the military is eligible for licensure in the state if all requirements provided by statute are met. A temporary permit may also be issued to a military trained veteran or the spouse of currently serving member of the military if he or she is licensed in another jurisdiction that fulfills the minimum requirements for West Virginia.

House Bill No. 4139. Board of Optometry, Continuing Education, 14 CSR 10

The rule amends a current legislative rule. The rule has been amended to align with the continuing education requirements with Enrolled Committee Substitute for House Bill 3317, which became effective March 2, 2023. The rule requires a person who receives his or her initial license to complete training in drug diversion and best practice prescribing of controlled substance within one year of the optometrist receiving his or her license.

House Bill No. 4140. Board of Optometry, Injectable Pharmaceutical Agents Certificate, 14 CSR 11

The rule amends a current legislative rule. The rule currently authorizes licensed optometrists, upon successful completion of necessary qualifications, to receive a certificate to use injectable pharmaceutical agents. The rule requires that injection certification requirements include, but are not limited to, successful passage of all sections of the National Board of Examiners in Optometry, including all sections pertaining to injections. The rule also deletes the section containing reporting requirements associated with certificate holders, including reporting information relating to injections and the maintenance of a logbook on all injections.

The House amended the rule by adding a new subsection on reporting. The rule deleted a subsection on reporting. The new provisions are the same except for a few provisions, including requiring report comply with HIPAA.

House Bill No. 4141. Board of Optometry, Eyelid Procedures, 14 CSR 14

The rule is new. It establishes guidelines for eyelid procedures not currently authorized by the current rule. The rule expands the scope of practice to include the removal, biopsy, and treatment of non-malignant growths of the “ocular adnexa” which are the “protecting and supporting structures of the eye, including the eyebrow, eyelids, and lacrimal apparatus.

House Bill No. 4142. Board of Osteopathic Medicine, Licensing Procedures for Osteopathic Physicians, 24 CSR 01

The rule amends a current legislative rule. The rule sets forth the manner in which the Board of Osteopathic Medicine issues licenses for osteopathic physicians.

The amendments to the rule incorporate the provisions of Enrolled Committee Substitute for House Bill 3317, which became effective March 2, 2023. They revise the drug diversion training and best practices for prescribing controlled substances.

In the definition section the current definition of "drug diversion training" has been changed to "Risk Assessment and Responsible Prescribing of Controlled Substances training". The components of the training are primarily the same as the previous version

of the rule. There has also been additional training added for managing patients with more than one controlled substance prescription.

In Section 4 the requirements for continuing education related to risk assessment and responsible prescribing of controlled substances are set out. Within one year of obtaining an initial license the licensee is required to complete three hours of training in a Board of Osteopathic Medicine approved course. There is an exclusion for persons who do not prescribe controlled substances. The course must be repeated prior to renewal of a license.

House Bill No. 4143. Board of Osteopathic Medicine, Osteopathic Physician Assistants, 24 CSR 02

The rule amends a current legislative rule. The rule set forth the manner in which the Board of Osteopathic Medicine issues licenses for osteopathic physician assistants.

The amendments to the rule incorporate the provisions of Enrolled Committee Substitute for House Bill 3317, which became effective March 2, 2023. They revise the drug diversion training and best practices for prescribing controlled substances.

In the definition section the current definition of "drug diversion training" has been changed to "Risk Assessment and Responsible Prescribing of Controlled Substances training". The components of the training are primarily the same as the previous version of the rule. There has also been additional training added for managing patients with more than one controlled substance prescription.

In Section 14 the requirements for continuing education related to risk assessment and responsible prescribing of controlled substances are set out. Within one year of obtaining an initial license the licensee is required to complete three hours of training in a Board of Osteopathic Medicine approved course. There is an exclusion for persons who do not prescribe controlled substances. The course must be repeated prior to renewal of a license.

House Bill No. 4144. Board of Pharmacy, Licensure and Practice of Pharmacy, 15 CSR 01

The rule amends a current legislative rule. The purpose of this rule is to provide for the licensure and regulation of the practice of pharmacy. The changes to the rule make two substantive modifications.

The first provides that the return of any drugs are required to be returned to a donor as prescribed in state code and in 15 CSR 19 a rule regarding donated drugs promulgated by the Board of Pharmacy.

The more complex amendments are to the section related to Sterile Pharmaceutical Compounding. The standards were specified in the rule have been updated to provide that West Virginia follow national guidance by adopting the following by reference the United State Pharmacopeia Chapter regarding compounding and sterilization and hazardous drugs and the Controlled Environment Testing Associations Certification Guide for Sterile Compounding Facilities.

House Bill No. 4145. Board of Pharmacy, Continuing Education for Licensure of Pharmacists, 15 CSR 03

The rule amends a current legislative rule. The purpose of this rule is to provide for the continuing education for persons licensed to practice of pharmacy. The changes to the rule were made necessary by the passage of Enrolled Committee Substitute for House Bill 3317, which became effective March 2, 2023. That bill required that any healthcare provider that prescribes, administers, or dispenses a controlled substance is required to have drug diversion training within one year of the issuance of an initial license. The rule requires pharmacists to have a minimum of two hours of drug diversion training within one year of initial licensure.

House Bill No. 4146. Board of Pharmacy, Registration of Pharmacy Technicians, 15 CSR 07

The rule amends a current legislative rule. The purpose of this rule is to provide for standards for training and registration of pharmacy technicians. The changes to the rule were made necessary by the passage of Enrolled Committee Substitute for House Bill 2754 during the 2023 Regular Session of the Legislature. That bill added pharmacy technicians to the list of persons who may administer immunization in accordance with treatment guidelines issued by the Center for Disease Control for adults and to persons aged three (3) to seventeen (17) with written consent of a parent. The rule makes changes consistent with the passage of this legislation.

The changes to the rule also update the section of the rule related to Identification requirements for Technicians and Technician trainees. The rule currently provides for approval of name tags by the Board and provided specific requirements for the identification. These specifics were eliminated.

House Bill No. 4147. Board of Pharmacy, Immunizations Administered by Pharmacists, Pharmacy Interns, and Pharmacy Technicians, 15 CSR 12

The rule amends a current legislative rule. The purpose of this rule is to provide for standards for the administration of immunizations by pharmacists, pharmacy interns, and pharmacy technicians. The changes to the rule were made necessary by the passage of Enrolled Committee Substitute for House Bill 2754 during the 2023 Regular Session of the Legislature. That bill added pharmacy technicians to the list of persons who may

administer immunization in accordance with treatment guidelines issued by the Center for Disease Control for adults and to persons aged three (3) to seventeen (17) with written consent of a parent. The rule makes changes consistent with the passage of this legislation.

The current section relating to immunizations has been deleted and replaced by a new section, providing requirements for a pharmacy technician to administer immunizations. This section includes direct supervision by a pharmacist, appropriate training, registration with the Board of Pharmacy, and continuing education.

Record keeping requirements have been updated to provide for notification to the patient's primary care physician if the patient has a primary care physician. A new has been added which contains practical training requirements necessary prior to the administration of immunizations.

House Bill No. 4148. Board of Pharmacy, Centralized Prescription Processing, 15 CSR 14

The rule amends a current legislative rule. The purpose of this rule is to provide for the outsourcing of prescription drug order filling to a central fill pharmacy. A central fill pharmacy is a pharmacy under contract with the originating pharmacy to fill or refill a patient's prescription medication. Schedule II drugs are excluded from this practice.

The rule would extend this practice to allow a pharmacist or a pharmacy intern or technician working under direct supervision of a pharmacist to access the pharmacy's database remotely to process medication orders. The rule has controls to protect confidentiality and the integrity of protected health information, prohibits the duplication, downloading or removal of any part of the pharmacies database, and requires that the pharmacy's electronic data base may only be accessed outside the pharmacy via a virtual private network.

House Bill No. 4149. Board of Pharmacy, Pharmacy Permits, 15 CSR 15

The rule amends a current legislative rule. The purpose of this rule is to provide for a registration and permitting process for a pharmacy prior to operation. The rule contains a new section requiring notice upon a planned temporary, permanent, or emergency closure of the pharmacy.

For a temporary closure a facility is required to post notification at the pharmacy entrance, on a telephone greeting, and on the pharmacy's webpage. The notification must contain an estimated length of the closure and provide options for prescription pick-up. The Board is required to be notified if the closure will last for greater than two business days.

For a permanent closure the pharmacy must provide notification to all patients 15 calendar days prior to the closure. The notice must: provide the last day the pharmacy will be open; the name, address, and phone number of an alternative pharmacy that will take possession of the patient's medication needs; instruction on how to transfer the patient's prescription; and the last day a transfer may be initiated. The notice must be in writing, by publication, by the posting of a closing notice at the pharmacy entrance, on telephone greetings, and any webpage. Any newly filled prescriptions in the 15-day closure period requires the same information be provided to the patient. The DEA must also be placed on notice of the transfer of any controlled substances to another registered pharmacy.

The pharmacists-in-charge must: inventory all controlled substances; if the pharmacy dispenses prescription, transfer all prescriptions to another licensed pharmacy, update the pharmacy operating status with all electronic prescribing vendors, and remove all signage and other indications that there is a pharmacy including any electronic presence such as a webpage; within 30 days of closure inventory all non-controlled substances, remove all prescription and non-prescription drugs, devices, and related supplies by returning them, transferring them to another licensed healthcare provider, or destroying them and completing proper documentation; and provide written notice to the Board containing specified information. Once the Board receives notice of permanent closure of a pharmacy a registration may not be renewed.

House Bill No. 4150. Board of Pharmacy, The Substitution of Biological Pharmaceuticals, 15 CSR 17

The rule amends a current legislative rule by amending the sunset date.

House Bill No. 4151. Board of Professional Surveyors, Examination and Licensing of Professional Surveyors in West Virginia, 23 CSR 01

The rule amends a current legislative rule, which establishes procedures and requirements for the examination and licensing of professional surveyors. The rule revises the length of time (from six years to 10 years) that an applicant can continue to fail the test before sitting out for two years and provides clarification of the documents and fees an applicant must submit when reapplying after having sat out for two years.

House Bill No. 4152. Board of Psychologists, Disciplinary and Complaint Procedures for Psychologists, 17 CSR 04

The rule amends a current legislative rule, which sets forth procedures for the investigation and resolution of complaints against psychologists. The rule sets forth the jurisdiction of the Intermediate Court of Appeals to hear an appeal by any person adversely affected by an order of the Board.

The House amended the rule to require the Board to determine if the conduct alleged in the complaint, if true, would constitute a violation of the rules of the Board or falls within the jurisdiction of the Board before issuing an acknowledgement to the complainant.

House Bill No. 4153. Board of Psychologists, Contested Case Hearing Procedure, 17 CSR 05

The rule amends a current legislative rule, which sets forth procedures for the adjudication of contested case hearings before the Board of Examiners of Psychologists. The rule sets forth the jurisdiction of the Intermediate Court of Appeals to hear an appeal by any person adversely affected by an order of the Board.

House Bill No. 4154. Real Estate Commission, Licensing Real Estate Brokers, Associate Brokers, and Salespersons and the Conduct of Brokerage Business, 174 CSR 01

The rule amends a current legislative rule in response to Enrolled House Bill 3203 which passed during the 2023 Regular Session, relating to the licenses that are permitted in other jurisdictions, continuing education requirements, and licensed brokers needing to have a place of business in West Virginia.

The rule sets forth verbatim, application, education and reciprocity requirements from the bill, requires an applicant for a broker's license to take an examination, amends the time frame relating to late fees and establishes that December 31 as the renewal date for cancelled licenses was defined as one that was not renewed by December 31 of the year in which the license expired, requires a person with a cancelled license to comply with all requirements for obtaining a new license, including the examination requirement, strikes out the language relating to multi-year licenses, and requires a licensee inform the Commission of any criminal action to which the licensee is a defendant, including misdemeanor traffic violations.

House Bill No. 4155. Real Estate Commission, Schedule of Fees, 174 CSR 02

The rule amends a current legislative rule. It amends the date wherein late fees attach to a licensee from "September 30" to "August 31", the date when enhanced late fees attach to a licensee from "December 31" to "October 31", and the date when further enhanced late fees attach to a licensee from "January 1 through June 15th" to "November 1 through December 31". Licenses not renewed on or before December 31 after the renewal fee was due cannot be renewed. The duplicate license fee is reduced from \$10.00 to \$5.00 and the \$10.00 fee for a change of name fee relating to a licensee is deleted.

House Bill No. 4156. Real Estate Commission, Real Estate Courses, Course Providers, and Instructors, 174 CSR 03

The rule amends a current legislative rule. It requires any reports or information to be submitted to the Real Estate Commission's "digital education tracking system or on a form prescribed by the Commission" prior to January 31 of the following year. This is an online vendor system that is utilized by the Real Estate Commission. The subsection on distance education has been amended to require that the design and delivery of each distance learning course be certified by the Association of Real Estate License Law Officials (ARELLO) or by another institution whose certification standards are considered equivalent by the Commission. The certified distance learning courses are based upon the same number of hours that would be credited for an equivalent live course and must also include a commission approved comprehensive assessment.

House Bill No. 4157. Registered Nurses, Policies, Standards, and Criteria for the Evaluation, Approval and National Nursing Accreditation of Prelicensure Nursing Education Programs, 19 CSR 01

The rule amends a current legislative rule. The rule establishes the evaluation, approval, and accreditation of schools of nursing. It amends the number of hours nurse administrators may spend on their teaching responsibilities by allowing them to teach more hours if they request to do so. Currently the number of hours may not exceed six academic semester credits per year or no more than three academic credits per semester.

The rule that defines the term Online Program Manager and requires any programs that contract with online program managers (OPM) to submit contracts with OPM's to the Board for review prior to being implemented and to meet required standards.

House Bill No. 4158. Registered Nurses, Requirements for Registration and Licensure and Conduct Constituting Professional Misconduct, 19 CSR 03

The rule amends a current legislative rule. The rule allows nurses educated in English-speaking countries to be exempt from the English Proficiency Exam, as permitted by the Commission on Graduates of Foreign Nursing Schools. The rule changes the renewal date from October 31 to June 30 to coincide with the state fiscal year.

House Bill No. 4159. Registered Nurses, Advanced Practice Registered Nurse Licensure Requirements, 19 CSR 07

The rule amends a current legislative rule. The rule establishes the licensure for Advanced Practice Registered Nurses. The rule requires documentation of three graduate hours in pharmacokinetics for licensure; provides for the issuance of a temporary permit for an applicant for endorsement licensure to practice; and requires the submission of current certification or recertification for renewal or reinstatement to be submitted directly to the Board.

House Bill No. 4160. Registered Nurses, Fees for Services Rendered by the Board, 19 CSR 12

The rule amends a current legislative rule. The rule establishes the fees charged by the Board for services rendered. The rule adds an “APRN Initial License Fee” of \$35. This was apparently omitted when the Board submitted a change to the rule during the 2022 Legislative session.

House Bill No. 4161. Respiratory Care, Student Temporary Permit, 30 CSR 09

The rule amends a current legislative rule. It requires direct supervision of a student temporary permit holder, establishes a ratio of 1:1 per shift relating to licensed respiratory therapists to student temporary permit holders, allows a student temporary permit holder to perform procedures if that permit holder has demonstrated the completion of such tasks, with the school and the employer sending completed competency forms to the Board for review, and allows student temporary permit holders the ability to perform a specified list of more complicated/complex skills under specified circumstances.

The rule also allows a student temporary permit holder to perform procedures relating to mechanical ventilation, or procedures on patients in any critical care situation or environment with direct supervision, which is prohibited under the current rule. Finally, the rule deletes the prohibition against a student temporary permit holder performing positive pressure procedures and performing any procedure not specifically contained with the rule.

The House amended the rule to clarify that completed competency forms are submitted to the Board for approval as well as review.

House Bill No. 4162. Secretary of State, Guidelines for the Use of Nicknames and Other Designations on the Ballot, 153 CSR 14

The rule amends a current legislative rule. It clarifies guidelines to be used by the Secretary of State and the County Board of Ballot Commissioners in determining how a name is to be printed on the ballot, clarifies provisions relating to use of gender honorifics (e.g., Miss, Ms., Mrs., Mr.) and generational suffixes (e.g., Jr., Sr.) in candidate’s name on the ballot, and removes the entire section limiting nicknames other than shortened forms of legal names to one word.

House Bill No. 4163. Secretary of State, Combined Voter Registration and Driver Licensing Fund, 153 CSR 25

The rule repeals a current legislative rule which establishes guidelines for the administration of the remainder of the Combined Voter Registration and Driver Licensing Fund.

Engrossed House Bill 4450 which passed during the 2022 Regular Session repealed W. Va. Code §3-2-12, which created the Combined Voter Registration and Driver Licensing Fund. This rule is being repealed because the fund is now depleted.

House Bill No. 4164. Secretary of State, Election Administration, Infrastructure, and Minimum Security Standards and Reserve Funding, 153 CSR 55

The rule is new. It establishes minimum standards for election administration, infrastructure, and security, which includes standards regarding cyber and physical security, and a minimum reserve funding requirement for each county from funds transferred to the separate fund for election administration, infrastructure, and security.

The rule defines terms, requires county clerks to develop and maintain an Incident Response Plan (IRP) and sets forth required elements of an IRP, authorizes IRP to be included with or incorporated into a broader County Continuity of Operations Plan (COOP), and requires immediate notification of the SOS's Chief Information Officer upon discovery of a potential or actual cyber incident and submission of a Plan of Actions and Milestones.

The rule has requirements election devices and authorized users and requires county clerk offices to be members of the Center for Internet Security's Election Infrastructure Information Sharing and Analysis Center. County clerk offices must enroll in an external vulnerability scanning program and have an annual vulnerability scan. Establishes scope of vulnerability scanning program. Requires counties to remediate identified critical or high-risk vulnerabilities.

Additionally, the rule requires reporting of identified or suspected election security incidents, sets forth physical requirements for voting equipment, requires various logs, and requires notification of unauthorized access or attempts to gain access to voting equipment, its secure location, or county clerk facilities.

Finally, the rule has provisions regarding the amount of money which must be retained in a county election fund to meet minimum reserve funding, requires counties seeking to transfer funds to meet the minimum reserve fund amount based on the provided formula, and requires County Commission to apply to Secretary of State for permission to transfer any funds in excess of the minimum reserve funding from the county election fund.

House Bill No. 4165. Treasurer, Enforcement of the Uniform Unclaimed Property Act, 112 CSR 05

The rule amends a current legislative rule. Currently, there is a separate rule (112 CSR 16) governing the Unknown and Unlocatable Interest Owner's (UUIO) Act found in

W. Va. Code §37B-2-1 *et seq.* The Treasurer's Office is allowing that rule to sunset and incorporating the act into this rule, which governs the Uniform Unclaimed Property Act, generally.

UUIO provisions are added relating to reporting, payment, or delivery, and unknown and unlocatable interest owners reserved interests.

The House amended the rule by renaming the title of the series to Enforcement of the Uniform Unclaimed Property and the Unknown and Unlocatable Interest Owners Act.

House Bill No. 4166. Treasurer, Jumpstart Savings Program, 112 CSR 20

The rule amends a current legislative rule. This rule sets forth the requirements of the Jumpstart Savings Program. The rule amends sections relating to definitions, the process to open an account, refusal by the board to open an account, termination of an account, contribution and distribution processes, and qualified expenses.

The amendments to the rule include adding qualifying professions pursuant to code eliminating the minimum deposit to reflect the recent statutory change and updating language relating to qualified expenses.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: March 9, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

House Bill 4190

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to the establishment of an alert system for missing cognitively impaired persons.

CODE REFERENCE: §15-3A-7, §15-3B-2, §15-3B-3, §15-3B-4, §15-3B-6, §15-3F-1 (New)

SUMMARY:

This bill designates an alert system for missing cognitively impaired persons and directs the Secretary for the Department of Homeland Security to establish a statewide Purple Alert Plan for missing cognitively impaired persons.

The bill follows the statutory framework for the establishments of the Amber Alert, Silver Alert, Blue Alert, and Green Alert programs and removes obsolete language referring to submission of the plan to the Joint Committee on Government and Finance. It then adds the Purple Alert to the “Guardian Angel Video Monitoring” Program currently in effect for the Amber Alert and Silver Alert and further clarifies that a Silver Alert will only be issued in the event of a missing senior citizen.

This bill also provides a definition for “cognitive impairment” which is “a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgement, behavior, or the ability to live independently or provide self-care, and includes but is not limited to: Alzheimer’s disease or other related dementias, an intellectual or developmental disability, a brain injury, or another mental disability that is not related to substance abuse.”

The Secretary of the Department of Homeland Security is required to establish a “Purple Alert” program authorizing the broadcast media, upon notice from the State Police, to broadcast the alert and is directed to develop a plan for implementation no later than July 1, 2025

The bill then sets forth in the criteria that would activate the Purple Alert:

- The person is believed to have a cognitive impairment;
- The person is believed to be missing, regardless of circumstance;
- An individual who has knowledge that the person is missing has submitted a missing person’s report to the State Police or other appropriate law-enforcement agency;
- The missing person may be in danger of death or serious bodily injury;

- The missing person is domiciled or believed to be located in the State of West Virginia;
- The missing person is, or is believed to be, at a location that cannot be determined by an individual familiar with the missing person, and the missing person is incapable of returning to his or her residence without assistance;
- There is sufficient information available to indicate that a Purple Alert would assist in locating the missing person; and
- The missing cognitively impaired person does not qualify for a Silver Alert or a Missing Endangered Child Alert.

Under this legislation, the State Police shall:

(1) update the broadcast media in a timely manner with new information when appropriately concerning the missing cognitively impaired person; and

(2) notify the Department of Transportation, the Division of Highways, and the West Virginia Turnpike Commission of the “Purple Alert” so they may inform the motoring public. In turn, these authorities may provide information relating to the missing cognitively impaired person and information on how motorists may report any information they have to the State Police or other appropriate law-enforcement agency.

Finally, the bill provides immunity from civil and criminal liability to those who follow the provisions of this new article of code.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: July 1, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

House Bill 4252

INTRODUCED

SHORT TITLE: Uniform Recognition and Enforcement of Canadian Domestic Violence Protective Orders Act.

CODE REFERENCE: §48-28B-1, §48-28B-2, §48-28B-3, §48-28B-4, and §48-28B-5 (New)

SUMMARY:

The bill creates the Uniform Recognition and Enforcement of Canadian Domestic Violence Protective Orders Act, which provides for the West Virginia registration, recognition, and enforcement of Domestic Violence Protective Orders (DVP) issued by Canadian courts.

Under this legislation, if law enforcement determines there is probable cause to believe a valid Canadian DVP exists and has been violated, law enforcement is required to enforce the terms of the Canadian DVP. Presentation of a certified copy of the Canadian DVP is not necessary; however, a certified copy of such an order does, on its face, constitute probable cause to believe that a valid order exists.

If a record of a Canadian domestic violence protective order is not presented, a law enforcement officer may consider other information in determining whether there is probable cause to believe that a valid Canadian domestic-violence protective order exists.

With respect to enforcement of the order by a West Virginia court, a petition is filed by a respondent, or a protected person authorized by law. The West Virginia Rules of Practice and Procedure for Domestic Violence shall govern the proceedings in West Virginia court. Enforcement is limited to the terms of the Canadian DVP.

If a law enforcement officer determines that an otherwise valid Canadian domestic violence protective order cannot be enforced because the respondent has not been notified of or served with the order, the officer shall notify the protected individual. The officer shall make reasonable efforts to contact the respondent. After notice to the protected individual, the officer shall make a reasonable effort to inform the respondent of the order, notify the respondent of the terms of the order, provide a record of the order if available, and allow the respondent reasonable opportunity to comply with the order before enforcement.

This legislation further provides for a process of registering a Canadian DVP in West Virginia, which is the same as registering an out-of-state DVP in this state.

Finally, this bill provides that a fee may not be charged for the registration of a Canadian domestic violence protective order.

DATE OF PASSAGE: January 31, 2023

EFFECTIVE DATE: April 30, 2024

ACTION BY GOVERNOR: Signed February 8, 2024

House Bill 4297

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Law Enforcement Officers Safety Act.

CODE REFERENCE: §15A-3-10 (Amends and Reenacts)

SUMMARY:

House Bill 4297 recognizes that correctional officers with the power to arrest and who the Commissioner has authorized to carry firearms are deemed to be qualified law-enforcement officers as that term is used in 18 U.S.C. §926B (Carrying of concealed firearms by qualified law enforcement officers). It authorizes correctional officers to carry a concealed firearm for self-defense purposes if the Commissioner of Corrections has a written policy to that effect, if such officers annually qualify in use of a firearm pursuant to standards that dare at least equal to those required of sheriff's deputies by the Law-Enforcement Professional Standards Program, and if the Commissioner issues a photo ID and certification card.

It requires the policy to contain provisions to preclude or remove a person from the concealed firearm program, to preclude a person prohibited from possessing or receiving a firearm under federal or state law, and to prohibit a person from carrying a firearm while impaired. It clarifies that the officers must obtain and maintain a suitable firearm and ammunition, that the officers must meet the requirements of 18 U.S.C. §926B, and that the privilege to carry a concealed firearm under these provisions are at the discretion of the Commissioner.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: June 7, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

House Bill 4399

COMMITTEE SUBSTITUTE AS AMENDED

SHORT TITLE: Creating the equitable right to expungement.

CODE REFERENCE: §61-11-25 (Amends and Reenacts)

SUMMARY:

This bill authorizes any person whose charges have been dismissed following a full and successful completion of a pretrial diversion or deferred adjudication to seek expungement of all records relating to the arrest, charges, or other matters arising out of the arrest or charges. The petition must be filed in the circuit court in which the dismissed charges were filed.

The bill prohibits expungement of charges for violation of §61-2-28(a) (domestic battery), §61-2-28(b) (domestic assault), §61-2-9(a) (malicious or unlawful assault), §61-2-9a (stalking, harassment, etc.), §61-2-9(b) (assault), or §61-2-9(c) (battery), where the alleged victim is a family or household member, if the charges are dismissed through completion of deferred adjudication.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: June 7, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

House Bill 4552

STRIKE AND INSERT AMENDMENT

SHORT TITLE: To ensure party affiliation is consistent with candidate's voter registration.

CODE REFERENCE: §3-5-7 (Amends and Reenacts)

SUMMARY:

This bill amends a section of the State Elections Code that regulates the filing of certificates of announcements of candidacies. The certificate of announcement is a sworn statement that an aspiring candidate must file with the Secretary of State, county clerk, recorder, or city clerk, depending on the office sought. For partisan elections, the certificate must include the candidate's political party and a statement that the candidate:

- (A) Is a member and affiliated with that political party as evidenced by the candidate's current registration as a voter affiliated with that party; and
- (B) Has not been registered as a voter affiliated with any other political party for a period of 60 days before the date of filing the announcement.

The current law authorizes the Secretary of State or board of ballot commissioners to refuse to certify the candidacy or to remove the certification upon receipt of a certified copy of the candidate's voter registration record showing that the candidate was registered in a party other than the one named in the certificate during the 60 days immediately preceding the filing of the certificate. It further provides that certification may not be refused on these grounds unless someone files a signed formal complaint and certified copy of the candidate's voter registration record with the officer receiving the certificate of announcement no later than 10 days following the close of the filing period.

The bill clarifies that the candidate's political party named in the certificate of announcement means his or her political party on the date that the certificate is submitted.

The amendment also adds a requirement that the Secretary of State, county clerk, recorder, or city clerk must electronically verify a candidate's current party affiliation prior to accepting a certificate of announcement for a partisan election. Additionally, it provides that the certificate of announcement must be refused if the candidate's actual current party affiliation does not match the party named in the certificate of announcement.

The bill specifies that these amendments go into effect January 1, 2025.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: January 1, 2025

ACTION BY GOVERNOR: March 27, 2024

House Bill 4700

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Banning certain persons from sport wagering activities.

CODE REFERENCE: §29-22D-4 and §29-22D-15 (Amends and Reenacts)

SUMMARY:

This bill requires the Lottery Commission to propose a rule for legislative approval, enumerating the reasons for which patrons of sports gaming may be banned from betting on sports. It sets forth a non-inclusive list of reasons to be included in the rule. The bill also requires the rule set forth a procedure for the filing of complaints against patrons with the Commission and investigation of the complaints with the Commission.

This bill also allows the commission or operator to ban a person from entering the gaming area of a gaming facility conducting sports wagering or the grounds of the licensed gaming facility or participating in the play or operation of any WV Lottery sports wagering until the rule proposed by the Commission is approved for promulgation by the legislature.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

House Bill 4786

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Delivery Network Company (DNC) Insurance Model Act.

CODE REFERENCE: §33-63-1, §33-63-2, §33-63-3, §33-63-4, §33-63-5, and §33-63-6 (New)

SUMMARY:

This bill creates a new article, the “Delivery Network Company Insurance Act” that applies to delivery network companies like Uber Eats, Grubhub, and Door Dash. It clarifies that a network delivery driver is an independent contract of the DNC unless otherwise agreed in writing and removes reference to “underinsured” motorist.

This legislation requires delivery drivers be covered under motor vehicle liability insurance in an amount not less than \$50,000 for bodily injury sustained by one individual in an accident, not less than \$100,000 for bodily injury sustained by all persons injured in an accident, and of not less than \$25,000 for property damage.

Additionally, if the insurance coverage maintained by a delivery network driver has lapsed or does not provide the required coverage, insurance maintained by the delivery network company must then provide coverage. Also, if a dispute arises as to whether an accident occurred during a delivery period, and the delivery network company cannot provide the required information, then the delivery network company’s insurer would be required to pay the claim. Delivery network companies are required to disclose insurance information to their drivers.

The bill preserves an insurer’s abilities, such as to exclude coverage and to seek recovery from another insurer in certain instances.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: June 7, 2025

ACTION BY GOVERNOR: Signed March 27, 2024

House Bill 4837

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Clarifying the duty of banks to retain and procure records.

CODE REFERENCE: §31A-4-35 and §46-3-118 (Amends and Reenacts)

SUMMARY:

In the context of record keeping and the statute of limitations, this bill protects banks from liability and synchronizes the time frames for:

- (1) bank record retention length,
- (2) when financial instruments are deemed abandoned, and
- (3) the statute of limitations to enforce an obligation to pay on a negotiable instrument, including notes, certificates of deposit, and drafts.

The bill eliminates the liability of banks due to the destruction of records after the statutory period for keeping such records, five years from the last entry, last deposit, or trust termination.

As to the statute of limitations in the UCC, it provides that an action to enforce the obligation of a party to pay a note payable must be commenced within five years, not six years. The bill also creates the assumption that an action to enforce the obligation of a demand, savings, or time deposit, including a deposit that is automatically renewable, that is brought more than 10 years after the initial date of the maturity, must be presumed to have been paid and redeemed absent evidence of either:

- (1) Owner consent in a record on file with the holder to renewal; or
- (2) Escheatment to the state pursuant to the Unclaimed Property Act.

The bill similarly shortens the statute of limitations on actions to enforce the obligation of a party to pay a note, a certificate of deposit to pay the instrument, and an accepted draft from six to five years.

Under this legislation, an action to enforce a note is barred if the bank was no longer statutorily required to retain records and actually no longer has such records; or if the note or certificate of deposit has, in accordance with the Unclaimed Property Act, been presumed abandoned, reported to the State Treasurer, and paid, delivered, or caused to be paid or delivered to the State Treasurer.

The bill also provides that no action to enforce the obligation of a party to a certificate of deposit to pay may be maintained against a bank if the bank has destroyed or otherwise disposed of all records relating to the certificate of deposit in compliance with W.Va. Code §31A-4-35 stating that records must be retained for at least five years.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

House Bill 4845

STRIKE AND INSERT AMENDMENT

SHORT TITLE: To prohibit swatting.

CODE REFERENCE: §61-6-20 (Amends and Reenacts)

SUMMARY:

This bill adds new criminal penalties relating to “swatting”, or falsely reporting an emergency incident. The existing statute enumerates four forms of this misdemeanor offense:

1. Initiating or circulating a false report or warning of or impending occurrence of an emergency under circumstances in which it is likely that public alarm or inconvenience will result or that rescue vehicles or emergency apparatus might be summoned;
2. Reporting to an emergency agency or organization an alleged or impending occurrence of an emergency, in which it is likely that public alarm or inconvenience will result or that emergency apparatus or rescue vehicles might be summoned, which did not occur or does not in fact exist;
3. Reporting to a law-enforcement officer or agency the alleged occurrence of any offense or incident which did not in fact occur, or an allegedly impending occurrence of an offense or accident which is not in fact about to occur, or false information relating to an actual offense or incident or to the alleged implication of some person; or
4. Calling or summoning emergency or rescue vehicles or apparatus without just cause.

As amended by this bill, a person who is convicted of an initial violation is guilty of a misdemeanor and subject to a \$500 fine and/or up to six months confinement.

The bill makes a second or subsequent violation, or a violation which results in bodily injury to another person, a felony offense punishable by a \$5,000 to \$10,000 fine and/or one to five years imprisonment.

The bill authorizes courts, prior to sentencing, to order any law enforcement agency or emergency service provider involved in the emergency response to file an itemized statement of costs it incurred during the emergency response within a specified time, and to order the offender to reimburse the agency for all or a portion of those costs.

Finally, the bill clarifies that this section does not apply to any person conducting an authorized emergency drill.

DATE OF PASSAGE: March 6, 2024

EFFECTIVE DATE: June 4, 2024

ACTION BY GOVERNOR: Signed March 22, 2024

House Bill 4911

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Relating to the sale of raw milk.

CODE REFERENCE: §19-1-7 (Amends and Reenacts)

SUMMARY:

This bill authorizes intrastate sales of raw milk if certain labeling requirements are met. It defines raw milk as milk that has not been pasteurized as specified in federal law. It requires any container of raw milk sold to be labeled as “unpasteurized raw milk” with the name and physical address of the seller, date of production, and a specific warning about foodborne illness. It authorizes rulemaking by the Commissioner of Agriculture in consultation with the Department of Health and in compliance with raw milk dairy industry standards.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: June 7, 2024

ACTION BY GOVERNOR: Became Law without Governor’s Signature March 28, 2024

House Bill 4940

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: A squatter cannot be considered a tenant in WV.

CODE REFERENCE: §37-6-31; §55-3C-1; and §55-3C-2 (New)

SUMMARY:

This bill provides protections to landowners from the activities of squatters. It first defines squatter as “a person occupying a dwelling unit who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that dwelling unit.” It then provides that a property owner does not need to commence eviction proceedings in order to remove a squatter from his or her property. Instead, the remedy at law to remove a squatter is one of “trespass,” which is a criminal misdemeanor. Finally, this legislation clarifies that a landlord’s remedy to seek removal of a squatter is through the criminal code.

DATE OF PASSAGE: March 6, 2024

EFFECTIVE DATE: June 4, 2024

ACTION BY GOVERNOR: Signed March 22, 2024

House Bill 4951

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: To facilitate the interstate practice of School Psychology in educational or school settings.

CODE REFERENCE: §18-10R-1, §18-10R-2, §18-10R-3, §18-10R-4, §18-10R-5, §18-10R-6, §18-10R-7, §18-10R-8, §18-10R-9, §18-10R-10, §18-10R-11, §18-10R-12, and §18-10R-13 (New)

SUMMARY:

This bill creates the Interstate Compact for School Psychologists. The bill defines terms, sets forth eligibility requirements for member states, sets forth requirements for a school psychologist to participate in the compact and receive an equivalent license, sets forth locations where an active military member or his or her spouse are considered to hold a home state license, and states that the Compact does not limit the authority of a member state to investigate or impose disciplinary measures on licensees.

The bill also establishes the Commission and sets forth its powers and duties, requires the Commission to facilitate the exchange of information between the Commission and a member state, provides the Commission with rule-making authority, provides for oversight, dispute resolution and enforcement, provides for the effective date of the compact, withdrawal of a member state from the compact, and amendment to the compact.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: June 7, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

House Bill 4967

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to the administration of the Voluntary Remediation and Redevelopment Act to provide new liability protections for persons and companies who wish to purchase and redevelop former industrial properties.

CODE REFERENCE: §22-22-1, *et seq.* (Amends and Reenacts)

SUMMARY:

This bill facilitates economic development and productive use of environmentally contaminated properties or properties that are less desirable because of potential environmental liability.

As background, the Voluntary Remediation and Redevelopment Act ("Act") was created in 1996 to encourage voluntary clean up and redevelopment of contaminated properties by providing certain environmental liability protections. The program under that Act is administered by our state's DEP and provides financial incentives to (1) entice investment at brownfield sites (sites contaminated or perceived to be contaminated) and (2) limit liability under environmental laws for those who remediate sites.

Under this legislation, the DEP can now issue a letter that provides environmental liability protection at any point in the process (as opposed to much later in the process) to prospective innocent landowners and bona fide purchasers of contaminated property. This letter then assists qualified innocent landowners and buyers to plan and finance redevelopment projects on the property before the remediation process is officially finished.

The focus of the bill is found in the environmental liability protection section and a number of a new subsections are added which provides five substantive changes to West Virginia environmental law:

(1) The Secretary of DEP may determine to limit the liability of lenders, innocent purchasers or landowners, de minimis contributors, or others who have grounds to claim limited responsibility for a containment or cleanup required under the applicable environmental acts.

(2) A bona fide prospective purchaser may not be held liable for a containment or cleanup that may be required at a brownfield site acts if the following conditions are met: (a) The person did not cause, contribute, or consent to the release of the pollution; (b) The person is not liable or potentially liable through any direct or indirect

relationships; (c) The person exercises appropriate care with respect to hazardous substances found at the facility; and (d) The person does not impede any response action.

(3) An innocent landowner is not held liable for cleanup that may be required if certain conditions are met. In addition to the four conditions for bona fide purchaser to gain liability protection, there are additional criteria that must be met for the landowner: (a) The person made appropriate inquiries into the previous uses of the facility; and (b) either one of the following conditions apply: (i) at the time the property was acquired, the person didn't know that hazardous substances were disposed at the site; or (ii) the person is a government entity that acquired the property through involuntary transfer.

(4) A person that owns real property that is contiguous and is contaminated by a release of a hazardous substance from real property not owned by that same person may not be considered liable for a containment or cleanup if (a) the person did not cause, contribute, or consent to the release, (b) if the person is not liable through any contractual, corporate, or financial relationship, and (c) if they provide full cooperation and assistance to persons conducting response actions.

(5) There is new language that clarifies that the Secretary of DEP may still require those responsible for the contamination to contain or remediate sites where waste has been improperly managed.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

House Bill 4998

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Modifying penalties for third offense shoplifting.

CODE REFERENCE: §61-3A-3 (Amends and Reenacts)

SUMMARY:

This bill modifies penalties for a third or subsequent offense conviction of shoplifting. It eliminates provisions requiring that at least one year must be spent in confinement not subject to probation; authorizing home detention to be used as an alternative sentence to incarceration; and requiring courts to disregard shoplifting convictions more than seven years prior to the offense in question for purposes of imposing punishment.

The bill requires court, upon a finding that probable cause exists that a person convicted of a third or subsequent shoplifting offense was abusing drugs or alcohol at the time of arrest, to order evaluation of the defendant for a substance abuse disorder determination. Upon a finding of substance abuse disorder, the bill authorizes the court to order the defendant undergo treatment as part of his or her sentence.

The bill requires courts, for purposes of determining the number of prior shoplifting convictions, to count convictions in other jurisdictions that have the same essential elements of the offense, disregarding the value of property shoplifted. It prohibits courts from considering prior convictions more than seven years prior to the date of the third or subsequent offense, regardless of jurisdiction.

This bill also authorizes courts to count convictions from other incidents if the essential elements are the same as WV's and more recent than seven years.

DATE OF PASSAGE: March 7, 2024

EFFECTIVE DATE: June 5, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

House Bill 4999

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Creating exception to spousal privilege.

CODE REFERENCE: §57-3-3 (Amends and Reenacts)

SUMMARY:

This bill expands the exceptions to spousal privilege and allow for adverse testimony by a spouse when the defendant spouse has committed a crime against a "minor or any person deemed incompetent by mental disease, defect, or other disability." It also allows a spouse to offer adverse testimony when the defendant spouse has committed a crime against a grandchild of either spouse. It would permit a spouse to testify against another spouse where, for example, one of the spouses has committed an act of sexual abuse against a child.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

House Bill 5084

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Require retailers to verify identification and age upon purchase of vape products.

CODE REFERENCE: §16-9A-1, §16-9A-2, §16-9A-3, §16-9A-4, §16-9A-7, and §16-9A-8 (Amends and Reenacts)

SUMMARY:

This bill relates to prohibiting the sale or gifting of tobacco products to persons younger than the age of 21. The current age is 18. This amendment is made throughout the bill.

Several sections of the Code have been reorganized by separating definitions from the provisions on penalties. It defines the term “electronic smoking device”. These devices, as well as filters, rolling papers, blunt or hemp wraps, and pipes are all considered tobacco products. The all-inclusive term “tobacco products” is substituted throughout the bill for the various types of tobacco products.

Penalties for possession of a tobacco product by a person younger than the age of 18 have been deleted.

The bill requires any person selling tobacco products to verify that the purchaser is at least 21 years old through a valid driver’s license, state identification card, a valid federally issued identification card such as a passport, or a military identification card. It subjects an employee who sells tobacco products to a person younger than the age of 21 to non-criminal and non-monetary penalties. If the employer gave the employee prior written notice in the workplace that such act or acts may result in his or her termination from employment the employer may fire the employee.

The fines for violations have been increased.

Currently, the West Virginia Alcohol Beverage Control Administration (ABCA) is one of the agencies which may conduct inspections at locations where tobacco products are sold or distributed in order to enforce the law against underage use of tobacco products. This bill relieves the agency of that duty and instead authorizes the Bureau for Behavioral Health of the Department of Human Services to perform inspections. It also transfers the responsibility for an annual report on enforcement to the Governor from the ABCA to the Bureau.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: June 7, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

House Bill 5091

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: West Virginia Critical Infrastructure Protection Act

CODE REFERENCE: §61-10-34 (Amends and Reenacts)

SUMMARY:

This bill broadens the protections for critical infrastructure facilities and increases penalties imposed on individuals for damaging critical infrastructure. Under existing law, an individual cannot trespass (misdemeanor) or damage critical infrastructure (felony). Fines and imprisonment, or both, are imposed as criminal penalties under current law.

With respect to changes to existing law, this legislation first removes the requirement for critical infrastructure to be completely enclosed or marked with signage indicating that entry is forbidden. This allows power lines, communication lines, and pipelines to fall within the ambit of the bill's protections. Additionally, new language clarifies that nuclear power infrastructure as well as hardware, software, and digital property of a facility is protected.

Next, the bill increases the fines for a first offense for damaging critical infrastructure equipment from the existing law range of \$1,000 to \$5,000 to the new range of \$3,000 to \$10,000. Additionally, it creates a second offense penalty with a fine range of \$10,000 to \$15,000 and an imprisonment range of two to 10 years. Of note, added language makes it clear that damage inflicted by cyber-attack or digital interference would be covered by this Act.

The bill also provides criminal penalties and compensatory and punitive damages for an individual who buys or receives property stolen from a critical infrastructure facility and provides for the forfeiture of personal property used in the theft.

DATE OF PASSAGE: March 7, 2024

EFFECTIVE DATE: June 5, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

House Bill 5232

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: The Business Liability Protection Act.

CODE REFERENCE: §61-7-14 (Amends and Reenacts)

SUMMARY:

This bill clarifies that an employer may not take any adverse action against an employee based upon statements of lawfully possessing a firearm in a motor vehicle except statements made pertaining to unlawful purposes or threats of unlawful actions.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

House Bill 5294

STRIKE AND INSERT AMENDMENT AS AMENDED

SHORT TITLE: Revising state law regulating farm wineries.

CODE REFERENCE: §11-16-6a, §11-16-11a, §60-3A-3a, §60-4-3a, §60-4-3b, §60-6-1, §60-7-2, §60-7-8a, §60-7-8d, §60-8-2, 3,6c,32a, §60-8A-5 (Amends and Reenacts) §60-8-8 (New)

SUMMARY:

House Bill 5294 removes the winery classification system.

The bill amends §11-16-6a by authorizing licensed brewers and resident brewers to offer both complimentary samples and for sale samples (flights); authorizing brewers to offer both on-premises and off-premises sale of their products; and authorizing “alternating proprietorship agreements”, which allow brewers and resident brewers to share facilities and equipment.

The bill amends §11-16-11a by authorizing both Class A and Class B retail licensees to hold sampling events; and by increasing beer samples to three per person and four ounces in total volume per brand, type, and flavor, for a total of 12 ounces.

The bill amends §60-3A-3a by modifying liquor sampling by Class A and Class B mixed retail liquor stores licensees and allows licensed liquor representatives to hold tastings; and capping volume at two ounces of liquor with as many as four one-half ounce sample deals with distilleries, mini-distilleries, and micro distilleries.

The bill amends §60-4-3a by authorizing selling as well as complimentary samples at distilleries; authorizing on-premises of samples spirits; limiting samples to three samples totaling no more than six ounces of liquor; authorizing sales by a manufactured distillery, mini-distillery or micro-distilleries at private fairs and festivals; limiting local government regulation when in compliance with state law; and authorizing use of pre-packaged food at private wine restaurants.

The bill amends §60-4-3b by authorizing wineries, farm wineries, and farm entities to sell for on-premises and off-premises consumption; limiting local government regulation when operating in compliance with state law; requiring storage, warehousing and wholesaling of wine to be consistent with federal law; authorizing free and for sale samples; authorizing wine by the glass to be sold with a multi-capacity license and a private wine restaurant license or private manufacturer; and authorizing an on-premises sale at fairs and festivals.

The bill amends §60-6-1 by making changes to be consistent with amendments to §60-4-3b.

The bill amends §60-7-2 by authorizing sampling at private manufacturer clubs consistent with other sampling changes; and removing the fresh on-premises food preparation requirement.

The bill amends §60-7-8a by authorizing private fair or festival licensees to distribute alcohol and beer by the drink; and allowing dual licenses at PODAs and fairs and festivals.

The bill amends §60-7-8d by redefining “close proximity” from 150 to 300 feet as the term relates to structures and serving areas.

The bill amends §60-8-2 by removing the food service requirement for wineries and farm wineries holding a private wine, restaurant license, or multi-capacity winery or farm winery license.

The bill amends §60-8-3 by expanding services wineries, farm wineries and other wine licensees can provide; authorizing samples and sales at fairs and festivals; and removing the background check requirement for out-of-state wineries.

The bill amends §60-8-6c by authorizing wineries and far wineries to offer both complimentary samples and for sale samples; authorizes on-premises sales; and on-premises sales when separately licensed as a private wine restaurant or private manufacturer club.

The bill creates a new §60-8-8 which authorizes sale and service of wineries at fairs and festivals.

The bill amends §60-8-32a by redefining “close proximity” from 150 to 300 feet as the term relates to structures and serving areas; clarifying that pre-packaged food meets on-premises food requirement; and authorizing farm wineries with class A license to serve and sell wine by glass or bottle.

The bill amends §60-8A-5 by authorizing customers at a winery or farm winery to consumer hard cider on-premises when the operator is licensed as a private wine restaurant or private manufacturer club; authorizing complimentary and for-sale samples of hard cider; clarifying that pre-packaged food meets on-premises food requirement; clarifying hours of operation applicable to wineries and farm wineries; authorizing wineries and farm wineries holding private wine restaurant license or private manufacturer club license to sell and serve hard cider by the drink or glass or cider by the bottle when consumed by the glass on the property; authorizing both on- and off-premises consumption sales of hard cider at private fairs and festivals; authorizing wineries and farm wineries to provide, sell, and serve hard cider samples, by the glass or drink, or by the bottle when consumed by the glass for on-premises consumption to patrons over 21 years of age and who are not intoxicated.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: May 1, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

House Bill 5295

STRIKE AND INSERT AMENDMENT AS AMENDED

SHORT TITLE: Authorizing a private outdoor designated area to simultaneously host multiple qualified permit holders.

CODE REFERENCE: Amends and Reenacts §8-12-26, §60-7-2a, §60-7-8a, and §60-7-8g (Amends and Reenacts)

SUMMARY:

This bill authorizes a private outdoor designated area (PODA) to simultaneously have multiple qualified permit holders, including, but not limited to, a special S2 licensed and properly insured private fair and festival.

The bill clarifies that the dual licensing permitted for private fairs and festivals includes, but is not limited to, dual licensing simultaneous to any other qualified permit holders.

The bill redefines “qualified permit holder”, for purposes of a PODA, as the holder of a Class A, Class B, or Class S2 license that elects to operate within a PODA, and a Class S4 special permit.

The bill creates a new Class S4 special permit for sales of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer in a PODA approved by a municipality. A Class S4 permittee is authorized to sell, furnish, or serve liquor, wine, nonintoxicating beer, and nonintoxicating craft beer.

The bill requires qualified permit holders to provide the days and hours of operation in the PODA and removes the limitation that they cannot exceed the stated private club hours of operation.

The bill eliminates the requirement that each qualified permit holder execute an agreement stating that it is jointly and severally liable for any improper acts or conduct committed in the operation of the PODA in conjunction with operation of their Class A license.

DATE OF PASSAGE: March 4, 2024

EFFECTIVE DATE: March 4, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

House Bill 5298

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Relating to prohibiting a candidate who failed to secure the nomination of a political party in a primary election from seeking the same elected office as an affiliate with a different political party in the subsequent general election.

CODE REFERENCE: §3-5-4 (Amends and Reenacts)

SUMMARY:

This bill amends a section of the State Election Code that regulates the nomination of candidates in primary elections. It adds a new subsection that would prohibit a candidate running for office with a recognized political party who loses the primary election from becoming another party's candidate for the same office in the general election.

This extends West Virginia's existing "sore loser" or "sour grapes" law set forth in §3-5-23(g), which similarly prohibits a candidate running for office with a recognized political party who loses the primary election from becoming a candidate for the same office in the general election through the nomination certificate process available to groups of citizens not affiliated with a recognized political party.

The bill specifies that these amendments go into effect January 1, 2025.

DATE OF PASSAGE: March 7, 2024

EFFECTIVE DATE: January 1, 2025

ACTION BY GOVERNOR: Signed March 27, 2024

House Bill 5326

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to prohibition of unfair real estate service agreements.

CODE REFERENCE: §30-38B-1; §30-38B-2; §30-38B-3; §30-38B-4; §30-38B-5; §30-38B-6; §30-38B-7; and §30-38B-8 (New)

SUMMARY:

This bill prohibits unfair real estate services agreements between a property owner and a real estate broker and establishes the “Unfair Real Estate Services Agreements Act”.

It applies to an unfair real estate services agreement that: (1) runs with the land/binds future owners; (2) creates a lien or security interest in the property; (3) allows the contract to be assigned without timely notice to the owner; and (4) lasts longer than one year (for residential properties). Even if an unfair real estate service agreement is recorded, it does not provide actual or constructive notice against an otherwise bona fide purchaser or creditor. The bill clarifies if an unfair real estate service agreement is recorded, any party with an interest in the real property subject to the agreement may petition the circuit court for a court order declaring the agreement unenforceable and attorney fees and costs are to be awarded if the party prevails.

This bill provides that any unfair real estate service agreements are void as a matter of law, and a person subjected to an unfair real estate agreement has a private right of action for injunctive and declaratory relief, compensatory relief, and recovery of attorneys’ fees and court costs.

DATE OF PASSAGE: March 8, 2023

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

House Bill 5349

STRIKE AND INSERT AMENDMENT

SHORT TITLE: West Virginia Truth in Food Labeling Act.

CODE REFERENCE: §19-39-1, §19-39-2, and §19-39-3 (New)

SUMMARY:

This bill creates a new article within Chapter 19 (Agriculture), titled the “Truth in Food Product Labeling Act”.

Section 1 defines several terms: “analogue product”, “cell-cultured product”, “egg”, “egg product”, “fish”, “fishery product”, “food”, “food product”, “meat”, “meat food product”, “poultry”, and “poultry product”.

Section 2 lists various circumstances in which a food product (i.e., an analogue product or cell-cultured product) is deemed to be misbranded. To avoid being deemed misbranded, a food must comply with the listed labeling requirements. As such, this section establishes criteria for determining misbranded analogue products and cell-cultured products, which will put them into a similar regulatory framework for other misbranding laws that apply to other food items.

It provides exceptions for food products sold in restaurants, retail establishments, infant formula, medical food, certain food products exempted by the commissioner, food distributors, and food product businesses under a certain sales threshold.

Section 3 authorizes the Department of Agriculture to promulgate legislative rules to implement the new article, including provisions for inspection, other labeling information, violations, administrative enforcement, and appeals. It provides that federal law or regulation controls in the event of a conflict with the new article.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: June 7, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

House Bill 5395

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to judicial review of board decisions.

CODE REFERENCE: §21A-7-17 (Amends and Reenacts)

SUMMARY:

The bill provides that appeals of unemployment benefits shall be to the Intermediate Court of Appeals rather than the Circuit Court of Kanawha County. Of note, the commissioner's participation in an appeal becomes discretionary. Additionally, this bill removes language requiring the Board of Review to be a party to all judicial actions involving its decisions.

DATE OF PASSAGE: March 1, 2024

EFFECTIVE DATE: March 1, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

House Bill 5430

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Relating to per diem compensation and expenses of newly elected or appointed judicial officers receiving education and training prior to taking the oath of office.

CODE REFERENCE: §51-3-20 (New)

SUMMARY:

This bill authorizes the Supreme Court of Appeals to pay newly appointed or elected circuit judges, family court judges, and magistrates per diem compensation and expenses for attending training and education sessions prior to taking the oath of office and beginning their term. Additionally, it specifies that this compensation may be as much as the daily per diem rate of senior status circuit judges, senior status family court judges, or senior status magistrates for each required day of attendance, plus travel expenses.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: June 7, 2024

ACTION BY GOVERNOR: Signed March 28, 2024

House Bill 5510

STRIKE AND INSERT AMENDMENT AS AMENDED

SHORT TITLE: Clarify law regarding the crime of witness tampering.

CODE REFERENCE: §61-5-27 (Amends and Reenacts)

SUMMARY:

This bill modifies certain predicate behaviors in the elements of the offenses of intimidation toward and retaliation against public officials, public employees, jurors, and witnesses. It eliminates the requirement that a person's threat must be directed at inciting or producing imminent lawless action of a violent nature that could cause bodily harm and is likely to incite or produce such action.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

House Bill 5520

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Relating to juvenile competency.

CODE REFERENCE: §49-4-727, §49-4-729, and §49-4-733 (Amends and Reenacts)

SUMMARY:

This bill reduces the age under which a juvenile is presumed incompetent to participate in a court action from 14 to 13.

The bill clarifies that all options remain available to the parties short of an adjudication of delinquency while the issue of competency is pending. The bill authorizes the juvenile's attorney, guardian litem, or prosecuting attorney to seek or the court to order any pre-adjudicatory procedures or case-specific alternatives permitted by the Rules of Juvenile Procedure, or any disposition alternatives set forth in §49-4-734.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

House Bill 5561

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Relating to permitting the electronic execution of trusts.

CODE REFERENCE: §44D-1-103, §44D-4-402, §44D-5-503c, §55D-7-701, §44D-7-704, §44D-7-705, §44D-8B-2, and §44D-10-1011 (Amends and Reenacts)

SUMMARY:

This bill amends several sections within the Uniform Trust Code (Chapter 44D) which will allow trusts to be executed electronically.

In the definitions section for the entire chapter, the bill adds two new defined terms (“record” and “sign”) and amends the definition of the term “trust instrument” to incorporate both the traditional written format as well as the new electronic format. The definition of “record” expressly excludes a will unless it is duly admitted to probate. The existing definitions of “record” and “sign” have been deleted from a supplemental definitions section later in the chapter.

The bill incorporates these changes throughout the chapter by replacing references to a “writing” with a “trust instrument” or “record”, with the result that it permits non-testamentary trusts to be in either written or electronic form:

- §44D-4-402(a)(2) (statutory elements of a trust);
- §44D-4-402(d)(2) (requirements for trust where grantor does not have capacity);
- §44D-5-503c(c)(1) and (4) (rights, powers, and interests that expressly do not qualify as a revocable trust);
- §44D-7-701(a)(2) (actions that result in a designated trustee accepting a trusteeship);
- §44D-7-704(c)(2) (requirements for filling vacancy in trusteeship of noncharitable trust);
- §44D-7-704(d)(2) (requirements for filling vacancy in trusteeship of charitable trust);
- §44D-7-705(a) (authorizing trustee to resign without court approval); and
- §44D-10-1011(a) (limiting liability of trustee who holds interest as general partner in general or limited partnership on contract entered into by partnership after trust’s acquisition of interest).

The bill does not allow electronic execution of a testamentary trust unless the will is duly admitted to probate.

DATE OF PASSAGE: March 8, 2024

EFFECTIVE DATE: June 6, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

House Bill 5662

STRIKE AND INSERT AMENDMENT FOR COMMITTEE SUBSTITUTE

SHORT TITLE: Relating to adding “person in a position of trust” to certain crimes.

CODE REFERENCE: §61-8D-2, §61-8D-2a, §61-8D-3, §61-8D-3a, §61-8D-4, and §61-8D-4a (Amends and Reenacts)

SUMMARY:

This bill updates the criminal code by imposing criminal liability upon certain individuals in positions of trust who harm children. A "person in position of trust in relation to a child" is defined as someone who is generally acting in the place of a parent or by virtue of his or her occupation is "charged with any duty or responsibility for the health, education, welfare, or supervision of the child."

Under this bill a "person in position of trust in relation to a child" may be prosecuted under a number of criminal law provisions including: (1) murder of a child by refusal or failure to supply necessities, or by delivery, administration or ingestion of a controlled substance, (2) death of a child by child abuse, (3) child abuse resulting in injury, (4) child abuse creating risk of injury, (5) female genital mutilation, (6) child neglect resulting in injury, (7) child neglect creating risk of injury, and (8) child neglect resulting in death.

This legislation also updates the definition section of the article to align the terms "gross neglect" and "abuse" and further provides limitations on the certain objections for workers charged with caring for a child. Finally, the bill provides that a person in a position of trust in relation to a child includes a person who "under law or agreement" acts in the place of the parent.

DATE OF PASSAGE: March 7, 2024

EFFECTIVE DATE: June 5, 2024

ACTION BY GOVERNOR: Signed March 26, 2024

House Bill 5668

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Creating the Responsible Gaming and Research Act.

CODE REFERENCE: §29-22-30 (New)

SUMMARY:

This bill authorizes West Virginia University (WVU) to analyze gaming operations-related transactional data and metrics collected and maintained by the West Virginia Lottery as of March 1, 2024.

The bill defines transactional data and metrics to include demographic data, usage data, utilization of responsible gaming features, account suspension, complaints and financial information, including deposits, withdrawals, bonus usage, balance statements and beta-level data, as determined in the sole discretion of the West Virginia Lottery.

The bill requires the data to be transmitted in an anonymized data, excluding all personally identifiable information. It clarifies that the data is not a public record and is exempt from the West Virginia Freedom of Information Act.

The bill prohibits WVU from disclosing the data to any person except for the purposes of the research described in this section, as part of a peer-reviewed research, or to gaming operators pursuant to a written request delivered to the WV Lottery.

The bill requires WVU to use the data to develop a new program or alter or expand existing programs to include courses, training, certificates, initiatives, or other methods designed to foster innovation in gaming technology development and to prepare students for careers in racing, gaming, gaming operations, hospitality management, guest relations, entertainment, and other amenities typically offered in conjunction with gaming operations.

The bill requires the State Lottery Commission, with the cooperation of WVU, to prepare and submit an annual report to the Joint Committee on Government and Finance beginning January 1, 2026. The report is to include the impact of gaming on players and the state's economy, innovation in gaming technologies and operations resulting from this research, a curriculum designed to educate future leaders in the industry, and policy proposals developed by the West Virginia Lottery from this research.

DATE OF PASSAGE: March 9, 2024

EFFECTIVE DATE: June 7, 2024

ACTION BY GOVERNOR: Signed March 27, 2024

House Joint Resolution 28

STRIKE AND INSERT AMENDMENT

SHORT TITLE: Protection from medically-assisted suicide or euthanasia in West Virginia Amendment.

CODE REFERENCE: W. Va. Const. §23, art. 3 (New)

SUMMARY:

House Joint Resolution 28 places a proposed amendment to the West Virginia Constitution on the ballot in the 2024 general election. If ratified, it would add a new section 23 to article 3 (Bill of Rights), entitled “Protection from medically-assisted suicide”.

It would prohibit any person, physician, or health care provider in West Virginia from participating in the practice of medically-assisted suicide, euthanasia, or mercy killing of a person. It would also provide that this does not prohibit the administration or prescription of medication for the purpose of alleviating pain or discomfort while the patient’s condition follows its natural course, nor the withholding or withdrawing or life-sustaining treatment, as requested by the patient or his or her decision-maker, in accordance with State law. It would further provide that this does not prevent the State from providing capital punishment.

DATE OF ADOPTION: March 9, 2024